

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

T.A.No. 1072/86

Date of Decision: 15.2.93

BIMAL CHAND

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. B.B. Mahajan, Administrative Member

PER HON'BLE MR. B.B. MAHAJAN, ADMINISTRATIVE MEMBER:

Milap Chand Munot had filed a civil suit in the Court of learned Additional District Judge, Ajmer praying for declaration that the intervening period from the date of his compulsory retirement till his re-instatement in service should be treated as period spent on duty with other consequential benefits. The applicant expired during pendency of the suit and his legal representatives were brought on record. The suit has subsequently been transferred to the Tribunal U/S 29 of the Administrative Tribunals Act.

2. The applicant was compulsory retired from service after completion of 30 years of service on 4.1.1976. He submitted a number of representations. Eventually, an order of re-instatement was passed on 7.12.1977, a copy of which was endorsed on 16.12.77 and was received by him on 18.12.77. The plaintiff/applicant stated that he was constrained not to resume his duty and thereafter, the respondents issued him a registered letter on 27.8.1979 calling him to join the service on re-instatement within a period of one month and accordingly he resumed his duties on 26.9.1979. His pay was fixed vide order dated 3.11.79 as Rs. 545/-. An amount of Rs. 197/- was deducted from his pay on account of pension including the amount of commutation. He stated that his pay on re-instatement was thus fixed at Rs. 348/- per month. He submitted representation against this order but the same was rejected. He had claimed that the intervening period from the date of his compulsory retirement till his re-instatement in service should be treated as period spent on duty and he should be declared to be on continuous service with the respondents without any break and the order dated 3.11.79 fixing his pay on re-instatement be declared invalid and his pay may accordingly be re-fixed at Rs. 600/- per month

w.e.f. 26.9.79 and sought a decree of Rs. 18,401.45 on account of arrears of salary and allowances. The respondents in their reply have stated that the order of compulsory retirement was passed on the applicant according to Rule 48 (1)(b) of C.C.S. (Pension) Rules. His representation was rejected. They have taken the plea that the order of re-instatement dated 7.12.77 does not tantamount to accepting his representation but it was due to the policy decision adopted by the Government. They have stated that the order treating the intervening period from 4.1.76 to 7.12.77 as leave due and admissible to the applicant was legal and has been passed under Rule 25, sub-rule 2 of C.C.S.(Pension) Rules. They have explained that the pay of the applicant was fixed at Rs. 545/- per month. The amount of Rs. 197/- was not deducted from the pay and his pay was not fixed at Rs. 348/- on re-instatement as alleged by the applicant. However, the applicant had been asked to deposit the amount of pension and amount of commutation of pension which he had drawn. The applicant did not deposit this amount and the same was, therefore, ordered to be deducted in monthly instalments.


3. None is present on behalf of the parties, although the case was listed for hearing today. We have considered the pleadings and material placed on record.


4. It is an admitted fact that the order of re-instatement of the applicant was passed on 7.12.77. The respondents have stated that this order has been passed in accordance with the general policy decision of the Government. No copy of such general policy decision indicating the terms of those orders has been placed on the file. As the applicant was re-instated in service he was entitled to the period between the date of his compulsory retirement and re-instatement being treated as period spent on duty for all purposes. Rule 25(2) of the CCS(Pension) Rules which is relied upon by the respondents does not relate to the cases of compulsory retirement on completion of minimum period of qualifying service or age. It refers to the dismissal, removal or compulsory retirement from service and is thus applicable only when the compulsory retirement is ordered as a measure of penalty in disciplinary proceedings. The applicant, however, admitted that he did not join when the order of re-instatement was conveyed to him which he has received on 18.12.77. He is, therefore, not entitled to any pay for the period from 18.12.77 till 26.9.79 when he resumed the duties. So far as the fixation of pay on

re-instatement is concerned, it will have to be refixed by treating the period from 4.1.76 till 18.12.77 as period spent on duty and the period from 18.12.88 till 25.9.79 as extra-ordinary leave without pay. The respondents were, of course, within their rights to recover the amount of pension including the commutation of pension that was received by the applicant during the period between the date of his compulsory retirement and the date on which he resumed his duties and if any arrears on that account remain to be recovered, they will be entitled to recover the same out of pension and other dues payable to his heirs.

5. We accordingly allow this application partly and direct that the applicant shall be treated to be on duty for all purposes from the date of his compulsory retirement viz. 4.1.76 till 18.12.77 when the order of his re-instatement was received by him and he is eligible to payment of salary for this period. The period from 18.12.77 till 25.9.79 shall be treated as extra-ordinary leave without pay. His pay as on 26.9.79 shall be re-fixed on the above, basis. Any arrears due to him after adjusting the unrecovered amount of pension paid to him during the period between the compulsory retirement and resumption of duty shall be paid to his heirs within a period of four months of this order.

6. Parties to bear their own costs.


(B.B. MAHAJAN)
Administrative Member


(D.L. MEHTA)
Vice-Chairman