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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.22/90

Dated: 24.2.1993

BETWEEN:

Harold Gily

.. Applicant.

A N D

1. The Union of India, rep.
by Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. The Director,
The Naval Science and
Technological Laboratory,
Batchirajupalem,
Visakhapatnam.

.. Respondents.

Counsel for the Applicant

.. Mr. Nori
for
Mr. Y. Suryanarayana

Counsel for the Respondents

.. Mr. N. R. Devraj

CORAM:

HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (ADMN.) AHMEDABAD BENCH

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

15/11/93
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Order of the Division Bench delivered by
Hon'ble Shri N.V.Krishnan, Vice-Chairman.

Sri Y.Suryanarayana, Advocate for the applicant
and Sri N.K.Devraj, Standing Counsel for the respondents
are present and heard.

2. This Original Application is ^{u a sequel} ~~similar~~ to T.A.996/86.

^{u which} ~~It~~ was decided by this Tribunal on 21.4.1988. It is necessary
to state the brief facts giving rise to the present application.

3. The applicant was appointed as Fireman, Grade-II
on probation under the establishment of the second respondent
The Director, Naval Science and Technology Laboratory, Visakha-
patnam on 17.2.1978. He joined duty on 21.2.1978 and completed
his probation on 20.2.1980. ^{u However,} ~~Further,~~ on 29.8.1980 he was
served with an order of termination on the ground that the
panel drawn up by the Selection Board on 14.2.1978 on the
basis which ^{his} ~~an~~ appointment was made, has been declared void
~~as~~ it was not properly constituted.

4. Thereupon, the applicant filed OS.1104/80 in the
Court of the First Additional District Munsif, Visakhapatnam
for issuance of a decree that the ~~order~~ of termination is
illegal and void and also for an injunction restraining the
defendants from enforcing the same.

5. Admittedly, injunction was issued by the Court on
31.12.1981 in ^u ~~pursuance~~ of which he was taken back on duty on
5.1.1982. Thus he was kept out of employment from 29.8.1980
to 4.1.1982.

6. On coming into the force of the Administrative
Tribunals Act, 1985 this pending Original Suit was transferred
to this Tribunal and renumbered as T.A. 996/86. The TA was
disposed of by an order dt. 21.4.1988.

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7. In so far as the main grievance of the applicant is concerned the Tribunal made the following observations and passed the following order:

"The applicant has been continuing in service since 1978 till now by virtue of the interim injunction order by the trial court. The applicant had not secured the employment through any illegal means and as already stated, he was sponsored by the Employment Exchange which is a normal mode of recruitment. The termination order on the ground that the selection was not made through a validly constituted Selection Board cannot be said to be illegal. However, having regard to the circumstances and facts as given above, we are of the view that the applicant should be continued in service for the reason that he will not be able to secure a new employment at this state i.e. 10 years after the initial recruitment and it would cause grave hardship to him. In the circumstances we direct that the applicant shall not be ousted from service and he shall be continued in service. With these directions the application is disposed of. There will be no order as to costs."

8. The applicant made a representation on 21.7.1989 that the period during which he was kept out of employment from 29.8.1980 to 4.1.1982 should not be treated as a break in service and he should be given continuity in service backwages etc. This was rejected by the reply dt. 25.10.1989 of the second respondent stating that he was not entitled to the service benefits for the said period.

9. Aggrieved by this decision he has filed this application and he has sought a direction to the respondents to give ~~him~~ service benefits to him for the above period in pursuance of the Tribunal's earlier judgement in TA.996/86, for the period from 29.8.1980 to 4.1.1982 and also direct the respondents not to treat this period as a break in service.

10. The respondents have filed a reply pointing out that in their judgement in TA.996/86, the Tribunal did not set aside the order of termination by observing that in the circumstances it could not be held to be illegal. It was also



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pointed out that there are no directions in the judgement about this period from 29.8.1980 to 4.1.1982. ^{for this reason,} ~~that~~ the Tribunal also dismissed the Contempt Petition filed by the applicant i.e. C.P.46/88.

