

(2018) 08 CAT CK 0167

In the Central Administrative Tribunal

Case No : Original Application No. 1086 Of 2017, Miscellaneous Application No. 1379, 1380 Of 2017

PrOf. (Dr.) Amaresh Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 32

Citation : (2018) 08 CAT CK 0167

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Keshav Mohan, Divyakant Lahoti

Final Decision : Dismissed/Disposed Of

Judgement

1. Heard the applicant, who argued in person and the learned counsel for respondents.

2. The brief facts of the case are as under:

2.1 The applicant was appointed as a Research Assistant in Lakshmibai College of Physical Education, Gwalior on 21.02.1984 in the scale of Rs.1600-2900. He made a representation that, his work and qualification, being exactly similar to that of Lecturer, he should be granted the pay scale of Lecturer (Rs.2200-4000) on the principle of 'equal pay for equal work'. This plea was made to Hon'ble High Court of M.P. by filing WP (C) no.1187/88. The Hon'ble High Court vide their order dated 21.10.1994 allowed this writ for grant of same pay scale as that of Lecturer.

The respondents, however, did not implement this order and thus, the applicant approached the Hon'ble High Court again, who in their order dated 28.04.1998 ordered for payment of salary of Lecturer w.e.f. 21.02.1984. Since respondents still did not take any action, the applicant approached Hon'ble High Court again

when Hon'ble High Court vide orders dated 02.12.1998 fixed the next hearing as 15.12.1998. Still the judgement was not implemented and as such the applicant preferred a CP to Hon'ble High Court of M.P.

Meanwhile, the Respondents had petitioned Hon'ble Supreme Court also who on 22.01.1999 stayed these orders dated 28.04.1998 of Hon'ble High Court. This stay continued to be in force till this petition was withdrawn from Hon'ble Supreme Court by Respondents (by way of an affidavit by Registrar namely Dr. Rishi Pal Singh to the effect that salary of Lecturer is already paid to the applicant as part of a compromise and hence petition has become infructuous. The respondents brought out that this withdrawal was unauthorised and when it came to light they took action against said Registrar. Para 5 and 7.1 below refers.)

Subsequently, since by this time, the same pay scale of Lecturer was already granted to him for the period from 21.02.1984 till 1989 and as such the contempt petition, referred herein above, was dismissed by the Hon'ble High Court on 07.03.2003.

2.2 It was mentioned that the pay scale of the Lecturer was already paid to the applicant from 21.02.1984 to 15.01.1995.

3. Simultaneously, the Sports Authority of India (SAI), who was the Controlling Authority for Lakshmibai College of Physical Education at that time, decided that Research Assistants were not needed any more so and vide their order dated 10.10.1994 it was decided to abolish all nine posts of Research Assistant. The respondents showed the documents to indicate that out of these nine posts, two posts were already abolished while the remaining seven posts, which included the post on which the applicant was working, was abolished subsequently.

Once the posts of Research Assistant were abolished, the services of the applicant were terminated on 13.01.1995. However, the SAI gave an opportunity to the existing Research Assistants to be considered for absorption as Assistant Director, which carries the same pay as that of Lecturer, subject to their being found fit. For this absorption, the relevant Selection Committee, which was constituted to review the candidates, did not find the applicant fit to be absorbed as Assistant Director vide Committee's recommendations dated 26.10.1998.

3.1 Through a notification dated 11.07.1995 by Government, the CAT was conferred the jurisdiction on service matter grievances of employees of Respondents. The applicant preferred an appeal to this Tribunal questioning the very basis for SAI to consider the post of Research Assistant as surplus and also prayed before this Tribunal to consider the applicant for appointment as a Lecturer (TA No.1/1996 with connected case). This Tribunal vide their decision dated 31.07.1998, gave following orders:

"7. The Petitioner again approached the High Court and thereafter the Supreme Court alleging that abolition of the post was bad in law. The Supreme Court in

SLP No.20174 of 1995 passed the following order:-

"We are not inclined to interfere with the impugned order of the High Court specially in view of the admitted position that the post itself has been abolished which is the subject matter of challenge before the Central Administrative Tribunal.

The Special Leave Petition is dismissed."

