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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 583/91

DATE OF JUDGEMENT: 10.6.1993. 1993

Between

Ch. Narayanacharyulu

.. Applicant

and

1. Flag Officer Commanding-in-Chief
Eastern Naval Command, Naval Base,
Visakhapatnam 530 014

2. Controller of Defence Accounts (Pensions)
Draupathi Ghat
Allahabad (UP)

.. Respondents

Counsel for the Applicants
Counsel for the Respondents
CORAM:

: Party-in-person
: Mr NR Devraj, Sr. CGSC

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN)

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

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE SHRI
T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed by the applicant herein under Section 19 of the Administrative Tribunals Act to direct the respondents to ^{revise} the pensionary benefits of the applicant, on the basis that the applicant had put in a qualifying service of 31 years as on 21.3.90 and pay all consequential benefits and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant who was working in the Eastern Naval Command HQrs as UDC, was dismissed from service ^{on 21-3-90} ~~while~~ ^{as} ~~write~~

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certain charges as against the applicant were proved in a Departmental Enquiry. ~~The applicant was dismissed from service per orders of the respondents dated 21.3.90.~~ The said dismissal order was questioned before this Tribunal by the applicant in OA 326/91. The said OA 326/91 ~~x~~ is dismissed by this Tribunal as per judgement delivered today. The competent authority while passing the said dismissal order dated 21.3.90, at paras 25 and 26 had stated as follows:

- "25. Accordingly, the undersigned, in exercise of the power conferred on him as the 'Appointing Authority' hereby imposes the said penalty of 'Dismissal from Service' on Shri Ch.Narayana-charylulu, UDC. This order will take immediate effect.
26. However, ~~xxxxxx~~ considering that he has put in 31 years of service and having only five more years of service for retirement on superannuation and also looking to the condition of his family which includes children of school-going, a sympathetic view has been taken by the undersigned and as such, the undersigned sanctions a Compassionate Allowance equal to 2/3rds of his pension and gratuity which would have been admissible to him, had he retired on Compensation Pension in terms of Rule 41(1) of CCS(Pension) Rules 1972."

4. While fixing the pension of the applicant, the qualifying service in respect of the applicant was arrived as 27 years 11 months and 25 days by the respondents after excluding the period of suspension from 11.7.85 to 29.9.87 and 28.2.89 to 21.3.90 and also one month EOL on personal affairs from 19.9.88 to 18.10.88.

5. The total period of service rendered by the applicant right from 17.11.1958 to 21.3.90 nodoubt comes to 31 years 04 months and 04 days. After excluding the suspension period of the applicant and also the EOL availed by the applicant on personal affairs which is one month, the non-qualifying service of the applicant works out to 3 years

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04 months and 09 days, which part had been ~~xxx~~ excluded by the respondents from qualifying service. So, the total service taken into account by the respondents ~~xx~~ as qualifying service for fixing compassionate allowance is 27 years 11 months 25 days. It is needless to point out that compassionate allowance had been granted to the applicant purely on compassionate grounds, even though the applicant had been dismissed from service and actually had no right for payment of compassionate allowance as such. The case of the applicant is that, as it is stated by the Disciplinary Authority in the dismissal order that the applicant had put in 31 years of service that the entire period of 31 years from 17.11.58 to 21.3.90 is liable to be taken into consideration as qualifying service for the purpose of fixing ^{pension and} compassionate allowance to the applicant.

6. Now the main question before us is whether the period of suspension could be taken into account as the period of qualifying service for fixation pension and ~~compassionate~~ allowance thereof. The pension of the applicant was fixed as Rs.442.00; Commuted pension as Rs.147.00; Net Pension after commutation was arrived as Rs.295/- p.m. It is the case of the applicant that the ^{net} pension of the applicant is liable to be fixed at Rs.397/- pm after taking into consideration the applicant's 31 years of service. As the respondents have fixed the ~~xxx~~ ^{net} pension of the applicant as Rs.295/- and also have denied all consequential benefits to the applicant, the present OA is filed for the relief(s) as already indicated above.

