

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1159/97

Date of Decision : 25.2.2002

C.S.Marne _____ Applicant

Shri S.V.Marne _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri R.K.Shetty _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri Justice Ashok C.Agarwal, Chairman

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓

Shanta S.
(SMT.SHANTA SHASTRY)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1159/97

Monday this the 25th day of February,2002.

CORAM : Hon'ble Shri Justice Ashok C.Agarwal, Chairman

Hon'ble Smt.Shanta Shastry, Member (A)

Chandrakant Shankarrao Marne,
working as Orderly at the
Ammunition Factory,
Khadki, Pune.

...Applicant

By Advocate Shri S.S.Marne

vs.

1. Union of India through
The Secretary,
Ministry of Defence,
South Block, New Delhi.
2. The Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ammunition Factory,
Kirkee, Pune.
4. Shri S.S.Natrajan,
Chairman, O.F.Board,
10-A, Auckland Road,
Calcutta.
5. Smt.Shailaja Jha,
Works Manager (Stores),
Ammunition Factory,
Khadki, Pune.
6. Shri Omprakash,
Junior Works Manager,
L1 & L2 Section Incharge,
Ammunition Factory,
Khadki, Pune.

..2/-

7. Shri Vikram K.Pillai,
Lower Division Clerk,
Training Centre,
Ammunition Factory,
Khadki, Pune.

8. Shri M.W.Bhave,
Chargeman II/I,
Ammunition Factory,
F3 Section, Khadki,
Pune.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R (ORAL)

{Per : Smt.Shanta Shastry, Member (A)}

The applicant was appointed in the Office of Inspectorate of Armaments, Kirkee, Pune. The applicant was removed from service on 7.7.1987. He, therefore, preferred an appeal against the aforesaid order. As it was not decided, he filed OA.NO.386/88 in this Tribunal. The OA. was dismissed on 25.2.1991 with a direction to the respondents to dispose of the applicant's appeal within two months. The appellate authority rejected his appeal on 16.4.1991. The applicant again filed OA.No.614/91. The same was decided on 5.8.1994 with the following directions :- "quashed and set aside the termination order dated 7.7.1987. The respondents are directed to reinstate the applicant in service in the post in which he was placed at the time of termination from service but without back wages. For regulating the intervening period, the competent authority may pass order in accordance with law as may be deemed fit". The applicant had thereafter filed C.P.No.80/95 which was decided on

31.7.1995. The applicant was thereafter reinstated in service w.e.f. 3.8.1995 by order dated 25.9.1995. The applicant made a representation on 29.3.1996. He filed OA.NO.1246/96 wherein he had sought disposal of ^{the} representation. Respondents were directed accordingly. Then he filed another OA.No.1229/96 wherein the applicant was seeking full wages for the period from 5.8.1994 to 3.8.1995. Tribunal vide order dated 7.8.1997 directed respondents to pay the applicant half the wages for the aforesaid period. This was complied with. Thereafter, the applicant's appeal was decided by order dated 5.8.1997 regularising the applicant's absence as under :-

From 8.7.1987 to 4.8.1994 regularised by grant of EOL.

From 5.8.1994 to 2.8.1995 is treated as on duty.

Subsequently

Aggrieved by the aforesaid orders, the applicant has approached this Tribunal for treating the period from 8.7.1987 to 4.8.1994 also as duty for all purposes with full back wages and allowances and to grant notional increment and arrears of pay fixation from 5.8.1994 with 18% interest. The applicant has made some additional prayers by way of amendment of OA. However, he now submits that he is not pressing them as they have been challenged in a subsequent OA. filed in the year 2000.

2. The applicant has also submitted that he has filed another OA.No.1229/96 which was also decided on 7.8.1997. Further, a Review Application No.86/97 in OA.No.1229/96 requesting for grant of pay from 5.3.1994 to 5.8.1995 is still

pending. Another OA.No.1246/96 was disposed of by the Tribunal on 10.1.1997 directing the respondents to dispose of the representation dated 29.3.1996.

3. The applicant admits that he has filed different OAs. However, in the present OA., his relief ^{is} confined only to treating the period from 8.7.1987 to 4.8.1994 as duty period for all purposes.

4. It is the contention of the applicant that since he has been reinstated, the entire period has to be treated as duty period in terms of F.R.54-A and therefore he would be entitled to all the consequential benefits.

5. The respondents have, however, not agreed to this. According to the respondents, in the applicant's case since he was neither dismissed, removed nor compulsorily retired as a result of disciplinary proceedings, F.R.54-A is not attracted. His is a totally different case where it was a dismissal from service on account of unsatisfactory performance and therefore, he is not entitled to treat the aforesaid period as duty period. The learned counsel for the respondents also submits that the applicant had filed SLP against the judgement in OA.No.614/91 claiming back wages. However, the same was dismissed. The learned counsel further submits that the applicant has filed two more OAs. and in one of the OAs. removal of the applicant from service w.e.f. 13.11.1999 has been upheld.

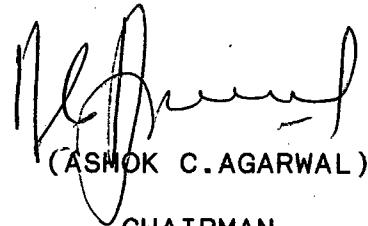
6. We have heard the learned counsel for both the sides.
7. This Tribunal had given a direction to the respondents to regularise the period of absence of the applicant from the date of termination of his services till his reinstatement but without back wages. The applicant is not claiming any back wages. He is only claiming the benefit of service during the period of termination to the date of reinstatement. He is, therefore, requesting for notional pay fixation on the basis of notional increments accrued during that period. In our considered view, though F.R.54A may not be attracted in the sense that the applicant was not dismissed or removed from service as a result of any disciplinary proceedings, all the same the applicant's services were terminated on account of unsatisfactory performance without giving him any opportunity of enquiry etc. Therefore, even though not literally, in spirit, the under-lying intention is the same as in F.R.54A i.e. when some one is exonerated fully, he deserves to be treated as on duty with consequential benefits. Thus, though the applicant was not dismissed or removed from service as a result of any disciplinary proceedings, he was dismissed all the same for unsatisfactory performance without giving him any opportunity of enquiry etc. and therefore, the aforesaid period from 8.7.1987 to 4.8.1994 ought to have been treated as a duty period. In the present case, the Tribunal set aside the dismissal order. So the applicant is entitled to treat the period from 8.7.1987 to 4.8.1994 as duty period.

8. We, therefore, quash and set aside the impugned orders dated 25.9.1995 and 6.10.1997 to the extent that the period from 8.7.1987 to 4.8.1994 instead of being regularised as E.O.L. shall be treated as duty, however, without back wages. Accordingly, the applicant shall be entitled to all the other consequential benefits, viz. seniority, increments, notional increments and his pay shall be fixed accordingly ^{with} ~~and~~ arrears arising out of difference in pay due to pay fixation, if any, as per rules. This shall be done within a period of three months from the date of receipt of a copy of this order. No interest shall be paid. Accordingly, the OA. is disposed of as above. No costs.

Shanta S

(SMT. SHANTA SHAstry)

MEMBER (A)



(ASHOK C. AGARWAL)

CHAIRMAN

mrj.