

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

OA-385 of 1996

(Patna, this the 20th day of February, 2004)

Coram:- Hon'ble Mrs. S. Dogra, Member (Judicial)

Hon'ble Mr. M. Jha, Member (Administrative)

Darbari Prasad, Son of Ram Kripal Prasad (since deceased) through legal representatives (1) Smt. Shanti Devi, widow of late Darbari Prasad (2) Sone Dutt, Son of late Darbari Prasad and (3) Rakesh Kumar, son of late Darbari Prasad, residents of Village Deoria, Post Office Bedul, Police Station Masaurhi, District Patna, retired Auditor, A/c No. 8290690, Office of the Controller of Defence Accounts, Patna-800019, District Patna.

.... Applicant

- By Shri N.P. Sinha, Advocate

Versus

1. The Union of India, Son of Not known, through the Defence Accounts Department, Controller General of Defence Accounts, New Delhi-110066.
2. The Controller of Defence Accounts, Post Office Patna.

... Respondents
- By Shri V.M.K. Sinha, Sr. S.C.

ORDER

Hon'ble Mrs. S. Dogra, Member (J):-

1. This Original Application has been preferred by the applicant (since deceased) for direction to the Respondents for grant of annual increment due from 1988 till the date of his retirement i.e. 31st March, 1994.

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2. The applicant was working as Auditor in defence accounts Department at Patna. He was prematurely retired on 8.5.1989 making it effective from 16.5.1989. However, on his appeal the said order was quashed and he was allowed to remain in service vide order dated 17.12.1989 and he resumed his duty on 22.12.1989.

3. The applicant approached the concerned authority to regularise the period of absence from duty from 17.5.1989 to 21.12.1989 but the same was rejected.

4. It is submitted by the applicant that earlier also he preferred an OA-6 of 1995 wherein directions were given to the Respondents to decide the representation of the applicant to be preferred by him vide its order dated 24.5.1995 vide Annexure-A-1. The Respondents have decided his representation vide Annexure-A-3. However, the applicant has not challenged this Annexure-A-3 passed by the competent authority on 21.7.1996.

5. Without coming to the submissions being made by the applicant it is necessary directly to come to the Written Statement wherein the Respondents have submitted that the applicant has suppressed material facts from the Court with regard to rejection of his claim reagitated in the present OA in earlier OA-233 of 1991 preferred by the applicant on the same ground along with relief for treating the said period of his absence on duty. The said OA was decided by

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this Court vide Annexure-R-1 on 11.12.1992. Therefore, it is submitted by the Respondents that since his submissions being made in the present OA have already been rejected. Therefore, the present OA is hit by principle of *refjudicata* and is liable to be dismissed on the ground of suppression of material ^{facts} from the Court.

6. The applicant has filed rejoinder and he remained silent while not replying to para-5 of the Written Statement wherein the Respondents have submitted with regard to suppression of factum of filing of OA-233 of 1991 praying for the same relief by the applicant. Even in Additional Rejoinder he has failed to give any cogent reply as to why he has suppressed this fact in his Original Application.

7. The Additional Rejoinder has been filed by the legal representatives of the applicant as the applicant, Darbari Prasad, died on 21.8.99 during the pendency of this OA, who were impleaded as ^{allowing} a party while ^{decided} one MA-274 of 2002 ^{on} 26.9.2002. In the said rejoinder also no reason whatsoever, has been assigned as to why this fact was suppressed with regard to decision passed in OA-233 of 1991 by the Court though it has been mentioned in para-5 of the said Additional rejoinder that the applicant's relief with regard to treating the period of absence as on duty was allowed by the Court in the said O.A.

8. We have heard the learned counsel for the parties and gone through the record. After perusal of order passed in OA-233 of 1991 vide Annexure-R-1 it

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4.

is found that this Court passed directions to treat the period of absence from 17.5.1989 to 21.12.1989 as on duty and to make the payment of pay and allowances for the said period to the applicant. It is also found that the applicant has sought same relief as has been claimed by him in the present Original Application with regard to considering his case for crossing the efficiency bar by a Departmental Promotion Committee (DPC) in 1988 and the same was rejected by this Court in the said order as the applicant was not found fit for crossing the efficiency bar by the said DPC in 1988.

9. Moreover, the applicant has not challenged the order passed by the Respondents vide Annexure_A-3 dated 21.7.1995 in pursuance of the directions given by this Court in OA_6 of 1995. After perusal of the said Annexure_A-3, the same is otherwise found to ^{be} very reasoned and speaking order while rejecting the claim of the applicant calling for no interference by this Court.

10. In the order on his representation (Annexure_A-3) it is found that the case of the applicant for holding up at the efficiency bar stage of Rs .1560/- has been rejected ~~interim~~ of FR-25 and the case of the applicant was always assessed by legally constituted DPC as "unfit" for crossing efficiency bar as per guidelines and instructions contained in the letter issued by the Government

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of India (DOPT) dated 10.4.1989.

11. The applicant has also suppressed this fact from the Court that in view of the order passed in OA-233 of 1991, the period of his absence for the aforesaid period has been treated as on duty, therefore, it is clear in the given facts and circumstances of the case that the applicant has not approached this Court with clean hands by suppressing certain material facts from this Court disentitling him for grant of any relief for which he is otherwise not found to be entitled for.

12. Therefore, after careful consideration in the matter we find no reason to grant any relief whatsoever to the applicant on two grounds, firstly on the ground of suppression of material facts from the Court, secondly on the ground that the claim of the applicant has been rejected by the concerned authority by passing very reasoned and speaking order in accordance with law vide Annexure A-3 which called for no interference by this Court.

13. Having said so we are not convinced with the submissions made by the learned counsel for the applicant and the present OA being devoid of merit is hereby rejected and disposed of accordingly. However, no costs.

sks

(Matreshwar Jha)
Member (A)

(Shyama Dogra)
Member (J)

20/2/04