

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.333/95

Date of order: 26.11.1997

Nand Kishore Jain : Applicant

Vs.

1. Union of India through Secretary, Ministry of Irrigation & Power (Water Resources), CGO Complex, Block-II, 6th Floor, Lodhi Road, New Delhi.

2. Chairman, Central Water Commission, Sewa Bhawan, P.K.Puram, New Delhi-110066.

3. Superintending Engineer, Govt. of India, Central Water Commission, N.I.Circle, Gayatri Bhawan, Suraj Nagar, Street No.6, Talab Tille, Jammu.

...Respondents.

✓ Applicant present in person.

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Nand Kishore Jain has prayed ^{for} the following reliefs:

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- i) "The letter dated 29.8.1980 be declared illegal, null and void as it is not a reinstatement order being inconsistent with the Central Civil Service Rules and F.R 54.
 - ii) The impugned order dated 28.12.1988 by which the service of the applicant dismissed be quashed and set aside with all consequential benefits.
 - iii) The order dated 31.3.1995 passed by the appellate authority be declared illegal, null and void, being inconsistent to with the direction given by the Hon'ble Tribunal dated 21.11.94.
 - iv) The respondents be ordered to reinstate the applicant from

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the date of his first termination and also direction to given to respondents to pay his salary to the applicant from 4.9.1974 to 18.11.1978 and from 19.11.1978 to till the decision of this Original Application and further still applicant is reinstated as per rules.

- v) The applicant be given consequential benefits of promotion, increments and seniority from the date of his juniors have been promoted on the post of Assistant Engineer/EAD/AD from April 1978 and May 1988.
- vi) The applicant may be awarded special cost of harassment and the interest on the amount which was illegally detained by the respondents @ Rs.24% per annum.
- vii) Any other appropriate order which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may be passed in favour of the applicant.
- viii) Cost be awarded in favour of the applicant."

2. The facts of the case as stated by the applicant are that he was appointed as a Supervisor Mechanical in the Central Water & Power Commission (CWC) in Technical Training Centre, Kota, vide letter dated 3.6.1964. He remained in service at Kota upto the end of 1970. He was transferred from Kota to Kishtwar in Jammu & Kashmir, in Sept.1970 and joined at his new place of posting on 1.4.1971. Due to his domestic circumstances he left his place of posting from time to time after submitting leave applications and medical certificates whenever necessary. Vide order dated 31.5.1972 the Superintending Engineer, CWC, Jammu, sent an order terminating the service of the applicant w.e.f. 16.5.1971. (Actual date of termination seems to be 16.6.1971 as seen from Annx.B dated 31.5.1972). Against such illegal termination, the applicant filed a Civil Suit before the District Judge, Kota, seeking a declaration for setting aside the termination "order" and "for payment of pay" and allowances from the date of termination. The Civil Suit was

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decreed in favour of the applicant on 18.11.1978 (Annx.A9.). His termination was declared to be illegal and an amount of Rs.14,761.34 was decreed as arrears of salary due to the applicant upto the date of the filing of the suit. The respondents preferred an appeal before the Rajasthan High Court against the said decree. A partial stay was granted by the High Court vide order Annx.A10 dated 5.8.1979. After the decree by the Court, the applicant approached the Superintending Engineer CWC, Jammu, for joining duty on 9.1.1979 but he was not taken on duty. The applicant came back to Kota and from there he requested the Superintending Engineer, CWC, Jammu, to make payment of salary including the decretal amount. When no action had taken on his plea, he sent a legal notice seeking reinstatement w.e.f. 31.5.1972 and payment of certain amount of salary. However, no action was taken by the respondents. The Superintending Engineer, CWC, Jammu, then sent a letter dated 29.8.1980 (Annx.A15) directing the applicant to report for duty to the Executive Engineer, Bursar Investigation Division, Jammu. The applicant's joining report at Udhampur was not accepted by the Executive Engineer, Bursar Investigation Division. The applicant was directed to join at Hanzal in the office of the Assistant Engineer, MSB No.3, Kishtwar. No T.A, etc. was granted to the applicant, as per rule. Aggrieved by the inaction of the respondents in making payment due to the applicant for joining duty consequent upon his transfers, the applicant met the Chief Engineer P&I, New Delhi, seeking reinstatement and payment of salary. His request was turned down and he was informed that unless the appeal pending in the High Court against the order of the lower Court is decided, no payment can be made to the applicant nor can he be reinstated. On 18.9.1981, the applicant sent a notice under Sec.80 of the CPC for payment of salary for the intervening period as per the

judgment of the Civil Court but still no action was taken by the respondents.

