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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.4/87.

Date of Judgment 14-2-91

Anant Rangrao Harwalker .. Applicant

Vs.

1. Govt. of India,
through the Secretary,
Ministry of Steel & Mines,
Department of Mines,
New Delhi.
2. Union of India,
Secretary,
Department of Personnel &
Administrative Reforms,
Ministry of Personnel &
Public Grievances,
New Delhi.
3. The Directorate General,
Geological Survey of India,
27, Jawaharlal Nehru Road,
Calcutta-60.
4. The Controller,
Indian Bureau of Mines,
Nagpur.
5. The Asst. Estate Manager,
Govt. of India,
Nagpur.
Opp. Old High Court Building,
Civil Lines,
Nagpur-Maharashtra. .. Respondents

Counsel for the Applicant : Shri V.Venkateswara Rao
for Shri H.S.Gururaja Rao

Counsel for the Respondents : Shri N.Bhaskara Rao,
Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

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This application has been filed by Shri Anant Rangrao Harwalker under section 19 of the Administrative Tribunals Act, 1985 against the Govt. of India, through the Secretary, Ministry of Steel & Mines, Department of Mines, New Delhi and 4 others.

2. The applicant joined as Senior Mining Engineer in the Mining Division of Exploration Wing, Indian Bureau of Mines (I.B.M.) in October, 1959. As a result of change of Government policy, the work of exploration was transferred to the Geological Survey of India (G.S.I.) w.e.f. 1.1.66 and the applicant was also transferred to the G.S.I.

In course of time he was promoted as Superintending Mining Engineer and on completion of probation he was confirmed in that post. Yet another policy decision was taken to entrust the work of detailed mining exploration to a new Corporation called the Mineral Exploration Corporation (M.E.C.) sometime in 1972. As a result of this decision, the exploration activity in the G.S.I. came to an end.

The petitioner was sent on deputation to the M.E.C. Options were called for from the concerned employees on certain terms and conditions. The applicant did not opt for M.E.C. and was, therefore, reverted to the G.S.I. in January, 1976. The petitioner alongwith another person Shri C.M.Jain was transferred to I.B.M. temporarily vide order dated 1.12.76. Not happy, the applicant challenged the validity of this order before the Nagpur Bench of the Bombay High Court vide W.P.No.220/79. This W.P. was eventually dismissed by the Nagpur Bench

of the Bombay High Court vide its order dated 5.12.84. The Nagpur Bench of the Bombay High Court held that there was no illegality in the order dated 1.12.76 by which the applicant was transferred to I.B.M. They had also observed that certain decisions which led to ~~such an~~ ^{the impugned therein} order ^{were} taken by the applicant in full knowledge of the consequences. The applicant preferred an appeal against this in the Supreme Court and vide its order dated 19.8.85 the Hon'ble Supreme Court did not propose to entertain the Special Leave Petition and dismissed the S.L.P. The Hon'ble Supreme Court had also taken note of the fact that the applicant whose services were ~~discontinued~~ dispensed with after being placed in the Surplus Cell had been offered another post of Deputy Director of Mines Safety. After the judgment of the Nagpur Bench of the Bombay High Court the respondents issued order No.9/3/84-CS.III dated 4.6.86 wherein they had stated that the applicant, who on being declared surplus ^{and} remained on the rolls of Central Surplus/Cell, was deemed to have retired from Government service w.e.f. the afternoon of 5.12.84. The applicant is aggrieved at this notification, ^{when} ~~then~~ he was actually employed as Deputy Director of Mines Safety w.e.f. 11.8.85. The applicant is also aggrieved that while he, who was earlier in the Rs.1800-2000 scale, was placed in the Rs.1500-1800 scale as Deputy Director of Mines Safety (although with the scale protection) his junior ~~to~~ Shri C.M.Jain, who was also declared surplus at one stage in the category of Superintending Mining Engineer in the G.S.I., was appointed to a higher post viz: Deputy

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Adviser to the Bureau of Public Enterprises in the pay scale of Rs.2000-2500.

3. The applicant was also in occupation of Type 'E' bungalow in Nagpur. He vacated this on 29.6.85 after joining as Deputy Director of Mines Safety at Hyderabad on 11.4.85. By his letter dated 28.7.86 the Asst. Estate Manager, Nagpur had informed the applicant that he had failed to vacate and hand over the quarter by ¹⁻⁵⁻⁸⁴ afternoon and that in addition to action under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 a market rent of Rs.2385/- p.m. was due from him. The applicant had sent a representation against this pointing out that since he was on the rolls of Surplus Cell he should be deemed to have ^{Continued in} service and no penal rent should be charged to him.

4. In this application, the applicant seeks:

(a) promotion in the scale of Rs.2000-2500 w.e.f. the date on which his immediate [junior Shri C.M.Jain was so appointed, with all consequential benefits.

(b) that the order treating him as having retired from service w.e.f. 6.12.84 be struck down and that he be paid arrears from 6.12.84 to 10.4.85 in the pay scale of Rs.1800-2000.

(c) that the order of the Asst. Estate Manager dated 28.7.86 be treated as illegal.

