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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.348 of 1999.

Date of Order :- 29-5-2000

Between :

Zamin Ali, s/o Rushtom Ali,
aged about 48 years, working as
Driver, Mail Motor Service (Postal),
Kothi, Hyderabad-500 001. ...

Applicant

By Advocate Mr.B.S.A.Satyanarayana)

A n d

1. Union of India, represented by
Chief Postmaster General,
Dak Sadan, Hyderabad-500001.
2. Director of Postal Services (HCR),
O/● Chief Postmaster General,
Hyderabad-500 001.
3. Manager, Mail Motor Service (MMS),
Hyderabad - 500 001.

Respondents

(By Sr.Standing Counsel Mr.B.N.Sarma)

CORAM :

THE HONOURABLE MR.JUSTICE D.H.NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.R.RANGARAJAN, MEMBER (ADMINISTRATIVE).

O R D E R

Justice D.H.Nasir, VC :

1. The impugned order bearing No.ST/19/Misc/94 dated 13.11.1998 passed by the respondents purporting to be implementing the judgement of this Tribunal in oA 289/97 dated 5-3-98 falls for our consideration in this OA. The applicant is informed by the said order that the period from 5-2-85 to 28-4-91 shall be treated as suspension under RF 54(B) and the period from 30.4.91 to 16-11-94 as the period spent on duty. By the same order dated 13.11.1998 on the question whether the period of absence from 5.2.1985 to 19.11.1991 should be treated as the period spent on duty and full pay and allowances/should be

paid, the Tribunal observed that there was no reason to interfere with the treatment ^{given to} made by the department in respect of the period from 5.2.1985 to 19.11.1991.

2. Under Clause (c) of the said order dated 13.11.1998 it is stated that the action had since been taken for grant of subsistence allowance of Rs.694/- per month for the period from 20.11.1991 to 9.5.1994 vide Manager, MMS, Hyderabad Memo No. MSA/66/PF/98-99 dated 15.10.1998. On the question whether the period of absence from 9.5.1994 to 16.11.1994 be treated as duty with full pay and allowances, the respondents ^{stated to} informed that the ~~Manager~~ MMS, Hyderabad had taken action to treat the period from 1.9.1994 to 15.11.1994 as leave eligible at the applicant's credit vide his Memo No. MES/66/PF/96-97 dated 2.1.1997. As regards the period to be regularised from 24.5.1994 to 31.8.1994 the applicant was informed by the said order dated 13.11.1998 that it has been ^{verified with} ~~checked as per~~ the CAT direction and found that no sanctioned vacant post was available during that period and hence this period could not also be taken as duty.

3. With regard to the applicant's request to fix his pay at Rs.1440/- in the scale of Rs.975-1600 treating the period of absence as continuous service and to accord due promotion, if any, with all consequential benefits, the applicant was informed by the respondents that the period from 5.2.1985 to 16.11.1995 had been treated as continuous service as per the direction of the Hon'ble Supreme Court in Civil Appeal No.4366/94 dated 9.5.1994 without any back wages. It is further stated in the impugned order in the concluding part of para-(e) that in view of the fact that the period from 5.2.1985 to 31.8.1994 was treated as non-duty, no fixation of pay on notional basis could be allowed as already intimated vide letter No.ST/Disc/Misc MMS/95 dated 25.1.1996. It is further stated that no promotion was due to the applicant as he had not put in the required qualifying service.

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4. Being aggrieved by the aforesaid order the applicant has filed the present O.A. urging the Tribunal that the applicant be given the benefit of continuous service by treating the entire period of absence from 5-2-1985 to 16-11-1994 as duty and continuous service for all purposes in terms of Ministry of Personnel and Training communication dated 3-12-1985 and that in consequence thereof, orders of the respondent No.1 contained in Memo dated 13-11-1998 and the respondent No.3's communication dated 15.10.1998 be quashed and set aside and that other consequential reliefs as stated in the relief clause of para-8 of the O.A. be granted.

5. On studying the facts it emerges that the applicant was appointed as T/S Driver in the Mail Motor Service, Hyderabad on 14.2.1997. He had to be placed under suspension from 5-2-1985 as the departmental inquiry was instituted against him on the charge of "absence from duty" without leave from 9-1-85 to 4-2-85. Eventually the applicant was removed from service with effect from 30.4.1991. The appellate authority in the appeal filed by the applicant modified the penalty of removal from service and ordered for compulsory retirement of the applicant by his order dated 20.11.1991. Aggrieved by the said orders, the applicant filed OA No.101/91 before this Tribunal which was, however, dismissed on 7-4-1993. An SLP against the said order was filed before the Apex Court. In its judgement dated 9-5-1994 the Hon'ble Supreme Court modified the penalty to that of stoppage of two increments without any cumulative effect and further directed that the applicant be reinstated with continuity of service but he would not be entitled to back wages.

