

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2226/2003

New Delhi, this the 8th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Liaq Ram,
S/o Shri Pearey Lal,
R/o House No. 315,
V&PO Khera Kalan,
New Delhi

... Applicant

(By Advocate : Shri V.S.R. Krishna)

Versus

Union of India, through

1. The Director General of Works
CPWD, Nirman Bhawan,
New Delhi
2. The Superintending Engineer,
PWD Circle No. VI,
Govt. of Delhi,
I.P. Estate, MSO Building,
New Delhi – 110 002

... Respondents

(By Advocate : Shri George Paracken)

ORDER (ORAL)

By Sarweshwar Jha, A.M. :

The applicant has assailed a number of actions taken by the respondents in his regard. However, essentially, he has prayed for quashing the impugned order of the respondents dated the 28th March, 2002 whereby the applicant has been reinstated in service w.e.f. 11.3.2002 (FN) in compliance with the judgement as referred to in the said order subject to the condition that he will not be entitled for any back wages for the period he was kept out of service, and for directions being given to the respondents to treat him in service from 31.08.1993, i.e., the date from which his original voluntary retirement had been effected, with all consequential benefits, like pay fixation, seniority, promotion and ACP benefits. He has also prayed for release of his pay and allowances for the period from

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10.5.1999 till 13.5.2002 and for treating the period from 31.8.1993 to 13.5.2002 as qualifying service for pensionary benefits and for calculating and releasing his pensionary benefits on that basis. It is noted that a prayer has also been made to release his monthly pension and other pensionary benefits and arrears thereof.

2. The facts of the matter, briefly, are that the applicant, who initially joined the services of the respondents on 7.10.1963 and working in different capacities under them, had requested for voluntary retirement from service w.e.f 31.8.1993, while working as UDC, due to certain domestic problems. He, however, withdrew the said request due to change in domestic circumstances. But the respondents accepted his request and retired him from service vide order dated 25.8.1993. Several requests were made by him to cancel the order dated 25.8.1993 but there was no response from the respondents. He accordingly, filed OA No. 1761/1994 with this Tribunal and which was disposed of on 04.05.1995 (Annexure A/2) with the direction to the respondents to again consider the request of the applicant for withdrawal of the notice of voluntary retirement and to decide the same by a speaking order. In compliance, the respondents issued a speaking order dated 19.2.1996 rejecting the request of the applicant. This led to the applicant filing another OA No.884/1996 with this Tribunal. This OA was allowed by the Tribunal vide order dated 29.4.1999 with the following directions:-

“We, therefore, quash the order at Annexure A-1 dated 19.02.1996 and direct that the applicant would be reinstated in service. This will be done on the condition that he will refund all the pensionary benefits received by him. He will not be required to pay interest thereon but he will also not be entitled to any back wages for the period he was kept out of service. He will, however, be entitled to count the intervening period for the purpose of seniority, increment and promotion.”

A copy of the detailed order of the Tribunal is placed at Annexure A/3.

3. In compliance of the order of the Tribunal, the applicant reported for duty on 10.5.1999. His joining report, however, was not accepted, as he had not complied with the conditions laid down in the order of the Tribunal (Annexure A/5). The applicant approached the Executive Engineer, PWD-16, as advised, vide his letter dated 18.5.1999

for necessary instructions. The said authority, after repeated remainders, wrote a letter to the Pay & Accounts Officer on 18.6.2001 (Annexure A/8). The applicant made a number of requests and visits to the Office of the respondents and that of the Pay & Accounts Officer for necessary payment regarding refund of pensionary benefits, which he had received after he had been granted voluntary retirement. Finally, he was advised vide letter of the respondents dated 5.3.2002 about the mode of payment/refund and the head of account in which the refund was to be made. The applicant, accordingly, arranged repayment of the pensionary benefits into the Govt. account on 11.3.2002. It has, however, been alleged by him that the respondents issued the necessary orders regarding his reinstatement only on 28.3.2002 and without allowing back wages. It has been argued on behalf of the applicant that even after issuance of the orders for reinstatement in March, 2002, the applicant was not allowed to join duty due to shuttling of the matter among several divisions of the respondent-departments. A reference has also been made to the fact that, earlier, the respondents did try to evade refund of the pensionary benefits by the applicant by approaching the Hon'ble High Court and subsequently by filing an SLP before the Hon'ble Supreme Court where also the SLP was rejected. It has been contended by the applicant that the respondents did not pay any pay and allowances to him for the period from 10.5.1999 till 12.5.2002 in spite of the fact that he was not at fault in the refund of the pensionary benefits or in dilly-dallying over the matter. It has also been alleged that the benefits, like, seniority, promotion, ACP and proper pay fixation and counting of qualifying service for pension have been denied to him and that the respondents have not cared to release his monthly pension, Group Insurance, etc., after his retirement on attaining the age of superannuation. A representation has been submitted to the respondents on 21.8.2002 in the matter, but the same has not been replied to.

4. The respondents, referring to the fact that the applicant had earlier filed OA No.884/1996 in which certain directions have been given to them subject to the applicant fulfilling certain conditions, have claimed that the applicant was aware of the directions of the Tribunal and accordingly he had to refund the retrial benefits received by him w.e.f.



