

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...  
**Order reserved on: 09.02.2016**

**ORIGINAL APPLICATION NO. 060/00801/2014**

**Chandigarh, this the 11<sup>th</sup> day of February, 2016**

...  
**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)  
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...

Bharpur Singh, son of Shri Sewa Singh, resident of House No. 7314, Haji Rattan Gate, Bathinda.

...APPLICANT

BY ADVOCATE: SHRI DEEPAK GUPTA

VERSUS

1. Union of India through Secretary, Govt. of India, Ministry of Defence, New Delhi;
2. AOC, I.N.C., Western Air Command, IAF, Suboroto Park, New Delhi.
3. Commanding Officer, 2211, Sqdn, 34 Wing, Air Force, Bhisiana, District Bathinda.

...APPLICANT

BY ADVOCATE: SHRI VINOD K. ARYA

**ORDER**

**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J):-**

Case of the applicant Bharpur Singh is that he has been working as Mess Waiter in Air Force Bassiana, District Bathinda. In October, 2005, he met with an accident. In the year 2007, he was shifted to SNCO's Mess whose In-charge started harassing the applicant and did not allow him to mark his presence in the Attendance Register. The applicant made complaints dated 16.01.2008 (Annexure A-1) and 13.03.2008 (Annexure A-2). The applicant was not paid salary since February 2008 onwards. Thereupon the applicant sent a Notice dated

25.06.2008 (Annexure A-3) to the respondents. He received reply dated 22.08.2008 (Annexure A-4) to the aforesaid notice. Since the respondents failed to disburse the salary of the applicant, he filed application on 24.09.2008 under Section 33-C(2) of the Industrial Disputes Act, 1947 in Industrial Tribunal, Bhatinda, claiming salary for the period from February 2008 to August 2008. The said application was dismissed by the Industrial Tribunal vide order dated 06.05.2014 (Annexure A-5), holding that the respondents did not fall in the definition of 'industry' and, therefore, Industrial Tribunal had no jurisdiction to decide the said application. On the aforesaid averments, the applicant has filed the instant O.A. claiming the following relief:

"8(i) Directing the respondents to give the salary of the applicant from the period February 2008 to February 2009 alongwith 18% p.a. interest since the same has been withheld/not paid in an illegal, arbitrary and discriminatory manner without any justification by the respondents."

2. Respondents in their written statement interalia pleaded that the applicant remained absent from duty without leave from 06.10.2007 to 27.03.2008 for 174 days. His illegal absence was treated as Extra Ordinary Leave (EOL) without pay and, therefore, he is not entitled to any leave salary for the said period. However, for the absence period, the applicant had been paid salary erroneously from 06.10.2007 till 31.01.2008. Consequently, due salary from 28.03.2008 till 31.08.2008 was either not paid or restricted to adjust the amount already paid to him for the absence period to which he was not entitled. His salary for the period from February 2008 to August 2008 was prepared in

24A

September 2008, but the applicant refused to sign the requisite Pay Bill-cum-Acquittance Roll claiming that he should be paid salary for the entire duration of EOL/absence period also. The applicant has already drawn salary for September 2008 in the same month and from October 2008 to February 2009 in March 2009. Some deductions from the said salary were also made due to subsequent absence period of the applicant without leave. Necessary documents in this behalf were annexed with the written statement. It was thus alleged that nothing remained due from the respondents to the applicant.

3. The applicant filed rejoinder wherein he controverted the version of the respondents and reiterated his own version.

4. We have heard counsel for parties and perused the case file.

5. Counsel for the parties reiterated their respective versions. Counsel for the applicant submitted that the applicant was not being allowed to perform his duties and was marked absent for which he sent representations Annexures A-1 & A-2. It was also submitted that no letter etc. was sent to the applicant regarding his alleged absence. It was pointed out that Attendance Sheets annexed as R-1 do not bear the initials of the applicant or other employees. It was also contended that if the applicant was absent from duty, why salary was paid to him for the alleged absence period upto 31.01.2008. As regards limitation, it was submitted that the applicant had been prosecuting his application in the Industrial Tribunal and, therefore, the instant O.A. is within limitation.