11. The respondents thereafter proceed to state as follows:-

5. As per rules, normally such periods of absence are treated as a break in service entailing forfeiture of past service, or as Dies Non. Notwithstanding above, it was proposed to regularise the period of absence of the applicant by grant of leave due and admissible under the rules. The applicant was accordingly asked on 25.1.90 to express his willingness to the proposed action. He has not so far given the willingness.

6. It may be seen that the period of absence could not be regularised so far because of the delay on the part of the applicant in expressing his willingness in writing to the proposed course of actions. The applications is therefore devoid of merits and to be dismissed in limine."

12. We have heard the learned counsel on both the sides and peruse the records.

13. The learned counsel for the applicant contended that the order of termination has been quashed and therefore, he is entitled to all the service benefits for the period he was out of employment, ~~and~~ including backwages and that this period cannot be treated as a break in service.

14. We have carefully perused the original judgement and we are satisfied that the learned counsel for the applicant has misread that judgement. The purport of the judgement was that though the order of termination cannot be ^{faulted, yet} ~~faulted~~ on sympathetic consideration as well as for the reason that the applicant himself was not ^{at} ~~yet~~ fault, he should be continued in service, in continuation of the service rendered by him in pursuance of the interim injunction order given by the Civil

Court and that his service should not be terminated on this ground here after.

15. We are of the view that on the last occasion, the Tribunal did not advert to this issue in their judgement in T.A.. 996/86 because of their impression that the applicant was never out of employment for any period, even subsequent to the termination of the service. This is borne out by the following observation in para 4 of the Judgement :-

"Accordingly the applicant was offered the appointment. The cancellation was due to the reason that the Board was not properly constituted. The applicant was however continuing in service from 28.8.1980 when the termination order was served on him."

Similarly in the extract of the judgement which pertains to para 4 (extracted in para 7 supra) the Tribunal has observed that the applicant "has been continuing in service since 1978 till now by virtue of the interim injunction order by the Court."

16. The only question now is whether the applicant is entitled to any benefit for the period from 29.8.1980 to 4.1.1982 when he was out of service. As the respondents have ~~thus~~ stated that it was not their intention to treat this period as a break in service but to regularise this period of absence by grant of leave due and admissible under the rules, ~~we~~ ^{we} are of the view that this application cannot be disposed of by a direction to the respondents in ~~view~~ ^{terms} of the averrments made in para 5 and 6 of the counter affidavit.


17. We are satisfied that this is a case where, on the earlier occasion, the Tribunal had dealt ^{with} the issue sympathetically. It is therefore just and proper that the respondents have themselves chosen to consider the issue, similar sympathy ^{with} ~~the~~. This is also in ^{consonance} with the observations of the Tribunal which

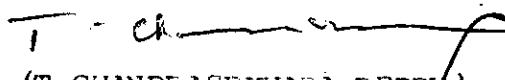
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have
we referred to above *in para 15.* ~~para 4 of the Judgement.~~ We therefore, dispose of this application with a direction to the second respondent to regularise the period of absence from 29.8.1980 to 4.1.1982 by granting the applicant leave due and admissible standing the earlier letters dt. 25.10.1989 and 26.10.1989 which have been filed as enclosures to the Original Application.

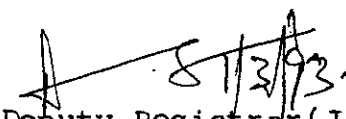
The application is disposed of with the above said direction with no order as to costs.


24.2.93
(N.V. KRISHNAN)
Vice-Chairman (Admn.)


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 24th February, 1993

(Dictated in Open Court)


8/3/93
Deputy Registrar (J)

To

1. The Secretary, Union of India,
Ministry of Defence, Govt. of India, New Delhi.
2. The Director, Naval Science and Technological
Laboratory, Butchirajupalem, Visakhapatnam.
3. One copy to Mr. Y. Suryanarayana, Advocate, CAT. Hyd.
sd
4. One copy to Mr. M. R. Devraj, Sr. CGSC. CAT. Hyd.
5. One spare copy.

pvm

*6/5/93
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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

N.V. Krishnan.

THE HON'BLE MR. V. NEELABRI RAO : V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 24-2-1993

ORDER/JUDGMENT:

R.P./C.P/M.A. No.

in

... 22/90

T.A.No.

(W.P.No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