7. Counter is filed by the respondents opposing this OA.

8. We have heard Party-inPerson and Mr NR Devraj Standing Counsel for the respondents.

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9. In the counter filed by the respondents, it is maintained that the period of suspension cannot be taken into consideration as qualifying service for the purpose of fixation of pension and compassionate allowance thereof. Where a Person is under suspension and is subsequently dismissed from service, whether the suspension period is to be treated as qualifying service, had been dealt in a decision reported in 1976 SC 2490 which reads Baldev Raj Guliani, Appellant Para 41 Vs Punjab and Haryana High Court/- which reads as follows:

"
.....
Suspension is step to dismissal and may culminate in dismissal. When an officer is suspended, no work is taken from him but he does not cease to be in service. When he is dismissed, the link with the service is snapped and naturally the order of suspension merges in dismissal. Nothing remains to be done about his suspension.
.....
....."

So, from the said decision, it becomes amply evident that suspension is a step towards dismissal and when a person who is under suspension is dismissed, no separate orders are liable to be passed with regard to his pay and allowances for the suspension period. As a corollary, it follows, that an employee, who is kept under suspension/ and followed by dismissal under no circumstances the period of suspension can be taken into consideration for giving any benefit to the employee prior to dismissal. So, from the above decision, it becomes amply evident that the applicant had no right to demand the department to treat the suspension period as qualifying service.

No doubt, it is mentioned in the dismissal order that the applicant had put in 31 years of service

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but, in the same letter it is also stated that looking to the condition of his family which includes children of school-going, a sympathetic view has been taken by the undersigned and as such the undersigned sanctioned a compassionate allowance equal to 2/3 rd of his pension and gratuity which would have been admissible to him had he retired on compensation pension, in terms of Rule 41(1) of CCS(Pension) Rules 1972.

So, a combined reading of both the Supreme Court Judgement cited above and the ~~contents~~ contents of dismissal order dated 21.3.90, it becomes amply evident that the pension was liable to be fixed only on the basis of qualifying service which the applicant had put in. Qualifying service as been defined in AIR 1985 SC 69 Hans Raj Vs State of Punjab - which means "service qualifying for Pension" according to the rules applicable to the Government servants. As indicated in the Supreme Court Judgement 1976 SC 2490 when suspension merges in dismissal, the period of suspension cannot \rightarrow be counted as qualifying service for fixation of pension. \leftarrow

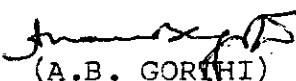
\rightarrow But once the suspension period is excluded from service, it is not in dispute that the pension fixed by the competent authority is in accordance with rules and regulations. Hence, we have no hesitation in holding the action of the respondents treating the applicant had put in 28 years ^{of service} / by duly excluding the suspension period and the EOL period, ~~as valid~~. We see no illegality committed on th


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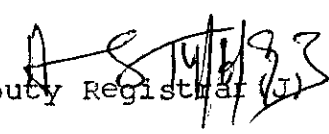
part of the respondents in fixing the pension of the applicant and compassionate allowance thereof. Hence, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.


(A.B. GORTHY)
Member (Admn)


(T. CHANDRASEKHARA REDDY)
Member (Judl.)

Dated: 18-6-1993

mvl


Deputy Registrar (J)

To

1. The Flag Officer Commanding-in-Chief
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
2. The Controller of Defence Accounts (Pensions)
Draupathi Chat, Allahabad (UP)
3. One copy to Mr. Ch. Narayanacharyulu Party-in-person
E/1, Fallava Park, Kancharapalem, Visakhapatnam
4. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd
5. One copy to Hon'ble A. B. Gorthy, Member (A) CAT. Hyd.
6. One copy to Deputy Registrar (J) CAT. Hyd
7. Copy to Library, CAT. Hyd.
8. Copy to All Reporters as per standard list of CAT. Hyd.
9. One spare copy.

pvm

6th June 1993
Sd/-
14/6/93

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TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CHECKED BY

APPROVED BY

HYDERABAD BENCH

HYDERABAD

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD.

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR. *A. B. Gorkh* ~~R. BALASUBRAMANIAN, M(A)~~

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY: M(J)

AND

THE HON'BLE MR. C.J. ROY : MEMBER (JUDL)

Dated: 10-6 - 1992

~~ORDER~~/JUDGMENT:

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

in

O.A.No.

T.A.No.

583/1
(W.P.No.)

Admitted and Interim Directions issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as with drawn

Dismissed for default

M.A. Ordered/Rejected

No order as to costs.

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