

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 350 of 2002

Jabalpur, this the 15th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Vinod Dayaram Bhagat, S/o. Shri
Dayaram Bhagat, aged about 54 years,
Occupation : Government service as
UDC in National Savings Organization,
Government of India, 89-Malviya Nagar,
Bhopal, R/o. HIG-6, Meenakshi Residency,
66-A, Inderpur, BHEL, Bhopal.

... Applicant

(By Advocate - Shri Deepak Panjwani on behalf of Shri Udayan
Tiwari)

V e r s u s

1. Union of India, through :
its Secretary, Ministry of Finance,
Department of Economics Affairs,
North Block, New Delhi.
2. National Savings Commissioner,
12, Shivnari Hills, Nagpur (MS).
3. Regional Director, National Savings
Organization, 89, Malviya Nagar,
Bhopal.

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(i) to quash the impugned order dated 22.5.2001
(Annexure A-9) in so far as it relates to the placing
the applicant at the initial pay of Rs. 1200/- p.m.,

(ii) to command the respondents :

- (a) to fix the period of reduction in the lower pay
scale/post,
- (b) to fix in the pay scale of UDC from the date of
reinstatement and the applicant be given all
advantages in the pay scale,
- (c) merely 10 years have elapsed and the applicant
be restored to the higher post of Head Clerk
with all consequential benefits."

2. The brief facts of the case are that the applicant was
initially appointed on the post of Lower Division Clerk
w.e.f. 30.3.1971 and was promoted to the post of Upper
Division Clerk w.e.f. 15.3.1977. He earned further promotion

to the post of Head Clerk in March, 1985. The applicant was posted in the office of Regional Director, National Savings Organization, 33, Anand Nagar, Raipur. He was charge sheeted and a memo was issued on 29.3.1988. Three witnesses were examined by the disciplinary authority but they were not examined by the enquiry officer and they did not enter into the witness box and did not give any evidence. The applicant submitted his written brief. The enquiry officer submitted his report. A copy of the enquiry report was given to the applicant with order imposing penalty of compulsory retirement. Against the said order the applicant preferred an appeal. The appellate authority came to the finding that the punishment of compulsory retirement was too harsh and passed an order dated 2.7.1992, whereby it was directed that the applicant be reverted to the post of UDC in the pay scale of Rs. 1200-2024/- and would continue to remain there till he was found fit by the competent authority for promotion to the higher post. Aggrieved by these orders the applicant filed an Original Application No. 363/1993. The Tribunal while disposing of the OA found that the order of the appellate authority was not in terms of the rules. It was also found that the order interpreting the order of appellate authority by the disciplinary authority dated 19.8.92 was absolutely bad in law and was set aside. The case was remanded to the appellate authority to pass appropriate modified orders in accordance with law. In compliance the appellate authority modifies its order vide order dated 22.5.2001 (Annexure A-9), wherein it treated the intervening between the date of compulsory retirement on 18.12.1989 and rejoining on reinstatement on 3.9.1992 (FN) as period not spent on duty. In view of FR 54(7) the applicant will be paid pay and allowances for the intervening period at an amount equal to the subsistence allowance which the Government servant was drawing before the date of compulsory



retirement. In the subsequent para no period has been fixed for reversion of the applicant in the pay scale of UDC. It has still been left ambiguous and uncertain by saying that until he is found fit by the competent authority to be restored to higher of Head Clerk. The order that has been passed to the detriment of the applicant is that instead of giving him the pay scale of UDC he has been permanently fixed at Rs. 1200/- which was the then basic of the post of UDC. On account of passing the order dated 22.5.2001 the applicant is being subjected to recovery of Rs. 1,000/- per month and has been reduced from Rs. 4600/- p.m. to Rs. 4000/- p.m. The modification did not permit the order to the detriment of the applicant. The applicant was already fixed in the pay scale of Rs. 1200-2040/- as per earlier order of the appellate authority and he was given the corresponding pay scale of 5th Pay Commission w.e.f. 1.1.1996. The applicant filed contempt petition which was disposed of by the Tribunal directing the applicant that if he is aggrieved by the order passed by the appellate authority, he could file fresh OA for redressal of his grievances and no case for initiation of contempt proceedings was made out. Hence, this OA has been filed by the applicant challenging the impugned order dated 22.5.2001.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that the disciplinary authority has passed the order of compulsory retirement against the applicant but the appellate authority modified this order of the disciplinary authority. Against the modified order of the appellate authority the applicant preferred an original Application No. 363/1993 in which it was held that the disciplinary authority has no power to