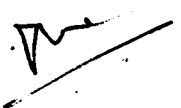
1.9.1993. The respondents have maintained that the applicant was reminded in the matter several times to deposit the said benefits which, according to them, was a pre-condition for his being allowed to join. In this connection, they have enclosed copies of some letters at Annexure R/1 (colly). It has also been averred by them that the said matter simply involved the applicant going to the Department and paying the money by cash or cheque if he really wanted to do so. The applicant himself prolonged the compliance of the directions of the Tribunal as given in their letter dated 29.4.1999. The refund was finally made only on 11.3.2002, keeping the said amount with him for a period of 9 years from 1.9.1993. According to them, the applicant enjoyed the benefit of the said amount for such a long period without even paying the interest thereon to the respondents. In any case, the applicant was reinstated in service only after the said amount was refunded by him. The respondents have contended that the benefit of the said period cannot be given to the applicant, as he was not in service during that period.

5. However, when I am taken through the rejoinder filed by the applicant I find that he has reiterated the point that he was not allowed to join his duty by the respondents deliberately. Initially, the respondents refused to allow him to withdraw his notice for voluntary retirement when he had to approach the Tribunal for relief and after the said relief was granted by the Tribunal vide order dated 15.5.1995, they kept the applicant away from joining the Department on the question of refunding the retirement/pensionary benefits. The applicant has also tried to drive home the point that the respondents had no case at all and when they approached the Hon'ble High Court and Hon'ble Supreme Court in the matter, their petition/SLP were dismissed. To convey that he had no interest in retaining the retirement benefits with him, he has submitted that he deposited the pensionary benefits of Rs. 1,33,733/- on 11.3.2002 as soon as he received the letter of the respondents dated 5.3.2002. Still the respondents did not allow him to join duty immediately and he was shuttled from one place to another.

6. On having heard the learned counsel for the parties and also after careful perusal of the facts of the case, it is observed that after the orders of the Tribunal in OA No. 884/1996

were passed on 29.4.1999 with very clear stipulation that the applicant would be reinstated in service on the condition that he will refund all the pensionary benefits received by him and that he will not be required to pay any interest thereon and further that he will not be entitled to any back wages for the period he was kept out of service, he was not reinstated in service till such time that he had not refunded all the pensionary benefits received by him earlier. In fact, it is quite surprising to note that even after he had refunded the amount of pensionary benefits received by him, he was made to wait for long before he was finally reinstated. Here again the respondents appear to have displayed a non-resolving attitude, which is difficult to reason out and to appreciate. While the Tribunal had laid down the condition that he (applicant) will refund all the pensionary benefits received by him, it did not necessarily mean that this was a pre-condition. A positive view of the matter would mean that the applicant should have been reinstated after the orders of the Tribunal were passed and it should have been ensured that the amount of pensionary benefits was refunded/deposited by him. Instead, he was not allowed to be reinstated till the date the amount was refunded by him, which was delayed, as it appears on a balanced assessment of the facts of the case as submitted by both the parties, mainly for the reason that the applicant was seeking to know from the respondents the mode of payment etc. To argue that the applicant intended to enjoy the benefit of Rs.1,33,733/- during the period when he could not refund the said amount for the reasons given by him appears to be quite unreasonable and unmerited. No employee would sacrifice the benefit of reinstatement and consequential benefits for enjoying the benefit of retaining an amount which has to be finally refunded.

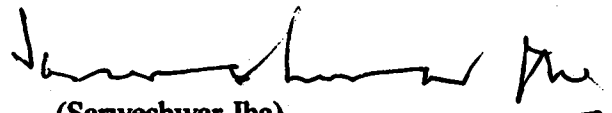
7. On the question of treating the intervening period of more than 9 years as qualifying period for pensionary benefits, I think that it is quite illogical to hold a view that the same would not be allowed when the period has been allowed for the purposes of seniority, increment and promotion by the Tribunal while disposing of OA No. 884/1996. While in the said directions of the Tribunal, the words 'pensionary benefits' are not included together with the words 'seniority, increment and promotion' for which the

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intervening period has to be counted, the natural corollary would be that the said period should also qualify for pensionary benefits. What was required on the part of the respondents in this regard was to have taken a view in the matter with reference to the rules on the subject and not to go by the mere absence of the words 'pensionary benefits' in the said order of the Tribunal.

8. Going by the above observations, I also find it difficult to accept that the applicant should be denied the benefit of pay and allowances from the date on which he initially reported for duty, i.e., 10.5.1999 till he was finally reinstated. It is seen from the records that his joining was not accepted by the respondents vide their letter dated 11.5.1999 and that he should approach the Executive Engineer, PWD in the matter. It is quite obvious that the joining report as given by the applicant as on that date was avoided without sufficient reason and basis. Accordingly, it would be incumbent on the respondents to reconsider the case in this regard in the light of the above observations and to extend the benefit of pay and allowances to the applicant for the said period.

9. Having regard to the above, I am, therefore, inclined to take a view that the period from 31.8.1993 till the date when he was reinstated in service, i.e., 11.3.2002 shall be counted as qualifying service and that the pensionary benefits in respect of the applicant shall be revised appropriately with reference to the relevant rules/instructions on the subject. I am also inclined to accept the view that the applicant be allowed the benefit of pay and allowances for the period from 10.5.1999 till he was reinstated in service after giving fresh consideration to the matter. Ordered accordingly. The respondents shall ensure that the above directions are complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(Sarweshwar Jha)
Member (A)

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