

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 061/00042/2016 Date of order:- 28.3.2018.

Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)

Radha Krishen s/o late Anand Ram, r/o village Sagam Tehsil District Anantnag at present Block 120, Flat No.21, Lane NO.21, Mini Township, Jagti Colony, Nagbrota, Tehsil & District Jammu (Group D)

.....Applicant.

(By Advocate :- Mr. Basit Manzoor Keng)

Versus

1. Institute of Hotel Management, Catering Technology & Applied Nutrition, Ministry of Tourism, Government of India through its Chairman (Secretary Tourism Government of Jammu & Kashmir) Board of Governors, Rajbagh, Srinagar, Jammu & Kashmir.
2. The Principal, Institute of Hotel Management, Catering Technology & Applied Nutrition, Ministry of Tourism, Government of India, Rajbagh, Srinagar, Jammu & Kashmir.

...Respondents

(By Advocate : Shri Anil Bhan).

ORDER

Sanjeev Kaushik, Member (J):

By means of the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, applicant Radha Krishen seeks quashing of order dated 8.3.2016 (Annexure A-1) whereby he was directed to refund an amount of Rs.86685/- . The applicant has sought further direction for directing the respondents to settle the pensionary dues and to issue Pension Payment Order in his favour.

2. Brief facts of the case are that the applicant was initially appointed as Helper in the respondent Institute vide order dated 2.11.1982. Due to militancy in the valley, the services of the applicant was transferred and attached to Dr. Ambedkar Hotel Management, Chandigarh from 1990 till 2002. Thereafter, the applicant was posted at Institute of Hotel Management, Catering & Nutrition, Gurdaspur from 2002 till December, 2008. Vide order dated 8.12.2008, the applicant was repatriated to his parent organization i.e. Institute of Hotel Management, Catering Technology & Applied Nutrition, Srinagar. The applicant made a number of representations to the respondent Institute for grant him the benefit under the Assured Career Progression Scheme or stagnation increments as he was not granted any promotion. Instead of acceding to the request of the applicant for grant of ACP/stagnation increments, he was issued order dated 28.1.2010 whereby he was informed that he failed to attend his duties after winter vacation on 4th & 5th January, 2010 and resumed his duties on January 6th, 2010 and this willful absence and over stayed period shall be treated as "dies-non" (i.e. leave without pay but not break in service). Again, the applicant was issued notice dated 11.5.2011 for willful absence from duty on 9th May, 2011 and he was directed to explain his position within two days to which he submitted his reply on 13.5.2011 by mentioning therein that he could not attend his duties on May 9, 2011 due to his own illness. He has further stated that his family is living at Jammu and he be provided his small accommodation in the campus of Srinagar so that he can shift his family to Srinagar. The

applicant also submitted a representation dated 5.7.2011 for grant of ACP and increments as he has not got any promotion since his appointment from 1982. The applicant was again issued notice dated 4.10.2011 for negligence of duties and willful absence from duty to which the applicant tendered his reply on 5.10.2011. Feeling dis-satisfied with the reply submitted by the applicant, respondent no.2 appointed Shri Ajaz Ahmad Akhoon, UDC as an Inquiry Officer vide letter dated 10.10.2011 and the applicant was directed to cooperate with the Inquiry Officer. Even on the same day, the applicant also received another letter dated 10.10.2011 whereby he was informed that your willful absence from duty on 3.10.2011 without prior permission has been treated as dies-non but not break in service. When the applicant was harassed by the Principal of the Institute, he made a detailed representation Annexure A-13 to Chairman of BOG, IHM, Rajbagh, Srinagar. Again the applicant made representation dated 11.10.2011 by denying all the allegations levelled against him with a further prayer that " it is better to retire me before eight months which I accept instead of insult". After receiving the representation from the applicant, the Principal of the Institute vide letter dated 12.10.2011 accepted the request of the applicant for voluntary retirement from 31.10.2011. The applicant vide his letter dated 17.10.2011 has stated that as he was upset due to his domestic problem, as such, he withdrew the said retirement notice and he be treated on duty from 17.10.2011 after availing leave from 12.10.2011 to 14.10.2011. The applicant was again issued memo dated 17.10.2011 to the effect that you have not

obtained station permission before leaving to Jammu, as such he was advised to explain his position to which the applicant replied on the same very day. In his reply, the applicant has stated that due to ring ceremony of his daughter and mental stress, he left for Jammu. He further stated in his reply that he left for Jammu with the interference of Chairman of the Institute. Applicant was again issued letter dated 18.10.2011 whereby his period from 12.10.2011 to 14.10.2011 was treated as absent i.e. leave without pay. After protracted correspondence and after holding enquiry by Shri Ajaz Ahmad, UDC, the applicant was retired from service on 31.10.2011 instead of 31.7.2012 inspite of the fact that he had taken back his voluntary retirement notice.

