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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.830/2003

New Delhi this the 2nd day of June, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri T.B. Tyagi,
S/o late Sh. M.B. Tyagi,
R/o 1/3549, Tyagi Colony,
Raj Nagar Extension,
Loni Road, Shahdara, Delhi. -Applicant.

(By Advocate Shri Amit Anand with Sh. Anand Singh, Counsel)

-Versus-

1. Union of India through
Secretary, Ministry of Human
Resource Development,
Deptt. of Education,
Shastri Bhawan, New Delhi.
2. Govt. of NCT of Delhi,
through its Chief Secretary,
Delhi Sachivalaya,
I.P. Estate, Delhi-2.
3. Director of Education,
Govt. of NCT of Delhi,
Old Sectt.,
Delhi. ' -Respondents

(By Advocate Shri Mohit Madan, proxy for Mrs. Avnish Ahlawat)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 13.11.1995, whereby authorities have rejected the condonation of the period from 9.8.79 to 3.3.87 for the purposes of fixation of pay etc. Respondents' order dated 18.4.2001, whereby the aforesaid period has been treated as for pension only, denying increments is also assailed.

2. Briefly stated, applicant while working as TGT in the Directorate of Education, on a tripartite contract went on foreign assignment on deputation for a period of three years w.e.f. 9.8.74. Though he has informed for extension much before the expiry of deputation period his representation remained unresponded to. As applicant due to

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non-relieving could join the Department only on 8.3.1988 a disciplinary proceeding for over-stayal and wilful absence was initiated against him.

3. Applicant by an order dated 19.9.1990 was exonerated from the charges by the disciplinary authority. Regarding condonation of the aforesaid period for the purposes and for treatment as spent on duty by an order dated 13.11.1995 request of applicant was turned down.

4. By an order dated 18.4.2001 period from 9.8.79 to 3.3.87 has been condoned for the purposes of grant of pension and other retiral benefits. However, the same has not been reckoned for the purposes of increments of pay.

5. On a representation for regularisation of period of over-stayal the same was rejected by an order dated 12.11.2001.

6. Applicant had challenged the order dated 18.4.2001 in OA-553/2002. By an order dated 5.2.2003 passed by the Tribunal for want of challenge to order dated 13.11.95 OA was dismissed, with liberty to take appropriate steps to redress the grievance in accordance with law. Resultantly, the present OA.

7. MA-957/2003 has been filed for condonation of delay on the ground that as the issue is regarding pensionary benefits and refixation of pay is a continuous cause of action with liberty to challenge the letter dated 13.11.95. In the interest of justice and to carry out the substantial justice any delay be condoned.

8. Learned counsel for applicant in so far as delay is concerned, cites the decision of the Apex Court in Sualal Yadav v. State of Rajasthan, (1976) 4 SCC 853 to contend that once the representation has been entertained and dismissed on merits gives a fresh cause of action.

9. On merits it is contended that the period of over-stayal for which applicant has been proceeded against in a major penalty chargesheet for the allegations of over-stayal the deputation and unauthorised absence having been exonerated it is to be deemed that he continued in service and the period is to be treated as spent on duty, for the limited purposes of notional increments which would enhance the pensionary benefits of applicant.

10. Learned counsel contends that in similar circumstances one Zaheer Ahmed who also over-stayed has been imposed upon a punishment of two years withholding of increments and the entire period has been treated as spent on duty. He alleges hostile discrimination violative of Articles 14 and 16 of the Constitution of India and relies upon a decision of the Patna Bench of this Tribunal in Babu Lal v. State of Rajasthan, 2000 (33) LIC 3032 Rajasthan in CA-784/98 decided on 7.8.2000.

11. Learned counsel contends that the specific plea of discrimination has been raised by applicant in his OA which has not been specifically rebutted is deemed to be admitted in view of the decision of the Apex Court in Raj Bahadur Sharma v. Union of India, (1998) 9 SCC 458.

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12. Learned counsel states that withholding of increment amounts to penalty which cannot be inflicted once applicant is exonerated of the charges. He relies upon the decision of the Patna High Court in Dr. Cosmos John v. State of Bihar, 2003 (3) ATJ 669 to buttress his plea.

