

Central Administrative Tribunal
Principal Bench

O.A.No.400/2003

Hon'ble Shri V.K.Majotra Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 8th day of September, 2003

Shri Vijay Kumar Mago
s/o Shri K.L.Mago
r/o F-39, CEERI Plant
Pilani (Rajasthan). Applicant

(By Advocate: None)

Vs.

1. Council of Scientific &
Industrial Research
Anusadhan Bhawan
Rafi Marg
New Delhi - 110 001.
2. Director General
Council of Scientific & Industrial
Research
Anusadhan Bhawan
Rafi Marg
New Delhi - 110 001.
3. Central Electronics Engineering
Research Institute
Pilani - 333 031. Respondents

(By Advocate: None)

O R D E R (Oral)

By Shri Shanker Raju, Member (J):

Applicant impugns respondents' order dated 14.11.2002 treating the period from the date of compulsory retirement w.e.f. 17.5.1999 till reinstatement, i.e., 24.2.2002 as restricted to 75% of the pay and allowances and the entire absence has been treated as duty only for the purposes of pension. Quashing of the aforesaid order has been sought with all consequential benefits.

2. Applicant, who was compulsory retired by an order dated 17.5.1999, preferred OA challenging the same on proportionality of punishment. The OA was

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dismissed and thereafter CWP No.6225/2000 preferred before the High Court of Delhi was disposed of on 18.10.2001 with a direction to the respondents to reconsider and re-examine the case of the applicant for quashing of punishment by a fresh appropriate orders to be passed within four months..

3. In pursuance thereof, by an order dated 15.2.2002, Director General, CSIR, the appellate authority, taking a lenient view observed as under:

" I am, however, now inclined to take a somewhat lenient view in the light of the observations of the Hon'ble High Court, and feel that the ends of justice would be met if Shri VK Mago is reinstated in service and penalty of reduction to the grade Gr.II(2) from Group II(3) is imposed upon him w.e.f. 15/4/1999, i.e. the date from which he was compulsorily retired, for a period of four years.. Shri VK Mago will stand restored to his original post of Group II(3) after the completion of four years and will draw the pay which he would have drawn, had he not been reduced to the lower post. On restoration, the period of reduction will also count for the purpose of seniority."

4. From the above, it is apparent that the punishment has been reduced to reduction to the grade Gr.II(2) from Group II(3) w.e.f.15.4.1999.. By an OM dated 12.7.2002 issued under FR-54 a proposal has been made by the respondents to treat the aforesaid period as spent on duty only for pension and also restricted the payment of pay and allowances to 75%. The aforesaid has been responded to by the applicant..

5. By the impugned order, the period has been treated on duty only for the pension and pay and allowances are restricted to 75%, giving rise to the present OA..

6. As none appeared for the parties, OA is disposed of under Rules 15 and 16 of the CAT (Procedure) Rules, 1987.

7. In the OA, applicant has assailed orders on the ground that orders issued are illegal and as the punishment has already been awarded vide order dated 15.2.2002, he cannot be punished twice for the same matter. It is further contended that as no power of review vests in, Chief Vigilance Officer decision taken by the DG cannot be reviewed by a subordinate authority.

6. It is contended that the aforesaid order amounts to double jeopardy which shows mala fides of the respondents.

7. In their reply, respondents contended that as per FR 54 action is taken as per law after issuing show cause notice to the applicant. This was with a view to regularise the period of absence and not with a view to review or enhance the punishment.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. By an order dated 15.2.2002, in pursuance of the directions of the Delhi High Court, DG, CSIR being the appellate authority taking a lenient view, reinstated the applicant in service and modified the punishment to reduction to a lower group.

10. The aforesaid punishment was imposed with effect from 15.4.1999, the date when the compulsory retirement was ordered. Applicant has been observed to the original post of Group-II(3) after completion of four years and would draw pay which he has been drawn as so far had not been reduced to the lower post. Affect of the aforesaid is that the applicant has been temporarily reverted. DG has also in his order observed that, on restoration, the period of reduction will also count for the purposes of seniority.

11. In so far as the treatment of intervening period from compulsory retirement till the reinstatement, FR 54 clearly stipulates that on a show cause notice where the dismissal, removal or compulsory retirement is set aside by the appellate authority, to treat the absence period preceding compulsory retirement as period not spent on duty or order conversion of leave of the kind due and the pay and allowances shall be subject to such an order. This has to be preceded by a show cause notice.

12. The action of the respondents in restricting the pay and allowances to 75% is valid in accordance with FR 54 and is after following due procedure of issuing show cause notice to the applicant. We do not find any infirmity on that count.

13. However, DG while reducing the punishment has not passed any order as to treatment of intervening period. Moreover, the second part of the notice though order which restricts the period of four years i.e., 15.4.1999 to 24.2.2002 to be computed only for the purposes of pension cannot be countenanced. The DG while reducing the punishment by an order dated 15.2.2002 clearly decided that on restoration the period of reduction will count for seniority as well. Accordingly, the treatment of the aforesaid period otherwise would amount to review of an order passed by DG by a subordinate authority which lacks jurisdiction.

14. In the result, for the foregoing reasons, OA is partly allowed. Impugned order in so far as restricts the aforesaid period to be counted towards pension and not as seniority is quashed and set aside. Respondents are directed to treat the aforesaid period as qualifying service for seniority as well. No costs.

S. Raju
(Shanker Raju)
Member (J)

/rao/

V.K. Majotra
(V.K. Majotra)
Member (A)