

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 16.9.93.

TA 738/86
(CS 331/85)

PREM CHAND

... APPLICANT.

vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON. MR. B.B. MAHAJAN, MEMBER (A).
HON. MR. GOPAL KRISHNA, MEMBER (J).

For the Applicant

... SHRI M.S. GUPTA.

For the Respondents

... NONE.

PER HON. MR. B.B. MAHAJAN, MEMBER (A).

The applicant, Prem Chand, had filed a Civil Suit in the court of Additional Munsit, Jaipur (West), Jaipur, praying for full pay and allowances for the period from his termination of services till reinstatement. The suit has been transferred to this Tribunal u/s 29 of the Administrative Tribunals Act, 1985, and has been registered as TA.

2. The services of the applicant were terminated on 1.3.76 under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. The Ministry of Agriculture, Govt. of India issued ^{an} order on 17.7.79 setting aside the order of termination of service. This order was conveyed to the applicant by the Chief Hydrogeologist and Member, Central Ground Water Board, Faridabad, vide order dated 15.1.81. The applicant

re-joined service in pursuance of this order on 16.1.81. In the order dated 15.1.81 (Annexure 'A') it was mentioned that his absence from duty between the date of termination of his service and the date of his reinstatement may be regularised in accordance with the provisions of sub-para 2 of FR 54 and other related provisions of FR 54. In pursuance of this order, the applicant was sanctioned leave of the kind due till 6.7.76 and for the period from 7.7.76 to 15.1.81, it was treated as leave without pay to regularise the period between his termination and reinstatement vide order dated 27.1.84 (Annexure 'D'). The plea of the applicant is that FR 54 is not applicable in his case and he should have been paid full pay and allowances from the date of his termination till reinstatement. The respondents have taken the plea that the applicant can not be given pay and allowances for this period as he has not performed any duty in this period.

3. The case was listed for hearing today. None is present on behalf of the respondents and none has been appearing on their behalf after 12.8.92. We have heard the learned counsel for the applicant and perused the records.

4. FR 54 deals with the cases of Govt. servants who are dismissed, removed or compulsorily retired and are subsequently reinstated. The applicant had admittedly not been dismissed or removed from service under the Discipline & Appeal Rules but his services were terminated under the CCS (Temporary Service) Rules. The contention of the applicant that the FR 54 has no application in his

present

case is thus correct and the relevant rule for dealing with such a case is Rule 5(2)(b) of the CCS (Temporary Service) Rules, 1965. This rule provides as under :-

- "(b) Where a Government servant is reinstated in service under sub-rule (2), the order of reinstatement shall specify -
- (i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and
 - (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

The authority which ordered reinstatement is the Department of Agriculture, Government of India, in this case. This ^{authority} was competent to determine under this rule the amount or proportion of pay and allowances to be paid to the applicant for the period of his absence between the date of termination of service and the date of his reinstatement. A copy of the order passed by the Department of Agriculture has not been placed on record by the respondents. The applicant stated that he did not receive the order and ^{he} only received the order from the Chief Hydrogeologist dt. 15.1.81. Even if it is assumed that the stipulation in this order dated 15.1.81 about regularisation of the period mentioned under FR 54(2) is based on the order of ^{the} Department of Agriculture, it ^{is} still not a valid order as it has not specified the amount or proportion of pay and allowances to be paid to the applicant for the period of his absence. The order does not indicate any reason as to why the pay and allowances will not be allowed to the applicant for this intervening period. In the reply filed by the respondents the only reason given is that the applicant

had not worked during this period. This is not a tenable reason. If the intention of the rule was to dis-allow pay and allowances for the period for which an employee had not performed any duty, there would have been no occasion to incorporate the above mentioned provision in the rules because in every case the employee would have performed no duties between the date of termination of service and reinstatement. It is provided under Rule 5(2)(b) that pay ^{as may be determined by the competent authority} and allowances will be allowed to the Govt. servant between date of termination of his services and his reinstatement. No other reason for disallowing pay and allowances to the applicant for the period of absence has been indicated either in the order of reinstatement or in the reply filed by the respondents. In the circumstances, the order to allow only payment of leave of the kind due and to treat the remaining period as leave without pay is ~~xxx~~ arbitrary and therefore not sustainable.

5. In view of the above, we allow this application and direct that the applicant shall be paid pay and allowances for the period from 7.7.76 to 15.1.81, which has been treated as leave without pay by the order dated 27.1.84 (Annexure 'D'). The arrears on this account shall be paid to the applicant within a period of four months of this order. The parties to bear their own costs.

G. Krishna
(GOPAL KRISHNA)
MEMBER (J)

B.B. Mahajan
(B.B. MAHAJAN)
MEMBER (A)