

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 426/92

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DATE OF DECISION: 29.7.1996

Shri A.G.Vaidya Petitioner

Shri B. Ranganathan Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ?

B.S. Hegde
(B.S. Hegde)
Member (J)

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 426/92

Shri A.G.Vaidya
V/s.

... Applicant.

Union of India
through the Secretary
Ministry of Defence
Government of India
New Delhi

General Manager
Naval Armament Depot,
Trombay, Bombay.

Deputy General Manager
Naval Armament Depot,
Trombay, Bombay.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Appearance:

Shri B. Ranganathan, counsel
for the applicant.

Shri V.S.Masurkar, counsel
for the respondents.

JUDGEMENT

Dated: 29.7.94,

¶ Per Shri B.S. Hegde, Member (J) ¶

The applicant has filed this application under section 19 of Administrative Tribunal's Act, against the impugned order dated 31.3.92 issued by the AASO (A&P), Deputy General Manager (T) informing the applicant that the sum of Rs. 5,392/- is proposed to be recovered from the applicant's salary on the ground of excess payment alleged to have been made by the respondents as applicant allegedly availed of leave without pay on personal affairs for varying periods during 1982 - 85 totalling to 437 days.

The applicant has joined the service of the respondents as Lab Assistant in 1965 which post has now been redesignated as Chargeman and the applicant is currently working as Chargeman at Trombay. During

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the period from 1977 to 1986 he was working with Naval Armament Depot, Karanja. He further contents that his service book has not been transferred from Naval Armament Depot, Karanja to Naval Armament Depot, Trombay soon after his transfer as was required under the rules and there was an abnormal delay on the part of Naval Armament Depot, Karanja to transfer the service book of the applicant to Naval Armament Depot, Trombay. It is the contention of the applicant that he has not been granted annual increment in the year 1990, thereby he made a representation to the General Manager, Naval Armament Depot, Trombay that his annual increment due to him on 1.5.90 was not granted, on the enquiry with the Administration he has come to know that the leave period during 1982 - 85 was shown as EOL without pay on personal affairs, therefore the increments has been withheld. In that connection he has made representation, wherein he was stated that the absence during the period 1982-85 he was furnished medical certificate because he was sick and every time he resumed the duties only after producing the proper medical certificate. Inspite of the above fact, his leave period has been shown as personal affairs instead of it being on medical certificate. He further contents that from 1990 onwards he has not been released the annual increment. Accordingly he prayed for quashing the impugned order dated 31.3.92 and direct the respondents to release annual increments as per rules. The respondents in their reply denied the contention of the applicant. In para 4 the respondents have stated that the service documents of the applicant were received at NAD Trombay soon after his transfer without mentioning the date of transfer. In para 5 the respondents

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have stated that on scrutiny of the leave account of the applicant, it was observed that the applicant had availed Extra Ordinary Leave without pay on personal affairs as per the statement attached during the period from 1982-85 while he was serving at NAD Karanja and the same has not been taken into account by NAD Karanja while granting annual increments for the year 1982 - 85. This was observed by the Audit Authorities during the internal audit of the service documents. Since re-casting of increments for the period 1982 - 85 was to be done first before granting annual increment for 1990, the same was not granted to him.

Persuant to the directions of the Tribunal, Shri A.Mital, General Manager, NAD, Gun Gate, Naval Dockyard, Bombay has filed an affidavit stating that he has gone through the facts of the case and has filed this affidavit in his official capacity. On denying the allegations made by the applicant, the respondents only re-iterated that they were maintained the service records and leave accounts as per rules. He also stated that during the period 1982 -85, the records were destroyed as per the existing rules .


Heard the rival contention of Shri B. Ranganathan, counsel for the applicant and Shri V.S. Masurkar, counsel for the respondents and perused the documents carefully. The leave account of the applicant furnished by the respondents as prepared on 18.1.90 for the alleged periods is **not acceptable**, as in the affidavit filed by the respondents they have stated that original records were not available, if that is so, how they had prepared the statement. In the circumstances, I am of the view that it is not possible to give any

credence to the later statement filed by the respondents on 18.1.90, covering the period from 1982 - 85 especially they have stated in the affidavit that the original documents were not available for the aforesaid period. It is not the case of the respondents that the applicants has defrauded or gave any wrong information to the department. As a matter of fact normal procedure is as and when the applicant /petitioner takes leave , corresponding leave application ought to have been given by the official concerned to the Competent Authority which in turn the Competent Authority thereby accept the same or reject the leave application. There is nothing to justify in this case that the medical certificate received by the applicant had been rejected by the respondents. Therefore it is apparent that the respondents have not maintained the service records of the applicant and in the absence of any original records it is not possible to give any credence to the statement given by the respondents on a later date. Besides that, even assuming that the earlier payments has been made or any excess payments were made to the applicant, in that event after due procedure of law the respondents are within their right to recover the money from the salary but that does not empower them to stop further increments from time to time which is otherwise due to the applicant. In the instant case, admittedly, the respondents have failed to release the annual increments from 1990 till date. The respondents have not given possible/plausible explanation or justification. They do not have the power to withhold the increment on the ground that the applicant has been paid excess payment in the earlier years. Their calculation is is not based

on scrutiny of the original documents.

Learned counsel for the applicant submits that by not paying the annual increments he has suffered heavily . He will **lose** by way of pension, therefore, he contents that the respondents be directed to pay annual increments forthwith and quash the impugned order which is not based on scrutiny of original documents of the applicants service records.

In the conspectus of the facts and circumstances of the case, the impugned order passed is not just and proper and the same is liable to be quashed and set aside. Accordingly, the impugned order dated 31.3.92 is quashed , if any recovery pursuant to this is made the same may be refunded to the applicant within a period of two months from the date of receipt of this order. The respondents are directed to release the annual increments of the applicant from 1990 onwards within a period of two months from the date of receipt of this order. In the result the O.A. is allowed but no order as to costs.


(B.S. Hegde)
Member(J)

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