6. In pursuance of the direction given by the Apex Court the applicant was reinstated as Driver by at M.M.S.Nellore by order dated 25.8.1994. But the applicant expressed his inability to join the said post by making a representation dated 14.9.1994 and requested for posting him at MMS, Hyderabad as and when vacancy arose. Subsequently one post of Driver fell vacant at MMS, Hyderabad due to the death of one Arun Humnabadkar on xxxx xxxx xxx xxx

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4.11.1994 and the applicant was posted to the said vacant post with effect from 16.11.1994.

7. Subsequently the third respondent served a notice dated 24.6.1995 on the applicant proposing to restrict the amount of Pay and Allowances for the period from 5.2.1985 to 29.4.1991 to subsistence allowance already paid in accordance with the provisions of FR 54-B. The applicant made a representation on 23.9.1995 claiming duty pay for the period of suspension and requested the department to regularise the period under FR-54(5). However, by order dated 25.10.1995 it was directed to treat the above period as suspension only. The applicant filed an appeal against the said order before the respondent No.1. However, the appeal was rejected by order dated 25.1.1996. Aggrieved by the said order the applicant filed O.A.No.434 of 1996 before this

(per one of us A. Ramaswami) on 29-10-96
Tribunal in which, the Tribunal while disposing of the said OA, made the following directions :

- (a) With regard to treating the period of absence from 5.2.1985 to 16.11.1994 as continuous service for the purpose of leave, increments and pensionary benefits a direction was given to the concerned respondent to decide this issue in accordance with law.
- (b) With regard to the second prayer to treat the period of absence from 5.2.1985 to 19.11.1991 as period spent on duty and pay the applicant full pay and allowances, the Tribunal was pleased to reject the same.
- (c) With regard to treating the period of absence from 20.11.1991 to 8.5.1994 as deemed suspension and pay the subsistence allowance, this Tribunal rejected the same in view of the directions of the Hon'ble Supreme Court.
- (d) With regard to the period of absence from 9.4.1994 to 16.11.1994 to be treated as duty with full pay and allowances, this Tribunal directed to recheck the vacancy position and if sanctioned vacant post was available during the period at Hyderabad, the applicant be deemed to have been posted against that post and paid wages till 31.8.1994.

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- (e) With regard to fixation of pay of the applicant at the stage of Rs.1440/- in the scale of pay of Rs.950-1500/- this Tribunal directed the concerned authority to decide the issue in accordance with the rules.

8. The respondents in their counter affidavit submit that in compliance with the directions of this Tribunal as stated above, the competent authority vide orders dated 20.1.1997 treated the period from 5.2.1985 to 29.4.1991 as suspension and the period not spent on duty and the request of the applicant for ^{fixing} the pay at the stage of Rs.1440/- in the scale of pay of Rs.950-1500/- ^{was rejected}.

9. Further according to the respondents, the above order of the competent authority was challenged before this Tribunal by the applicant in OA No.289 of 1997 and by order dated ~~5.3.1998~~ this Tribunal was pleased to set aside the order dated 20.1.1997 and directed the respondent to implement the decision in OA No. ⁴³⁴ ~~436~~ of 1996 dated 29.10.1996 in accordance with law within four months. Subsequently in M.A.No.662/98 in OA No.289/97 by order dated 7.9.1998 this Tribunal clarified that the applicant was eligible for subsistence allowance for the period from 20.11.1991 to 9.5.1994 and the same was sanctioned and paid to him vide proceedings dated 15.10.1998.

10. It is further stated by the respondents in their counter affidavit that in compliance of the order of the Tribunal in OA No.289/97 the competent authority once again passed order vide proceedings dated 15.11.1998 with regard to treatment of the period from 5.10.1985 to 16.11.1994 and also for fixing the pay of the applicant at Rs.1440/- in the scale of pay of Rs.950-1500/-. It is further stated in para-7 of the counter affidavit that as the period from 5.2.1985 to 31.8.1994 was treated as non-duty, the relief sought by the applicant was rejected.

11. Aggrieved by the said order, the applicant filed the present O.A. for a direction that the period of absence from 5.2.1985 to 16.11.1994 ^{be treated as} as duty and continuous service for all

purposes. However, according to the respondents, the competent authority decided to treat the period from 5.2.1985 to 31.8.1994 as non-duty as per rules, ^{holding that} the relief sought by the applicant was untenable since the impugned proceedings, according to the respondents were issued in compliance ^{with} of the judgment of the Hon'ble Supreme Court in C.A.No.4366/94 dated 9.5.1994 and as such the same was legal and valid.