6. Counsel for the respondents pointed out that the applicant remained absent without leave for 174 days from 06.10.2007 to 27.03.2008, which was regularized as EOL for which no salary was payable to the applicant, but erroneously salary had been paid to him for the period upto 31.01.2008 and the same was adjusted out of his salary from 28.03.2008 onwards and the remaining salary was paid to him. Even after 27.03.2008, the applicant remained absent for some periods in the subsequent months.

7. Counsel for the applicant contended that the salary for the period from February 2008 to February 2009 has not been paid to him and even after adjusting the salary of absence period, the remaining amount should have been credited in his bank account, but has not been so credited as depicted from his bank pass-book (Annexure A-6). Counsel for the respondents, however, pointed out that various amounts have been credited in the account of the applicant as mentioned in the pass-book.

8. We have carefully considered the matter. The applicant has claimed salary for the period from February 2008 to February 2009. The instant O.A. was filed on 10.09.2014 although the limitation period for filing of O.A. was one year only. Even for the last month of February 2009 for which the salary has been claimed, the O.A. is barred by limitation by 4 years 6 months because the same could be filed upto end of February 2010 only. The applicant has not moved any application to seek benefit of Section 14 of the Limitation Act to exclude the period spent by him in prosecuting his application in the Industrial Tribunal. The O.A. is thus barred by limitation.

9. As regards the contention of the counsel for the applicant relating to absence period of the applicant, no relief relating to the said period has been claimed. The respondents have annexed Attendance sheets Annexure R-1 depicting that the applicant remained absent from 06.10.2007 to 27.03.2008. The mere fact that the said Attendance Sheet has not been initialled by the applicant would not invalidate the same nor diminish its evidentiary value because the Attendance Sheet has not been initialled by other employees also. If it is the practice of respondents of not getting initials of such employees on the Attendance Sheet, it cannot be said that the applicant had attended his duty during the said period. Moreover, no relief regarding the absence period has been claimed by the applicant in the O.A. and, therefore, the respondents were not required to place on record letters which might have been written to the applicant regarding his absence. However, in the opening page of Annexure R-1, it is mentioned in paragraph 3 that despite repeated instructions and reminders, the applicant had not even submitted his leave application for the absence period. Thus the applicant remained absent for the aforesaid period and the salary paid to him for the absence period up to 31.01.2008 has been rightly adjusted out of his salary payable from 28.03.2008 onwards. Merely on the basis of representations Annexures A-1 & A-2, it cannot be said that the applicant was not being permitted to perform his duties and was intentionally being marked absent. The In-charge of the SNCOS Mess who allegedly did not have cordial relations with the applicant and who allegedly started harassing the applicant, has not been impleaded as respondent by

name. There is also no material on record to substantiate the aforesaid plea of the applicant.

10. Merely because the salary for the absence period upto 31.01.2008 was erroneously paid to the applicant, it does not confer any right on him to retain the same and the same has been rightly adjusted out of salary which became due to him from 28.03.2008 onwards.

11. Perusal of copy of bank-passbook Annexure A-6 also reveals that various amounts were credited in the bank account of the applicant and, therefore, it cannot be said that salary for the subsequent period, after adjusting the overpaid salary for the absence period, has also not been paid to the applicant. On the other hand, the respondents have produced document Annexure R-2 regarding payment of the said salary to the applicant which also finds support from entries in the bank pass-book (Annexure A-6) of the applicant.

12. For the reasons aforesaid, we find no merit in the instant O.A. which stands dismissed. The parties are left to suffer their own costs.

  
**(JUSTICE L.N. MITTAL)**  
**MEMBER(J)**

  
**(RAJWANT SANDHU)**  
**MEMBER(A)**

**Dated: 11.02.2016**

'SK'