

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1024/97

DATE OF DECISION:

This 5th Day of July 2000
(05/07/2000)

1. Dr. C.K. Pushpendran, Applicant.

(In person)

Versus

Union of India thru the Secretary, Dept. of Respondents
Atomic Energy & Others.
(By Shri. R.K. Shetty, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

and

Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.

No.

B.N. Bahadur
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No. 1024/1997
Dated this 5th Day of July, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)
And
Hon'ble Shri S.L. Jain, Member (J)

Dr.C.K.Punshpendran,
formerly employed as
Scientific Officer (SO/SD)
Bhabha Atomic Research
Centre, Anushakti Nagar,
Trombay, Mumbai 400 085

residing at 13/1101. Jyoti,
Devidayal road, Mulund (West)
Mumbai 400 080.
(Applicant in person)

..... Applicant

vs.

Union of India through

1. The Secretary, Department of
Atomic Energy,
Govt. of India,
Anushakti Bhavan, Chhatrapati
Shivaji Marg, Near Gateway of India
Mumbai 400 001.
- 2 The Director,
Bhabha Atomic Research
Trombay, Mumbai 400 085.

..... Respondents

(Respondents represented by Shri R.K.Shetty, Advocate)

O R D E R

[Per B.N.Bahadur, Hon'ble Member (A):

This is Application made by Dr. C.K.Pushpendran, formerly employed as Scientific Officer (SO/SD) in the Bhabha Atomic Research Centre (BARC) at Mumbai, seeking the relief, in substance that the Tribunal declare that the period of his service from 6.12.1983 to 30.11.1986 and the period from 1.12.1986 to 10.2.1987 be treated as duty for all purposes. The Applicant

...2/-

B.N.B.

also prays that all consequential benefits flowing from such declaration (including fixation of pay, payment of arrears and promotions etc.) should also be provided to the Applicant. The Applicants prays that the impugned orders dated 26.5.1997 (Exh.A) as also the impugned order dated 26.8.1997, be quashed and set aside.

2. The facts of the case, as set forth by the Applicant, are that he joined BARC in 1965 as Scientific Assistant (A), and through a series of promotions, was appointed Scientific Officer (SD) in 1982. The Applicant was formally permitted to join University of Mexico, Mexico City, in 1982, to pursue higher studies and was granted one year's study leave by BARC, for this purpose. In view of the unusual devaluation of currency in that country, it became unviable for him to support his family in India, and he consequently had to shift to an American University in 1983. The Applicant further states that he shifted to a University in USA, in November, 1993, and avers that in spite of all knowledge of problems faced by him, the Respondents refused to grant extension of study leave as was usually done for similarly placed Applicants. The Applicant avers that the Respondents sent a Cablegram to him (13.11.1983) asking him to return to India.

3. The Applicant further states that without waiting for reply, the Respondents issued him a chargesheet only a few days later (3.12.1984), to which he sent a reply on 26.12.1984. Applicant further ^{states} ~~that~~ ^{Ans} he submitted his resignation on 28.8.1985, along with Idemnity Bond money. The Inquiry was however, continued and when Applicant returned to India and reported for

...3/-

Bns

duty on 1.12.1986, he was not allowed to join, despite several written requests. The penalty of dismissal was imposed upon him vide order dated 11.2.1987 (Annexure C). The Applicant further describes details of subsequent events of his filing an OA No.211/1998, and the Contempt Petition in 1992 and how the Applicant came to be subsequently reinstated in service w.e.f 4.5.1992. In the further paragraphs in the O.A. the Applicant gives details of payments made to him etc.

4. Importantly, he states that an inquiry was restarted as per liberty granted by Tribunal, and that in the Inquiry Report dated 30.12.1993, the Inquiry Officer had held him not guilty of charges levelled against him. However, two years after such exoneration, the respondents disagreed and after the Show Cause Notice etc. imposed the penalty of Censure on the Applicant vide order dated 23.10.1996 (Ex.J). Applicant states that he has not filed any appeal in the matter.

