

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.299/99.

Dated this Thursday the 19th Day of June, 2003.

Shri Nivrutti Sopan Pawar,
Ex-Mason, Garrison Engineer,
(North) Santacruz, Bombay-29.
R/o.Saigar Chawl, Mountabatten
Camp, Dehuroad, Pune-412 101.

...Applicant.

(By Advocate Shri J.M. Tanpure).

Versus

1. The Union of India, through
Secretary, Ministry of Defence,
South Block, New Delhi-110001.
2. The Garrison Engineer (Uttar),
Garrison Engineer (North),
Santacruz, Bombay-29.
3. The Garrison Engineer,
Dehuroad, Taluka Haveli,
Dist. Pune.

.. Respondents.

(By Advocate Shri R.R. Shetty).

ORDER (ORAL)

Shri V.K. Majotra, Member (A).

The applicant who was working since 14.3.1966 as Mason Pt. under Respondent No.3 was removed from service on 31.7.1980. After receiving terminal benefits he moved the Appellate Authority in appeal which was dismissed as time barred. However, the revisional authority by order dated 28.2.1991 set aside the order of removal and remitted the matter to the Disciplinary Authority. Applicant retired on 30.6.1991. He filed O.A.681/1991 on the point whether the applicant should have been reinstated in service with effect from 31.7.1980 and not with effect from 28.2.1991. The O.A. was allowed vide order dated 10.6.1992 directing the respondents to treat the applicant as being in service with effect from 31.7.1980.

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He was directed to be in service till 8.6.1992 when a fresh order of dismissal or removal was passed. The applicant was held entitled to get the entire backwages from 31.7.1980 to 8.6.1992. The Union of India carried out the matter in Civil Appeal No.3332 of 1993 arising out of SLP No.2409/93. The Supreme Court passed the following order:-

"Special leave granted.

Heard counsel on both sides. The grievance of the appellants is that even though the respondent was removed from service on 31st July, 1980, he did not take any action thereafter till August 1988 when he made a representation for having his terminal benefits cleared. After securing the terminal benefits he made a representation to the Appellate Authority questioning the application as time barred, but the revisional authority acting under Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, set aside the order of removal and remitted the matter to the Disciplinary Authority by the order dated 28th February, 1991. Counsel for the Union of India, therefore, contended that the Union cannot be saddled with the responsibility to pay wages for the period the respondent was totally inactive i.e. after 31st July, 1980 till August 1988. It was only in 1988 that he moved the Appellate Authority questioning the removal order. We see force in this submission. We, therefore, allow the appeal and modify the order of the Tribunal by which back wages have been allowed from 31st July, 1980 to 8th June, 1992 and instead direct that he will be entitled to the same from 1st April, 1989 (instead of 31st July, 1980) till superannuation. Retiral benefits will also be revised accordingly, but if there is any recovery to be made, the same will not be effected."

2. Learned counsel of the applicant contended that respondents fixed applicant's pay at Rs.950/- p.m. with effect from 1.4.1989 granting extra ordinary leave for

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2801 days not counting that period for pension and gratuity. According to him the entire period from 31.7.1980 to 31.3.1989 has to be taken into consideration as continuous and uninterrupted service in terms of Supreme Court's judgment. Learned counsel also stated that applicant is entitled to 18% interest on Sy Pay bill and bonus of Rs.43,637/- and Rs.2512/- as even though the Supreme Court Judgment ^{was by} dated 19.7.1993, the said amounts were paid to the applicant on 28.9.1995.

3. The learned counsel of the respondents stated that while the applicant's O.A.681/1991 was decided with a direction to pay all back wages to him, The Supreme Court in the appeal of the Union of India modified the order of the Tribunal directing that applicant is entitled to back wages only from 1.4.1989 till superannuation. The retiral benefits were also to be revised accordingly which meant that the period from 31.7.1980 to 31.3.1989 have not to be included for giving any benefit to the applicant. Learned counsel also states that applicant's prayer for interest on delayed payment of SY Pay and Bonus cannot be considered because the applicant has asked for this 3 years after the payment.

4. We have gone through the Tribunals' and Supreme Court's orders carefully. Supreme Court's order only states that applicant is entitled to backwages from 1.4.1989 till superannuation. There is no observation

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made by the Supreme Court that period from 31.7.1980 to 1.4.1989 should be treated continuous service for the purpose of retiral benefits. Applicant was removed from service on 31.7.1980. He did not take any action thereafter till August, 1988 when he made a representation for glaring terminal benefits. After securing the terminal benefits he made a representation to the Appellate Authority questioning his removal. In this backdrop we have to read down the intent in the Supreme Court's order which states that "Retiral benefits will also be revised accordingly, but if there is any recovery to be made, the same will not be effected". The intent does not imply that applicant is entitled to counting of aforesaid period as an active service period when he was sitting at home all along. As such that period seems to have been taken off from the period upto his superannuation. Retiral benefits cannot be revised by taking that period as a continuous period for the purposes of computing the benefits. The prayer of the applicant in this regard is certainly res-judicata if viewed in the light of the Supreme Court's order of July, 1993. Thus we hold that he is not entitled to grant of wages, pension, gratuity etc. for the period between 31.7.1980 and 31.3.1989.

5. However, the applicant's claim for interest on the amounts of Rs.43,637/- and Rs.2512/- which were paid to him on 28.9.1995 although that should have been paid within a reasonable period after Supreme Court's judgment

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dated 19.7.1993 is justified and should not be denied by the respondents as employer. In this view of the matter respondents are directed to pay to the applicant interest @9% per annum on payment of 43,637/- + Rs.2512/- from October, 1993 i.e. three months after the date of Supreme Court's Judgment to 28.9.1995 when payment was made. This interest shall be paid to the applicant by respondents within a period of one month from the date of communication of this order. O.A. is partly allowed as above. No costs.

S. Raju
(Shankar Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A).

H.