3. Feeling dis-satisfied with the order for retiring him on 31.10.2011 instead of 31.7.2012, the applicant approached the Tribunal by filing O.A.No.1246/JK/2012 and the said OA was allowed vide order dated July 11, 2013 by holding that the applicant is held entitled to all consequential benefits. After receipt of the order dated July 11, 2013, respondent Institute vide letter dated 7.1.2014 written to applicant that an enquiry has been conducted against him when he was in service and he was directed to furnish his defence to the enquiry report submitted by the Inquiry Officer. Aggrieved against the letter dated 7.1.2014, the applicant again approached the Tribunal by filing O.A.No.061/00003/2014 which too was allowed vide order dated 13.3.2015 by quashing the letter dated 7.1.2014, whereby the applicant was directed to furnish his defence to the enquiry report conducted against him.

4. The applicant has alleged that instead of complying with the orders dated 11.7.2013 & 13.3.2015 passed by the Tribunal, the respondent Institute vide order dated 8.3.2015 has denied the pension and pensionary benefits and also ordered for recovery of Rs.86,685/- Hence the present OA.

5. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that since the petitioner did not qualify for pensionary benefits having less than required service at the time of his superannuation, the provisional pension paid for sustenance for which he was not otherwise entitled comes to Rs.86,685/- has to be recovered from him. The issue for waiving of Rs.86,685/- was also taken up in the Board of Governors meeting held on August 19, 2016, but the Board of Governors did not agree to the request on the ground that the amount in question is government money and has to be recovered from the applicant and the same be deposited with the Institute chest. They have further stated that the applicant has been declared not eligible for grant of pensionary benefits as he did not have the minimum qualifying service of ten years on the date of normal superannuation i.e. 31.7.2012 as per Rule 49(1) of the CCS Pension Rules, 1972. The respondents have further stated that once the applicant submitted his pension papers including family declaration and after verification of all related records, it was found that the incumbent had only 3 years continuous service on the date of his normal superannuation, thus, not entitled for any pension. With regard to grant of financial promotion under ACP/MACP Scheme is

concerned, they submitted that it is as good as grant of functional promotion, wherein screening of work and conduct of the beneficiary during preceding 3 to 5 years is must and before grant of such financial benefit, the work and conduct of the beneficiary during the preceding 3 to 5 years has to be good. But in the case of the applicant, the work and conduct of the applicant all along has remained un-satisfactory and below the mark. It is not a matter of two days only in the month of January, 2010, rather, the applicant remained erratic in his attendance right from the beginning in all the three institutes where he worked. They have thus prayed for dismissal of the OA.

6. I have heard the learned counsel for the parties and have perused the material placed on record.

7. Learned counsel for the applicant vehemently argued that the impugned action of the action of the respondents for recovery of the amount to the tune of Rs.86,685/- is violative of principles of natural justice. He further argued that when the applicant is working as Helper since 2.11.1982 and retired on 31.7.2012, then how the respondents can say that the applicant had worked with the respondent Institute only for a period of three years, as such, he is not entitled to any pension. He has drawn my attention to order dated 8.3.2016 (Annexure A-1) wherein the respondents have themselves mentioned that from 1990 to 2011, 121 days as period treated as leave without pay; period of suspension from 4.6.1988 to 13.10.1989; period of stoppage of increment and period of dies-non from 4.1.2010 to 5.1.2010 & 10.10.2011; and the period of absent

in different years in 1985, 1986, 1987, 2002, 2005 & 2009 comes to about 100 days, whereas in para 1 of the written statement, the respondents have categorically stated that "incumbent had only 3 years continuous service on the date of his normal superannuation, thus not entitled for any pension". He further argued that in case 221 days i.e. less than one year, are to be treated as leave without pay/absent from duty, even then the applicant had rendered more than 28 years of service with the respondent Institute, as such, the applicant cannot be denied from his ACP/MACP benefits, pension and other pensionary benefits.

8. Learned counsel for the applicant further argued that the applicant has been issued various memos to the effect that verbal complaints about the applicant's behavior has been received in the Institute, whereas the fact is otherwise as not a single complaint in writing has been placed on record by the respondents against the applicant from the date of his initial appointment i.e. from November, 1982 till his retirement.

9. On the contrary, the learned counsel for the respondents has argued what has been stated in the written statement.

10. I have gone through the averments made in the OA and the written statement verbatim and find that the applicant has specifically mentioned in para 4.2 of the OA that he was appointed as Helper with the Institute vide order dated 2.11.1982(Annexure A-2), to which the respondents have not denied in their written statement. Further, in reply to para 1 of the OA, the respondents have stated that "answering respondents had issued an office order No.Estt/2015/

(127)/ 5038 dated 08.03.2016 by virtue of which the applicant has been declared not eligible for grant of pensionary benefits as he did not have the minimum qualifying service of 10 years on the date of normal superannuation i.e. 31.7.2012, as per Rule 49(1) of CCS Pension Rules 1972 of Central Govt. Employees Pension Rules amended from time to time". At the most, the respondents can extend the year for grant of ACP/MACP benefit to the applicant for the period he remained on leave without pay or period of absence. All these facts go to show that the applicant had worked from November, 1982 till 31.7.2012 and the averment of the respondents that the applicant had worked less than three years stood falsified.

11. In view of above discussion, the OA is allowed and the impugned order dated 8.3.2016 is quashed. The respondents are directed to release the pension and other pensionary benefits along with other consequential benefits, within a period of two months from the date of receipt of certified copy of this order. The respondents are also directed to pay interest on all retiral dues @ 8% till its realization. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:- March 28, 2018.

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