13. In so far as order dated 13.11.1995 is concerned, it is contended that the same cannot be sustained in the light of the fact that applicant has not been found guilty of over-stayal with unauthorised absence.

14. On the other hand, respondents' counsel vehemently opposed the contentions. The objection of limitation is raised on the basis of a decision of the Apex Court in Srilal Sah v. Gulabchand Sah, (1993) 1 SCC 557 and contended that knowledge of the order is the starting point of limitation. As applicant was aware of the order passed on 13.11.1995 and was informed of 5.10.1996 non-challenge to the aforesaid order within the limitation period makes the OA as barred by laches. Mere liberty accorded in the order would not extend the period of limitation.

15. Further objection of constructive res judicata is raised. It is stated that once the OA has been dismissed the same grievance cannot be raised in a fresh proceeding.

16. Learned counsel states that on a lenient view the over-stayal period has been treated as qualifying service for pension.

17. In so far as period spent on duty is concerned, as the contention has been rejected the same cannot be treated as good for pay and allowances.

18. I have carefully considered the rival contentions of the parties and perused the material on record. Although limitation plays an important role but while propagating the cause of substantial justice being a discretion the same is to be liberally construed. If a sufficient cause is shown which furthers dispensation of justice and the explanation does not smack of mala fide or dilatory tactics utmost consideration should be shown to condone the delay. The aforesaid observations are fortified by the decision of the Apex Court in A.M. Lodh v. State of Tripura, (2004) SCc (L&S) 10 and State of Bihar v. Kameshwar Prasad Singh, 2001 (1) SLJ 76. Moreover, in the light of the three-Judge Bench in Sualal (supra) if the representation and the request have been turned down on merits no limitation can be raised. I find that applicant has prayed for regularisation of period of over-stayal for the purposes of increments of pay, which has been turned down on 18.4.2001 and also by an order dated 12.11.2001.

19. Having regard to the explanation tendered and sufficient cause shown and also in view of the fact that grant of notional increment would have an effect over the pensionary benefits of applicant is a recurring cause of action, in the interest of justice I condone the delay in filing the present OA.

20. As regards merits are concerned, I find that applicant was exonerated of the charges of over-stayal and unauthorised absence. This is an implied acceptance to thee fact that applicant for the period 9.8.79 to 3.8.87 had not remained on wilful absence and had not breached the terms of deputation and rather remained there for non-relieving. The aforesaid period, for all practical purposes, is to be treated as spent on duty.

21. In an identical situation one Zaheer Ahmed who over-stayed thee deputation at Nigeria on awarding of penalty of withholding of increments on re-instatement from dismissal the entire period has been condoned and treated for increment of pay. It is trite that when two persons are identically situated and form a class cannot be subjected to hostile discrimination. Article 14 of the Constitution of India has application in discrimination while awarding punishment. This view is fortified by the decision of the Apex Court in Sengara Singh v. State of Punjab, (1983) 4 SCC 225, which is re-iterated by the Rajasthan High Court in Babu Lal (supra). The aforesaid plea taken by applicant has not been specifically rebutted and is deemed to be accepted in the light of the decision of the Apex Court in Raj Bahadur Sharma (supra).

22. The decision taken by the respondents on 13.11.95 not to condone the over-stayal beyond five years is without application of mind and without taking into consideration the exoneration of applicant from charges by the disciplinary authority. This decision, on the face of it, is unjustifiable.

23. — Once the period as per Government of India's orders dated 23.9.82 has been condoned for pensionary benefits the same should have been treated for the purposes of increment of pay. As the aforesaid absence is not attributable to applicant and is on the basis of the non-relieving by the Nigerean Government Patna High Court in John's case (supra) in identical situation ordered treating the period as spent on duty. Accordingly the impugned order issued by the respondents cannot be sustained in law. The order dated 13.11.95 and order dated 18.4.2001 in so far as these orders deny entitlement of increments to applicant for the period 9.8.79 to 3.8.97 are set aside. Respondents are directed to grant applicant notional increments to applicant from 1979 to 1987 and accordingly recalculate the pensionary benefits of applicant. In that event he would be entitled to arrears of pensionary benefits. The above directions shall be complied with, within a period of three months from the date of receipt of a copy of this order.

24. With these directions OA is partly allowed.
No costs.

S. Raju
(Shanker Raju)
Member (J)

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