5. Applicant further states that through the impugned order 26.5.1997 he was informed regarding the manner in which his pay was fixed for the various periods now in dispute. It is with these grievances, and also with the grievance that he should have been promoted as Scientific Officer (SE) in 1987, that Applicant is before us seeking the reliefs as described above.

6. The Respondents have filed a written statement in reply, resisting the claims made by the Applicant on all counts. It is averred that promotions in the Department are made on a unique Scheme called "Merit Promotion Scheme". Further, since disciplinary proceedings are started against the Applicant, for unauthorised absence from 6.12.1983, the Applicant's case for

...4/-

B.S.

promotion to the grade of SO/SE was considered on 5.10.93 but the findings of the DPC were kept in sealed cover. After completion of the disciplinary proceedings, the penalty of Censure was imposed on the Applicant vide order dated 23.10.1996, which has not been challenged. In view of his emerging from the Departmental Inquiry with a punishment, findings in sealed cover were not acted upon. In fact, as per Govt. orders, his case was to be considered in the next DPC where he was called for interview on 12.9.1987. However, the Applicant did not attend the interview, which fact has not been brought out by him in the O.A.

7. Respondents aver that the prayer for payment of interests is hit by the law of limitation and also barred by the principles of resjudicata as the same prayer was made in CP filed in OA.211/88. Reasons for the delay in payment were also explained in that CP/OA, avers the respondents. The CP was dismissed in 1993.

8. Coming to the prayer for quashing of orders treating the period of 6.12.1983 to 13.11.1986 as dies non, and the period from 1.12.1986 to 10.12.1987 as HPL, the respondent goes into details of Rule 25 of CCS Leave Rules 1972 and says that orders as issued were issued in consonance with the Rules cited. The Respondents further restate the facts of the case of Applicant in chronological terms in paras 5 (a) to 5 (i).

9. Respondents state that Applicant had indeed written to them of his desire and intention for a change in venue and University, but that prior permission should have been obtained from the Competent Authority, before actually changing the

B-6

University. This was not done by the applicant and hence he was informed that his requests for extension of EOL was not approved, and that he should return to duty immediately. This was conveyed to Applicant by cable dated 29.11.1983. However, the Applicant failed to comply with the instructions. The Respondents statement further give details regarding the inquiry, their action on it and other facts regarding DPCs etc. as already pointed out by Applicant. The Respondents aver that a lenient view has been taken in imposing the penalty of censure and in no case can the period of nearly three years from December, 1983 to November, 1986 be treated as duty as it would amount to rewarding the Applicant for misconduct.

10. We have heard the Applicant who appeared in person before us to argue his case, as also the Learned Counsel for Respondents, Shri R.K.Shetty. The Applicant, Dr C.K.Pushpendran, argued his case in detail first taking us over the ^hchronological facts in the case and to the documents relevant to the facts and arguments made by him. The Applicant contended that it is well known how an unprecedented situation had arisen in Mexico, due to high devaluation, and how he had informed Respondents, admittedly, of his intention to shift to the US. He had no time under the circumstances to go into formalities of receiving of written permission before joining the University of Ohio in USA on 15.11.1982. Applicant contended, in argument, that he had written to the Department on his joining, but instead of this EOL being granted, he was chargesheeted.

bs

11. The Applicant argued that others in the Department who were similarly placed had been given permission for change of Universities under similar circumstances, but he was discriminated against. He further contended that there was no Rule which necessitated prior permission being taken again, and reiterated that in the case of Dr. Tribhuvan it can be seen that such permission was granted as can be seen from Ex.M at page 76. He also drew support from the list submitted by him at Ex. L (page 74) to show how a large number of Scientists had been permitted to extend their EOL. Applicant also sought to draw support from instructions contained in the OM of June 1978.
12. The Applicant also argued at length on what he called the denial of promotion that was due to him in 1987, and resisted the defence that this could not be given because no CRs were available. He said that the usual practice of sending CRs to Professors in the United States was dispensed with in his case, and this discrimination should not be allowed to come in the way of his consideration for promotion, specially in view of a clear report on this aspect by the head of Division, a copy of which is placed at page 146.
13. Applicant further reiterated the other points made by him in his Application viz. that he was not allowed to join when he reported back only on instructions of the Department, that no permission is needed once EOL has been granted, the Enquiry Officer has exonerated him and the Respondents slept over the matter for an inordinately long period before taking a view. Applicant further argued that the actions in treating long periods as *dies non* was unjust and reliefs, as asked for, should be granted.