5. The application is opposed by the respondents. It is their case that upto the stage his services were dispensed with from the Surplus Cell their action had been upheld, first by the Nagpur Bench of the Bombay High Court and later by the Hon'ble Supreme Court which did not seek to interfere with the judgment of the Nagpur Bench of the Bombay High Court. Originally his services were to have been dispensed with from 30.9.84 itself but because of the pendency ^{of the case} and the judgment of the Nagpur Bench of the Bombay High Court they had to shift the date to 6.12.84. Since he has subsequently been offered alternative appointment:

Deputy Director of Mines Safety, the termination order was rescinded and he had been treated as having retired from service on 6.12.84. Hence they treated the period from 6.12.84 to 10.4.85 as a break in service and opposed payment of salary for this period. As regards the claim of the applicant for promotion on par with his junior Shri C.M.Jain, it is their case that Shri Jain was not transferred to the Surplus Cell alongwith the applicant w.e.f. 31.3.84 and, therefore, his case was on a different footing and the applicant had no claim vis-a-vis his erstwhile junior Shri C.M.Jain.

6. We have examined the case and heard the learned counsels for the applicant and the respondents.

7. The applicant prays for promotion in the scale of Rs.2000-2500 from the date his junior Shri C.M.Jain was promoted. We find from the statement of the respondents that Shri Jain was not placed in the Surplus Cell alongwith the applicant w.e.f. 31.3.84. From the statement of the applicant it is seen that Shri Jain had gone as Deputy Advisor to the Bureau of Public Enterprises which is ~~altogether~~ a different organisation and the selection for which might have been dealt ^{with} on a different basis. In any case, according to the applicant himself Shri Jain was placed in the higher scale in October, 1982 and this being a pre-1.11.82 case this Tribunal has no jurisdiction to look into this case and we are unable to afford the relief sought for.

8. The applicant has alleged that he has not been paid salary from 5.12.84 to 10.4.85. The respondents had treated

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treated him as having retired from service from 5.12.84 and re-employed from 11.4.85 and do not want to pay arrears of salary for this period of break. We find from the material papers attached to the application that the offer of appointment as Deputy Director of Mines Safety was made on 11.4.85 with ~~not~~ protection in the Rs.1800-2000 scale. ~~for the~~ applicant. The case was pending at that time in the Nagpur Bench of the Bombay High Court. Subsequently, we find from the averments of the applicant that from time to time the last date for accepting this offer had been extended and from the letter dated 4.4.86 which the applicant had addressed to ~~not~~ Shri J.B.Muni Rajulu, Under Secretary, Department of Mines, Ministry of Steel & Mines, New Delhi we find that by their letter dated 6.4.85 the Director-General of Mines Safety had asked the applicant to report at Hyderabad and accordingly the applicant had reported for duty at Hyderabad on 11.4.85. The respondents depend on the judgment of the Nagpur Bench of the Bombay High Court for justifying their action. We do not find anything in either the judgment of the Nagpur Bench of the Bombay High Court or the subsequent judgment of the Hon'ble Supreme Court which prevents the respondents from treating the interregnum 6.12.84 to 10.4.85 as a period ~~of~~ ⁱⁿ service. The applicant should ^{therefore} be treated as ~~being~~ ^{having been} in the Surplus Cell ~~10.4.85~~ and From 11.4.85 onwards he is back in service at Hyderabad till his retirement on superannuation in May, 1987. We are, therefore, of the view that the period from 6.12.84 to 10.4.85 also should be treated as ~~in~~ service

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and there should be no break in service. We, therefore, direct the respondents to pay the pay and allowances that the applicant was entitled to during this period. This may be paid to him within a period of two months from the date of receipt of this order.

9. As regards the Asst. Estate Manager's order dated 28.7.86, in view of our decision in para 8 above the question of penal rent does not arise. For his entire service in the Surplus Cell, the applicant is treated as in service and, therefore, his occupation of quarter should also be on normal rent only. He had taken over the new job at Hyderabad on 11.4.85. Under the normal rules when an officer is transferred from one place (in this case Surplus Cell) to another ^{place} _{Hyderabad} ^{he} is entitled to retain the quarter at the previous station for a period of two months on normal rent. Thus, the applicant is entitled to retain the quarter at Nagpur on normal rent upto 10.6.85. Thereafter he had been in extended occupation of the quarter till 29.6.85 when he surrendered the quarter. For this duration of 19 days (11.6.85 to 29.6.85 - both days inclusive) he is liable to pay double the normal _{rent} under the rules. The respondents are, therefore, directed to drop the case for penal rent and charge him the normal rent only upto 10.6.85 and double the normal rent for the period from 11.6.85 to 29.6.85.

10. With the directions given above, the case is thus disposed of with no order as to costs.

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(J.Narasimha Murthy)
Member (Judl).

R.Balasubramanian

(R.Balasubramanian)
Member (Admn).

Dated

14th February 91

File No. 101
Deputy Registrar (JUDL)

To

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1. The Secretary, Union of India, Ministry of Steel & Mines, Department of Mines, New Delhi.
2. The Secretary, Union of India, Department of Personnel and Administrative Reforms, Ministry of Personnel and Public Grievances, New Delhi.
3. The Directorate General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta - 60
4. The Controller, Indian Bureau of Mines, Nagpur.
5. The Asst. Estate Manager, Govt. of India, Nagpur.
Opp.Old High Court Building, Civil Lines, Nagpur-Maharashtra.
6. One copy to Mr.V.Venkateswara Rao, Advocate for
Mr.H.S.Gururaja Rao, CAT.Hyd.Bench.
7. One copy to Mr.N.Bhaskara Rao, Addl. CGSC.CAT.Hyd.
8. One copy to Hon'ble Mr.J.Narasimha Murty, Member (J)CAT.Hyd.
9. One copy to Hon'ble Mr.R.Balasubramanian, Member (A)CAT.Hyd.