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16. The other argument raised by the learned counsel for the petitioner are decided as under:-

(a) As regards the pay scale of Rs.1640-2900 being mentioned in the notice of termination being wrong, yet, question is, whether the order of termination become void? Infact the respondents had earlier issued a notice on 10-10-1994 terminating his services but he continued in service for three months and later on the respondents actually made payment on 3 months' salary vide the notice of 13-1-95 (Annex. P-1). Thus only question is there was any illegality in not making the full payment of the salary drawn by the petitioner and thereby vitiating the order passed. We do not think that the termination order of 13-1-1995 can be rendered illegal and void merely because of the mention of wrong pay scale therein and we reject this contention of the petitioner.

(b) The other contention regarding the abolition of the post by the Director General being without jurisdiction is rejected on proper reading of rule 5,6 and 20 of the Schedule of Sport Authority of India (Service) Bye - laws and Conditions of Service Regulation 1992.

(c) Number of authorities were cited by the learned counsel for the Petitioner. It was stated that the rule on the basis of which the termination is based violates fundamental rights of the petitioner is as such a permanent employee cannot be terminated by giving three months notice and relied on (1994) 2 SCC 416 Dr. Ramesh Chandra Tyagi Versus UOI and AIR 1977 SC 747 Mysore State Road Transport Versus Mirja Kasim. The petitioner also relied on the case of Air Inida Statutory Corpn Versin(sic.) United Labour, AIR 1997 SC 645 regarding termination of surplus staff which was a case under Central Labour abolition Act. But all those cases are distinguishable. The Petitioner also relied on 1997 (1) SLR 738 (SC) State of Punjab & Ors. Versus Gurusharan Singh. The said case is infact a rivers of the present case that is where an employee of the autonomous body has been rendered surplus and he has been absorbed in the Central Govt. The rules relied upon by the petitioner for absorption are also not applicable as they are applicable only to the Central Govt. employees declared surplus and not to the employees of the autonomous bodies.

17. The learned counsel for the respondents very strongly contended that the Director General can create or abolish a post within the pay scale already provided upto Rs.4,000/- and as such there is no violation of the rules. The

question whether the post should be abolished or not, is a policy decision and it is the absolute authority of the employer as held by Supreme Court in 1980 Vol. III SCC 29 and 1992 (2) SLR 196.

18. Having considered the case on the basis of the notings and documents filed by the petitioner as well as the respondents, it is clear that the petitioner should have been given one more opportunity to be considered for the post of lecturer without there being any open competition as the petitioner in this case have put in 11 years of service. Let the respondents constitute a Selection committee within three months from today and issue notice to the petitioners to appear before the Committee and if found fit, they may be appointed to the post of lecturer in any vacancy. If the petitioners are selected they will not be entitled to any monitory benefits for the intervening period from the date of their termination to the date of their selection. The respondents shall pass necessary orders in respect of the past services it ultimately the petitioners are appointed, with this direction the TAs are disposed of."

Thus the right of SAI to declare the post as surplus was upheld. Further, it was also decided that the applicant, on being declared surplus, cannot be treated at par with Civil employees, as applicant works in an autonomous organisation. However, it was decided to give directions to SAI to constitute a Selection Committee to consider the applicant for the post of Lecturer.

A Selection Committee was accordingly constituted by the respondents, who vide their recommendation dated 26.10.1998 did not find the applicant fit for the post of Lecturer.

3.2 The applicant brought out that one of the Selection Committee Member, who did not find him fit for Lecturer on 26.10.1998, was already repatriated to his parent cadre (i.e. outside SAI) as per orders dated 05.10.1998. And thus, the recommendations dated 26.10.1998 of this Committee, which had eventually held the applicant as unfit for the post of Lecturer vide their recommendations dated 26.10.1998, cannot be relied upon.

Learned counsel for respondents brought out that the said Member of the Selection Committee, who was repatriated to his parent cadre vide orders dated 05.10.1998, was still in service on 26.10.1998. Moreover, he had obtained a stay order also against repatriation from Hon'ble High Court vide their orders dated 12.10.1998 and that this stay was still in force on 26.10.1998 when the said Committee made their recommendations. These pleadings by respondents were not countered by applicant. Therefore, the recommendations of the Committee cannot be questioned and as such they continue to be valid.