...7/-

BmB

14. Arguing the case on behalf of Respondents their Learned Counsel Shri R.K. Shetty, stated that a regular DE as per procedure has been conducted, and the applicant has been found guilty and has been imposed the penalty of Censure. It was logical that the period of absence be treated as *dies non*. He drew support from FR (A) (2) (i) to make the point that Respondents have the discretion to decide on how the period from 11.2.1987 till 1992 was to be treated, and that they had decided on this within the four corners of the Rules, and considering the facts and circumstances of the case. Learned Counsel contended that they had been more than lenient towards the Applicant, in scaling down the penalty from dismissal to Censure, and that also for the period of absence, the Applicant had been treated fairly.

15. Reacting to the allegation of discrimination vis-a vis the case of Dr. Tribhuvan, learned Counsel for Respondents argued that it was necessary, under the Merit Promotion Scheme, that prescribed period of service in the concerned grade should have been completed and it is also necessary for the officer concerned to procure the required CR gradings. He contended that the period of EOL is not taken into consideration for assessment for the purpose of promotion. On the allegation that blank CR forms were not sent to the Professors of the Applicant in USA, Shri Shetty argued that this was so because Applicant was on unauthorised absence.

16. We have considered the arguments advanced in the case by either side and have also gone through all papers on record filed by Applicant and Respondent.

Bnb

17. In the first place, we must note that the penalty imposed on the Applicant, after the departmental inquiry, is not being questioned by him in this O.A. And, therefore, we have to assume that that part is settled. It has to be recapitulated that the relief, in substance, is sought for the following:

(a) Declaration of period from 6.12.1983 to 30.11.1986 and from 1.12.1986 to 10.2.1987 as duty for all purposes.

(b) quashing of impugned order dated 26.5.1987 and direction for refixation of pay in various grades and payment of arrears and quashing of orders dt. 26.8.1987

(c) direction for grant of promotion to the Applicant as Scientific Officer (SE) from about August, 1987

(d) recomputation of pension and other retiral dues on the basis of other reliefs

18. We would also like to recall the facts of some of the salient dates in the case for easy analysis. The Respondents have stated that periods have been treated as follows:

(a) 6.12.82 to 5.12.83 - EOL (For prosecuting Post Doctoral Fellowship)

(b) 6.12.83 to 30.11.86- Dies Non (Unauthorised absence)

(c) 1.12.86 to 10.2.87 HPL (Leave Due & Admissible)

(d) 11.2.1987 to 3.5.92 Treated as Duty for All purposes.

Now, admittedly, the Applicant had moved on from Mexico to the USA w.e.f. 6.12.1983 to prosecute his further studies and continued there till 30.11.1986. The period between these dates has been treated as Dies non (unauthorised absence) The Applicant's contentions are that he had given prior intimation to the employers of his intention to change University/venue, in view of the conditions in Mexico. The Respondents' point is that such intimation was not enough, and prior permission was needed to change the course. Applicant had argued before us that nowhere in the Rules was prior permission stipulated to be necessary. Another arguments of his, as detailed above, was that others were given such permissions.

19. It is well established that prior permission is needed to proceed for any course/training/ research by any Govt. Servants and that the Scheme for deputation for these purposes abroad provides for grant of EOL subject to this permission. The grant of leave or EOL is not a right, and cannot be looked at in segregation and distinct from the permission required for pursuing any course/ research etc. The Applicant may have had a very genuine ground for moving out from the country where he first went to pursue higher studies, and it is also true that he has intimated his intention to shift to the USA to the Respondents. However, the fact that permission has not been accorded to him to pursue his further research is evident. He was constantly asked to return to the original posting but chose not to do so.

B.S.