3. Further according to the applicant, when he was at Kota, he requested for reinstatement but the position remained as it was i.e. neither was he reinstated nor was any payment made to him. He received a paltry amount of Rs.248/- on 28.3.1981 by Money Order for joining duty. The applicant joined duty at Kishtwar in the office of the Assistant Engineer, MSD III, under the assurance that he would be given reinstatement and paid necessary amount as also given promotion within two to three months. However, after expiry of one year, the applicant was neither reinstated nor was any payment made to him, nor yet was any promotion granted to him. Even full salary for the period was not paid and only the minimum of the pay scale of the Supervisor was paid to him. Illegal deductions were also made from his pay. The Superintending Engineer, Jammu, refused his requests regarding reinstatement, payment of pay and allowances, etc. The respondents ultimately initiated disciplinary proceedings against him and without following the prescribed procedure dismissed the applicant from service vide order dated 28.12.1988 (Annx.A7).

4. Thereafter, the applicant preferred an O.A No.570/90 before this Bench of the Tribunal which was disposed of vide order dated 22.7.1991. The direction of the Tribunal in this case was that the applicant shall prefer an appeal against the penalty order and that the said appeal shall be disposed of by the respondents on merits within a specified period. Thereafter the applicant preferred an appeal against the penalty order but since the appeal was not disposed of in a proper manner, the applicant preferred yet another O.A before the Tribunal, No.526/92, which was disposed of vide order dated 24.11.1994 (Annx.A5). By this order, the Tribunal set aside the appellate

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order and directed the respondents to pass a fresh order after giving personal hearing to the applicant. Now, in the present O.A, the applicant seeks quashing of the order of the disciplinary authority dated 29.12.1988 (Annx.A7) by which he has been dismissed from service and the order dated 31.3.1995 (Annx.A6) by which his appeal has been dismissed by the appellate authority after the Tribunal passed the order Annx.A5 dated 21.11.1994. The applicant has also sought a declaration that the letter dated 29.8.1980 (Annx.A15) by which he was directed to report for duty to the Executive Engineer, Bursar Investigation Division, Udhampur, may be declared as null and void as it does not amount to an order of reinstatement and is inconsistent with the provisions of the rules. The applicant has assailed the order of the appellate authority as not being a speaking order. There is no evidence that any enquiry was actually held against the charges framed against the applicant. There has been no application of mind by the authorities concerned and there are violation of Articles 311, 14 and 21 of the Constitution. The respondent did not act in accordance with the decree passed by the Court in not letting him be reinstated in service, even though there was no stay granted by the High Court against that portion of the decree which related to his reinstatement in service. The respondents did not pass any order under FR 54 with regard to his reinstatement. The respondents tried to post the applicant under a person who was junior to him when he was asked for to join duty at Kishtwar.

5. The respondents in their reply have denied the averments of the applicant. According to them, the appellate authority has passed the order after taking into account the entire facts and circumstances of the case and after affording an opportunity of personal hearing to the applicant as directed by the Tribunal. The applicant proceeded on leave from 17.5.1971

to 23.5.1971 and later on sought extension of leave. He did not apply for leave beyond 15.6.1971 nor reported for duty despite various communications sent by the respondents. Therefore, his services were terminated by order dated 31.5.1972 w.e.f. 16.6.1971 (Annx.F7). After the applicant received the decree from the Court setting aside the order of termination, he came to report for duty and was directed to report at Hanzal site but he refused to accept his further posting and insisted on his being posted at Udhampur where in fact there was no vacancy. The conduct of the applicant showed that he was not interested in continuing in service. The respondents have given a detailed explanation in their reply regarding the payments claimed by the applicant and how these were adjusted against the dues from him or were paid to him. After the applicant absented himself from duty the disciplinary proceedings were initiated against him, full opportunity was given to him to defend himself and the prescribed procedure was followed by the disciplinary authority while passing the order on 29.12.1988. They have denied that there was any illegality in any of the action taken by the respondents and whatever payments were due to the applicant were in fact made to him.

6. During the arguments the applicant appearing in person stated that after the decree was passed regarding reinstatement in service, the respondents in fact never reinstated him in service by passing a proper order as prescribed in the rules. He had joined duty at Kishtwar on 10.2.83 and remained there for about a year in the post of Supervisor. However, there was no formal reinstatement, full pay and allowances due to him were paid and promotions due to him were also not granted. In these circumstances, he had no option but to leave the place of posting on 10.2.84 after applying for six days leave. Thereafter he did not join duty in the Jammu Region because his

grievance had not redressed by the respondents. No proper opportunity was given to him to defend himself during the enquiry and the orders passed by the disciplinary authority and the appellate authority are both illegal, the latter also being a nonspeaking order in spite of the directions of the Tribunal that there should be a speaking order.

