
(2018) 08 CAT CK 0099

In the Central Administrative Tribunal

Case No : Original Application No. 2089 Of 2003

M.B. Usgaonkar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 39

Citation : (2018) 08 CAT CK 0099

Hon'ble Judges : L. Narasimha Reddy, J;K. N. Shrivastava, Member (A)

Bench : Division Bench

Advocate : Vikas Tiwari, Yatindra, Hanu Bhaskar

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. This is the third round of litigation instituted by the applicant in the context of claiming his retirement benefits. He belongs to the Central Civil Service. He held various senior positions in the Ministry of Defence. While holding the post of Member (Finance) in the Special Surplus Stores Disposal Committee (for short, SSSDC), he retired on 10.04.1993 on attaining the age of superannuation. His last drawn pay was Rs.5,700/- in the scale of Rs.4,500-5,700. Thereafter, he was re-employed on 26.04.1993 as Member (Finance), SSSDC. That appointment also came to an end.

2. The applicant undertook correspondence with the respondents in the context of extension of retirement benefits, as well as the one on account of notional promotion. When he did not get adequate response, he filed OA No.874/1994, claiming various reliefs. One of them was in respect of half pay leave. The OA was disposed of with certain directions. The applicant got some relief from the respondents. However, his request for cash equivalent to the half pay leave, which, according to him, works out to Rs.48,388/-, was not released to him. Hence, he filed this OA.

3. On an earlier occasion, this OA was dismissed on the ground that the relief claimed is barred by constructive res judicata. The applicant filed writ petition, WP(C) No.576/2005 in the High Court of Delhi. The writ petition was allowed through order dated 18.01.2018, and the matter was remanded to the Tribunal.

4. We heard Shri Vikas Tiwari, learned counsel for the applicant, and Shri Hanu Bhaskar, learned counsel for the respondents.

5. The only relief claimed in this OA is the one relating to half pay leave. The service rules governing the service of the applicant provide for half pay leave. If an employee has not utilized those half pay leaves, he will be entitled to be paid cash equivalent, subject to certain limit. In the case of the applicant, the half pay leave was denied by placing reliance upon certain clauses of rule 39 of the CCS Leave Rules, which deals with the cases of re-employment. It appears that the respondents proceeded on the assumption that the entitlement of leave encashment of the applicant got totally merged in the re-employment, and it is only in respect of the service on re-employment that anything can be worked out, and viewed in that context, nothing existed. As a matter of fact, this was the line of defence pleaded in the counter affidavit.

6. The approach adopted by the respondents cannot be countenanced. There was absolutely no continuity of service on the basis of re-employment, and the question of the earned half pay leave of the applicant getting diminished or merged, does not arise.

7. Though objection is raised as to the limitation and the one of constructive res judicata, we do not intend to deal with them at this stage, particularly when the case itself was remanded by the High Court by setting aside the order passed earlier by invoking those principles.

8. The OA is accordingly allowed, and the respondents are directed to work out cash equivalent of the half pay leave that existed to the credit of the applicant for the services rendered by him till he retired on attaining the age of superannuation, within three months from the date of receipt of this order. If the amount is paid within that period, it would not carry any interest. If it is not paid within that period, it would carry an interest at the rate of 6% from the date on which it became payable till the date of actual payment. There shall be no order to costs.