

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2915 OF 2003

New Delhi. this the 10th day of March, 2005

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.K. NAIK, MEMBER (A)**

Vijay Shanker Shukla,
S/o late Shri Nankoo Ram Shukla,
R/o RZ-34/223, 'J' Block,
Sagarpur West,
New Delhi-110046.

.....Applicant.

(By Advocate : Shri R.K. Shukla)

Versus

Union of India, through

1. The Secretary,
Ministry of Agriculture,
Dairying and Animal Husbandry,
Krishi Bhawan,
New Delhi.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.
3. The Dy. General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

.....Respondents

(By Advocate : Shri S.M. Arif)

ORDER (ORAL)

SHRI SHANKER RAJU, MEMBER (J) :

Applicant in this OA has sought payment of 25% salary with allowances and usual increments from 16.8.1993 to 31.5.1997 as well as from 1.6.1997 to 23.6.2000.

2. Brief factual matrix of the case relevant to the issue are that by an order dated 31.5.1997, major punishment of compulsory retirement was imposed upon the applicant. The applicant assailed the said order in OA No.2857/1997, which was allowed by this Tribunal vide order dated 13.3.2000 on the ground that punishment was awarded, on disagreement by the disciplinary authority, without following proper rules, the above impugned order was set aside with a further direction to reinstate the applicant, however, with liberty to proceed further in the matter. Accordingly, in compliance with the aforesaid directions of this Tribunal, the respondents have passed an order dated 23.6.2000 (Annexure A-4) whereby again imposed the punishment of compulsory retirement upon the applicant, which was reduced in an appeal preferred by the applicant by an order dated 15.2.2001 to that of reduction of his pay to the minimum scale of pay, i.e., 3050/- for a period of 4 years w.e.f. 23.6.2000 and the period of 23.6.2000 till he joined duty has been treated as 'non-duty' for all purposes. A review petition preferred by the applicant was also rejected on 29.5.2003.

3. Learned counsel of the applicant Shri R.K. Shukla contends that non-grant of 25% of salary for the period of suspension is not legal and the pay scale of the applicant has not been revised as per the recommendations of the Vth Central Pay Commission w.e.f. 1.1.1996 to 23.6.2000. It is stated that once the order of punishment is set aside, the applicant is entitled to all consequential benefits.

4. Applicant has also preferred a representation on 23.10.2003 to the respondents for the relief prayed herein.

5. On the other hand, learned counsel for the respondents Shri S.M. Arif opposed the contentions raised by the learned counsel of the applicant

and stated that respondents have taken a decision on 12.12.2003 whereby period from 31.5.1997 to 23.6.2000 has been treated as spent on duty for the purpose of pensionary benefits only and the suspension from 31.5.1997 to 23.6.2000 has been restricted to subsistence allowance already drawn by the applicant and no pay and allowances has been made admissible for the period from 24.6.2000 to 21.2.2001. The aforesaid order, according to Shri S.M. Arif learned counsel for the respondents, has not been assailed whereas notice in the present case was issued to respondents on 3.12.2003 only. On merits, it is stated that the subsistence allowance has been paid to the applicant and the applicant's pay has also been revised from 1.1.1996 and the action of the respondents, treating the period of suspension not spent on duty, is in accordance with law.

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


7. Earlier, when the punishment of compulsory retirement was imposed upon the applicant, the applicant had challenged the said punishment by filing an Original Application No.2857/1997 and the same was set aside by the Court vide its order dated 13.3.2000. The aforesaid period, when the applicant was reinstated, and subsequent period, when on reconsideration penalty of compulsory retirement was again imposed and the same was further modified in an appeal, the interregnum period was treated as deemed suspension and treated as not spent on duty and the subsistence allowance was paid to the extent of 25%. FR 54-A (2) provides that where compulsory retirement is set aside not on merit the provisions of Sub Rule (7) of Rule 54-B of FR come into play which provides that the competent authority after giving notice to the Govt. servant of the quantum proposed

and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice. In so far as the objection regarding non-challenge to the order dated 12.12.2003 is concerned, we find that the same was not served upon the applicant till he filed this OA. Moreover, OA was admitted on 2.11.2004 and there is no question of preferring any appeal against this order by the applicant as very proceeding thereafter abates under Section 19 (4) of the Administrative Tribunals Act, 1985. In this view of the matter, the order passed on 12.12.2003 is nullity in law as the same is not in compliance of FR 54-A (2). We find that no show-cause notice was issued to the applicant and he has been deprived of an opportunity to respond the same, as such the order dated 12.12.2003 cannot stand scrutiny in law. The applicant in this OA has also prayed for any other relief and as we find that on the representation preferred by the applicant to which no reply was given to him, the order passed on 12.12.2003 is only extension of the order passed by the disciplinary authority on 23.6.2000.

8. In the result, for the reasons stated above, the present OA stands disposed of with a direction to the respondents to decide the period from 31.5.1997 to 21.2.2001 in accordance with FR 54-A (2) within three months from the date of receipt of a copy of this order. Resultantly, order dated 12.12.2003, which is without any legal sanctity, has no legs to stand.

No costs.


(S.K. NAIK)
MEMBER (A)


(SHANKER RAJU)
MEMBER (J)

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