

10

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 152/98 of

DATE OF DECISION 20.9.2000

Sri Sujit Karmakar

PETITIONER(S)

Mr. M. Chanda.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. B.C.Pathak, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 152 of 1998.

Date of Order : This the 20th day of September, 2000.

HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

Sri Sujit Karmakar
Son of late Surendra Karmakar
Ward No.14, Garowan Patty
Bye Lane No.2, L.D.S. Road,
District-Sonitpur,
Assam

.... Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India
through Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. Deputy Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India,
Bank Tiniali,
P.O. Itanagar,
Itanagar, Arunachal Pradesh. Respondents

By Advocate Mr. B.C.Pathak, Addl. C.G.S.C.

O R D E R (ORAL)

D.N. CHOWDHURY, J(V.C.).

This application relates to payment of arrear pay and allowances for the period from 1.7.1993 to 19.6.1994, pursuant to the order of the Appellate Authority setting aside the order of removal from service. The applicant while serving as S.A.(G) under the respondents a disciplinary proceeding was initiated against him for the alleged misconduct of unauthorised absence from duty. Pursuant to that the applicant was removed from service. On an appeal the Appellate Authority namely, the Deputy Director, SIB, Tezpur, by his order no. 33/E/95(10) dated 10.10.1995 set aside the order of removal from service of the applicant and

Contd...

ordered for his reinstatement to the post of S.A(G) from the date of resumption of duties with the following order:

" (i) The period of his services from June 20, 1994 to the date of his resumption to duties on reinstatement (within 10 days of issue of this order) will be treated as on duty, and,

ii) the pay and allowances for the period from June 20, 1994 till resumption to duties as at i) above will be paid as per rules.

3. Shri Karmakar is allowed to report back to duty at SIB Hqrs., Tezpur as SA(G) within 10 days of receipt of this order.

4. This takes effect from the date of issue of this order."

It appears that after the aforesaid order was passed the applicant was reinstated in service and the applicant was given all the benefits save and except the pay and allowances for the period from 1.7.1993 to 19.6.1994.

2. Mr. M.Chanda, learned counsel appearing on behalf of the applicant submits that the Appellate Authority set aside the order of removal from service on reaching a positive conclusion that the applicant did not wilfully absented himself from duties taking into consideration of his past services and also on medical reports. The Appellate authority set aside the findings of unauthorised absence and reinstated the applicant in service, therefore there is no justification to deny the salary for the period from 1.7.1993 to 19.6.1994.

3. Mr. B.C.Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents on the other hand submits that the Appellate Authority only set aside the order of penalty of removal and ordered him to be reinstated in service with effect from June 20, 1994. He further submits that the Appellate Authority in the order itself provided the reliefs as the applicant accepted the said

order and did not challenge the findings of the Appellate Authority. Mr. Pathak further submits that the respondent authority did not commit any illegality in not releasing the salary for the period of his absence from 1.7.1993 to 19.6.2000.

4. From the proceedings it appears that the applicant was removed from service for unauthorised absence. The Disciplinary Authority considered the medical reports and thereafter found his absence was unauthorised. The Appellate Authority in considering the appeal took note of the nature of absence and the facts revealed from the evidence on record. The Appellate Authority referred to the medical certificates issued by the Medical Authority. The Appellate Authority did not accept the evidence to the effect that the applicant was not suffering from asthamatic trouble prior to June/July 1993. For that purpose the Appellate Authority relied on the certificate dated 12.10.1992 issued from the Civil Hospital, Tezpur. The opinion of the Joint Director, Health Service, Tezpur also found indicative that the applicant was suffering from asthama at high altitude.

5. From the aforementioned discussion it is thus clear tha the Appellate Authority did not accept the conclusion of the Disciplinary Authority that the absence of the applicant was unauthorised. Once the aforementioned conclusion is reached by the Appellate Authority, the findings of the disciplinary authority automatically lost its edge after the order passed by the Appellate Authority which has set aside the order of penalty of removal from service. The medical report referred to also supporting the conclusion of the Appellate Authority.

Contd...

5. In the circumstances it appears in my opinion there is no reason for refusing the salary to the applicant for the period from 1.7.1993 to 19.6.1994. The respondents are directed to take necessary steps for regularising the aforesaid period of unauthorised absence enabling the applicant to get his salary for that period as per rules.

6. The application is allowed to the extent mentioned above. No order as to costs.

(D.N.CHOWDHURY)
Vice-Chairman

trd