12. Further according to the respondents, the OM dated 3.12.1985 had no application to the present case as the pay and allowances of the applicant were determined subject to the directions of the Court as envisaged in FR 54-A(1) which is reproduced below :

" Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court."

13. It is further stated in the counter affidavit that the period from 1.9.1994 to 15.11.1994 was regularised by granting eligible leave at the applicant's credit. The leave salary amount was paid to the official.

The respondents in their counter affidavit have extracted the relevant portion from the judgment in OA No.434/96 which reads as follows :

" The Supreme Court order does not talk anything about treatment of the period from 5.2.1985 to 19.11.1991. In the absence of any direction in this connection from the Supreme Court ~~there~~ is no reason to give any direction to treat that period as duty. Hence, I see no reason to interfere in connection with the treatment of the period from 5.2.1985 to 16.11.1994 at this stage."

14. It is further contended by the respondents that the period of absence from 30.4.1991 to 15.11.1994 was stipulated as non-duty under the provisions of FR.54-A read with the judgment of the Hon'ble Supreme Court dated 9.5.1994. This

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Tribunal's judgment dated 29.10.1996 also clearly stated that the subsistence allowance for the period was not payable and the period of absence had been treated as ~~suspension~~ from 5.2.1985 to 29.4.1991 and not counting as duty from 30.4.1991 to 15.1.1994 by the competent authority as per rules. It is further stated in paragraph-15 of the counter affidavit that the Tribunal in paragraphs- 6 to 9 observed that as no back wages were to be paid as per Apex Court order, the applicant was not entitled for any subsistence allowance for the period from 20.11.1991 to 8.5.1994, and therefore, ~~the~~ according to the respondents, the said period could not be treated as deemed suspension. The respondents also make a statement in ~~para-16~~ of the counter affidavit that the implementation of the Supreme Court judgment ^{and the} observations made by the Tribunal ^{concerning} ~~to~~ the relief sought by the applicant by vide para-3(a) to (c) were as per extant ^a rules ^{and since} ~~and as~~ the period from 5.2.1985 to 31.8.1994 was treated as non-duty, no fixation of pay on notional basis could be allowed. It is further contended by the respondents that ^{since} ~~no~~ back wages were to be paid as per the Apex Court order, the applicant was not entitled to any subsistence allowance for the period from 20.11.1991 to 8.5.1994. However, the same was paid as per the directions of the Tribunal in M.A.No.662/98 in OA No.289/97 dated 7.9.1998 and the period could not be treated as deemed suspension.


15. A statement is also made in para-18 of the counter affidavit that action had since been initiated for grant of subsistence allowance of Rs.694/- per month for the period from 20.11.1991 to 9.5.1994 vide Manager, MMS, Hyderabad Memo No. MSA/66/PF/98-99 dated 15.10.1998 as per the directions of this Tribunal in OA No.289/97. It is also contended by the respondents that no sanctioned vacant post was available during the period from 24.5.1994 to 30.4.1994 at Hyderabad.

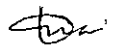
16. Further according to the respondents, for the


period from 9.5.1994 to 16.11.1994 the officials were posted at MMS Nellore as no sanctioned post was available at Hyderabad. But the official submitted a representation expressing his inability to join at MMS Nellore and requested to post him at MMS, Hyderabad. as and when vacancy arose at MMS, Hyderabad. The period from 1.9.1994 to 15.11.1994 was regularised ^{by} ~~for~~ by granting eligible leave ^{standing to his credit} ~~at the credit~~ as per the Tribunal's directions as contained in para-11 of the judgment dated 29.10.1996 and directed the applicant to file a representation for treating the period from 1.9.1994 to 15.11.1994 for granting him leave as admissible to him.

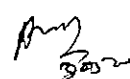
17. All these questions have been elaborately discussed and decided not only by the Apex Court but also by this Tribunal in OA 434 and 289, as already pointed out in the preceding paras of this Judgement and it will not be legal and proper for this Bench to re-open the same in this O.A. more particularly because the decisions of the above OAs being OA No.434 ^{Q. 1996} and 289 ^{Q. 1997} have not been reversed or modified by any superior forum.

18. We therefore find no merit in this OA. Hence the OA is dismissed. No costs.


(R. RANGARAJAN)
Member (A)


(D.H. NASIR)
Vice-Chairman

Dated: 29-5-2000 


30/5/2000