impose fresh penalties or to clarify the order of the appellate authority to the prejudice of the applicant. Therefore, the order of the disciplinary authority wherein applicant has been ordered to be treated as not only junior-most but also to start at pay of Rs. 1200/- being the minimum of the scale, is without authority and is also bad in law. Thus, the case was remanded back to the appellate authority to pass appropriate modified orders in accordance with the law. The appellate authority had passed the impugned order dated 22.5.2001 which is not in compliance of the aforesaid order of the Tribunal. The applicant has filed this OA as he was permitted to do so^{in CCP No. 71/2001} that if he still feels aggrieved he may file fresh OA for redressal of his grievance.

5. In order dated 17.8.2004 by this Tribunal, Shri B.da.Silva learned counsel for the respondents stated that although the counter reply has been prepared but the officer who has joined as Commissioner, National Savings Organisation is not authorised to sign the counter reply. The counter reply, therefore, is to be signed by the competent authority in the Ministry of Finance. He seeks and allowed a week time to file the counter reply. List this case for hearing on 2.9.2004. It is made clear that even if the counter reply is not filed within the stipulated time, the proceeding to file the same will be treated as complete and the case will be disposed of on the next date. But till now the respondents have not filed the reply.

6. The learned counsel for the respondents argued that the applicant has sought voluntary retirement. Hence, he is no more in service now. This oral argument advanced by the learned counsel for the respondents is not denied by the learned counsel for the applicant. He further argued that



the Department of National Saving Commission is not in existence and according to the applicant himself his CCP No. 71/2001 was not allowed as the respondents have complied with the directions of the Tribunal and the due reliefs has already been granted to the applicant. Hence, this OA is liable to be dismissed.

7. After hearing the learned counsel for the parties and on careful perusal of the records, we find that in OA No. 363/1993 filed by the applicant, the Tribunal vide its order dated 11th July, 2000 had directed the appellate authority to pass appropriate modified orders in accordance with the law within a period of three months from the date of receipt of this order, keeping in view the observations made in this order. The appellate authority has passed the impugned order dated 22.5.2001 (Annexure A-9). Against this order the applicant filed CCP No. 71/2001 which was decided by this Tribunal vide order dated 12th November, 2001 and it was held that "we find that so far as the orders of the Tribunal are concerned, that has been complied by the respondent-contemners. They have passed the speaking order in Annexure A-3 and A-4. As such no case for starting contempt proceedings against the respondents is made out. If the applicant is aggrieved, he may file fresh OA for redressal of his grievance. With this observation this CCP is dismissed." On this liberty the applicant has filed the present OA against the order dated 22.5.2001. We also find that the applicant is no more in service as he has taken voluntary retirement and the concerned Department i.e. Department of National Saving Commission has been closed by the orders of the Government of India. The due reliefs has already been given to the applicant as mentioned above in the order of the CCP which was dismissed with the finding that the respondents have complied with the orders of the



Tribunal by passing speaking orders.

8. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
प तिलिपि अचो धित:-

- (1) सचिव, उच्च न्यायालय कार एसेसिपुशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के कोउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के कोउंसल
- (4) ग्रंथपाल, को.प्र.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Shri. Panigami Hegde
Shri. B. S. S. Hegde

ज्ये रजिस्ट्रार

Issued
On 20.9.04
BS