7. The learned counsel for the respondents maintained that it was the applicant who had himself abandoned his place of posting and therefore the respondents had no option but to initiate disciplinary proceedings against him. Since the applicant had not cooperated during the enquiry, an ex parte enquiry was conducted by the Inquiry Officer and thereafter a proper order was passed by the disciplinary authority imposing penalty of removal from service on the applicant. He has claimed that the order passed by the appellate authority is also a speaking order as is evident from the contents thereof.

8. We have heard the applicant and the learned counsel for the respondents and have also perused the material on record.

9. On an earlier date we had asked the applicant to furnish a detailed chronology of the event from 1970 onwards which would throw light on the facts of the case. What has emerged from the chronology prepared by the applicant, a copy whereof has been furnished to the learned counsel for the respondents also^{is} that there was protracted correspondences between the applicant and the authorities in Jammu regarding the applicant's joining duty, taking leave, etc. and also litigation with regard to his seeking reinstatement after the respondents had terminated his service in May 1972. But the ultimate position which has emerged in this case is that the applicant admittedly joined on 10.2.83 at Kishtwar and remained there till 10.2.1984 in the post of Supervisor. Thereafter he proceeded on six days leave but never rejoined duty. The charge sheet issued to the

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post of Supervisor. Thereafter he proceeded on six days leave but never rejoined duty. The charge sheet issued to the applicant is not on record but a copy thereof was furnished before us by the learned counsel for the respondents. The charge against the applicant is that he proceeded on Earned Leave for 6 days w.e.f. 13.2.84 to 18.2.84 and thereafter did not report for duty nor applied for further extension of leave. On the basis of this charge sheet, an enquiry was conducted as seen from the order Annx.A7 dated 29.12.88. Since the applicant did not cooperate with the Inquiry Officer, the enquiry was held as ex parte. Thereafter, a penalty of removal from service was imposed on the applicant vide the aforesaid order dated 29.12.1988. The appeal of the applicant has also been dismissed by the appellate authority. The position that emerges is that the applicant did not want to continue at Kishtwar because according to him a proper order of reinstatement had not been passed. What however we fail to understand is how the applicant can claim that he was not reinstated in service, when actually he joined duty at Kishtwar on 10.2.1983 and remained posted there for one year. Not only that, he also drew some pay and allowances, though perhaps not ^{to} his full satisfaction, as stated by him in the chronology itself. Even if a formal order of reinstatement was not passed in favour of the applicant but he was allowed to rejoin duty and payment of pay and allowances was also made to him, we do not see any reason why the action of the respondents in this regard should not be treated as that of reinstating the applicant. His grievance that he was not offered a higher post to which he had sought promotion and remained on the post of Supervisor only makes no sense^s, because he could join on the promotion post after such promotion had been granted to him in accordance with the prescribed procedure. Since applicant did not cooperate with the Inquiry Officer, the Inquiry Officer had no option but to proceed ex

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Parte. It is not the applicant's case he did appear before the Inquiry Officer. The order of the disciplinary authority based on the findings of the Inquiry Officer cannot, therefore, be interfered with by us. In the appeal, the appellate authority has mainly agreed with the disciplinary authority. Although the order of the appellate authority may not be very detailed, it cannot be said that it is a nonspeaking order. What should be the contents of the order of the appellate authority and what should be its length depend upon the facts and circumstances of each case. We, therefore, decline to interfere with the order of the appellate authority either.

10. The applicant has also sought a declaration that the communication Annx.A15 may be declared as null and void. Annx.A15 dated 29.8.1980 is a letter addressed to the applicant by the Superintending Engineer, CWC, Jammu, asking him to report for duty to the Executive Engineer, Bursar Investigation Division, Udhampur. When the applicant himself was seeking reinstatement as a result of the decree passed by the Court it was logical for the respondents to send a communication of this nature to the applicant. We do not see anything wrong with this communication.


11. In the circumstances, we hold that the applicant was indeed reinstated in service by the respondents but it was he who left his place of duty subsequently and did not rejoin leading to the order of removal from service being passed against him. With regard to his grievances regarding ^{pay} and other allowances, we direct the respondents to re-examine the position and if any payment is due to the applicant for the period he actually performed duty as otherwise they shall make payment of such dues to the applicant within a period of three months from the date of the receipt of a copy of this order. No other reliefs are admissible to the applicant.

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12. The O.A is disposed of accordingly. No order as to costs.


(Ratan Prakash)

Judicial Member.


(O.P.Sharma)

Administrative Member.