20. Now once we agree that ^{not Bmb} be said that grant of such permission and leave, was ^{not Bmb} the right of this Applicant, it has to follow that it is not possible for us to make a judicial assessment and arrive at any conclusion or view as to whether the Leave should have been granted or not. The respondents have stated in their reply that Applicant was informed by a letter dated August, 3 1983 that the change of such nature requires prior permission from the Department and "that he should await permission from the Department before accepting the same. However, Applicant joined Michigan State University in USA without such permission" The Respondents have also stated that Applicant remained absent from 6.12.1983 to 30.11.1986 which is indeed a long period of ^{Bmb} ~~nearly 3 years~~! During this period the Departmental Inquiry was proceeded with.

21. On the argument of hostile discrimination taken by the Applicant, vis-a-vis such permissions being granted to others we do not find ourselves in a position to make an assessment into the cases of the others, who according to the Applicant were given such permissions and assess if that this entailed discrimination. For one thing, there is not enough material on record to be able to take a view on any hostile discrimination being made or otherwise. Also even if in the particular case of Dr. Tribhuvan permission was given wrongly that could not be the basis for providing judicial relief to the Applicant. Assuming that the Department made a mistake in Dr. Tribhuvan's case that mistake cannot be the basis of providing the relief sought by Applicant, as per well settled judicial principles in this regard.

Bmb

...11/

22. In view of the above discussions, we are unable to see any reason for providing the relief sought for a declaration to treat the period between 6.12.1983 to 30.11.1986, as duty for all purposes or for any other relief relating to this period.

23. Now we come to the period between 1.12.1986 to 10.2.1987. Admittedly the Applicant returned and sought to join duties w.e.f 1.12.1986, but was refused permission to do so by the Respondents since, according to the Respondents, by this time Disciplinary Authority had "tentatively come to the conclusion that the Applicant was not fit for retention in service and the matter had also to be referred to UPSC for their advice, who eventually agreed with the views of Disciplinary Authority at that juncture." Respondents also state in their reply in the same paragraph (17C) that this period was treated as HPL in view of this Tribunal's Order dated 25.9.1991 in OA. 211/88. It was reiterated by learned counsel for Respondents during arguments that this was granted as "Leave Due and Admissible". Now although the applicant has not actually joined duty during this period but since he reported it is obvious that what was probably in the mind of the Respondent was that the benefit should be given in the shape of Half Pay Leave on some kind of notional joining. We do not see how, in view of discussions above we could take a different view and allow this as duty for all purposes. Hence, we do not want to interfere in this regard also.

24. Coming to the relief sought at paragraph 8(d) regarding promotion as Scientific Officer w.e.f August, 1987 we first note that although the Applicant was actually reinstated with effect from 4.5.1992, the period from 11.2.1987 to 3.5.1992 has been

...12/-

Bis

treated as duty for all purposes. The Applicant was not actually working in August, 1987, from which time he wants the promotion, even though admittedly he has been treated as on duty. It is also true that merit has to be judged through Annual Reports for the preceding period which were not available in the case of the Applicant. The allegation made by Applicant is that his Professors should have been asked to write his report. When the relevant period has largely been confirmed as unauthorised absence it is not possible to give any direction on how the merit of the Officer for this period could have been judged nor is it possible, or necessary, for this Tribunal to go into the question of determining the suitability of the Officer in August, 1987 for promotion. The Applicant had strenuously sought to take support from the document annexed by him (copy at page 146 of the Paper Book) This is a note signed by somebody (name illegible), who ^{the} ~~Applicant~~ said, was his Head of Division. In this note it has been stated that Applicant has done valuable work since 1982 through publications/ research and also praises his devotion etc. in the one year period since May, 1992. The note recommends that even though his CRs are not available, he should be rated as A+. Even, for a moment, ^{if} we accept this document to be correct it cannot be the basis on which this Tribunal can grant the relief of promotion as sought. In any case, this document is not ^{of} proven, or admitted authenticity and cannot be relied upon.

25. In view of the discussions made above, we are not convinced of there being any case for interference in the case by the Tribunal. In the result, this O.A. is hereby dismissed. No orders as to costs.


(S.L. Jain)

Member (J)


(B.N. Bahadur)

Member (A)

05/07/2000