The respondents further brought out that the applicant was already removed on 13.01.1995 and the Committee, which was appointed in compliance to CAT judgment in TA No. 1/1996 to consider alternate appointment as Lecturer had not found the applicant fit, therefore, in follow up of this Selection Committee recommendations dated 26.10.1998, holding applicant unfit for Lecturer, no

further action was needed on the part of the respondents.

3.3 In view of the foregoing, the Committee's recommendations, dated 26.10.1998, evaluating the applicant as unfit for Lecturer, are taken to be valid and the objection of the applicant is not sustained.

4. Meanwhile, the SAI, which was the controlling body for Lakshmibai College of Physical Education was delinked from being the Controlling Authority of this College vide Ministry of Human Resource Development notification dated 13.10.1995 (effective w.e.f. 02.09.1995) and the College was converted into an autonomous body as a deemed University under the name and style of "Lakshmibai National Institute of Physical Education" and its affairs were to be managed by a Board of Management and under their control, by a Director.

It was at this stage, that the applicant had made a representation to Director, who under the delegated authority of Board of Directors of the said deemed University, constituted a Selection Committee to evaluate the suitability of the applicant for the post of Lecturer. (This actually becomes a Second Selection Committee as CAT's judgment dated 31.07.1998 referred in para 3.1 above was already complied with.)

This Second Selection Committee found the applicant fit for the post of Lecturer and accordingly the Registrar of the respondent-institution Respondent No.4), namely, Dr. Rishi Pal Singh, who was the competent authority to issue the relevant notifications, issued an order on 03.07.1999 wherein the applicant was re-appointed as Lecturer and his entire service from the past was also taken to be continued.

4.1 Learned counsel for respondents brought out that while the matter regarding appointment of the applicant was put up to the 10th meeting of Board of Directors held on 09.09.2001, all the relevant facts were not brought out before the Board of Directors.

All these relevant facts were supposed to have been prepared by the Office of Registrar duly assisted by one Assistant Director (Administration). Further, this post of Assistant Director (Administration) happened to be occupied by the applicant himself at that time. The respondents also brought out that the specific fact that "in compliance of the orders of this Tribunal vide order dated 31.07.1998 (please refer para 3.1 above), the applicant was already evaluated by the Selection Committee and he was not found fit as of 26.10.1998 (refer para 3.1 above)", was not brought out in the background papers put up to the Board of Directors and accordingly, the formation of the Selection Committee which was nominated by the Board of Directors to evaluate the applicant for the post of Lecturer, was not in order ab-initio.

Further, respondent brought out that while delegating the powers to the Director, the Board of Directors had also specified that all the decisions of the Director will subsequently, have to be got ratified from the Board of Directors. In follow up of

these directions, the re-appointment of the applicant in 10th meeting of Board of Directors, was got ratified from the Board of Directors again in the 11th meeting of Board of Directors held on 19.11.2001.

4.2 However, the counsel for respondents brought out that in all these decisions including the ratification of 11th meeting of Board of Directors, the factum of completion of first Selection Committee long back on 26.10.1998 itself, which was constituted in compliance of this Tribunal's order dated 31.07.1998, was never brought out, even though reference was given to this decision by CAT, and as such these decisions cannot be upheld at this stage as they were taken by Board of Directors in a state of mis- representation of facts. In support of this contention, the relevant proceedings of 10th meeting of Board of Directors are reproduced below:

"(A) That, Hon'ble High Court of Madhya Pradesh, in Misc Civil Case No.634 of 96 had directed the Institute to grant the benefits of Lecturer from the date of his appointment in service i.e. 21.2.1984 modifying the order passed in W.P. No.1187/88 thereafter, in Contempt Petition No.7 of 98 the High Court had further directed the respondents Institute to grant all due benefits of past services were granted vide Office Order Np.309 dated 9th December 1998. Thereafter in the Case of TA (Transfer Application) No.1 of 96 the Central Administrative Tribunal further directed the Institution to constitute a selection committee without competition on being declared surplus (from the post of Research Assi (sic.) relevant item related to the Petitioner Assistant in the scale of Rs.500-900 pre revised and 1640-2900 revised) for selection as Lecturer and if found fit be appointed to the post of Lecturer in any vacancy. Since, Dr. Amaresh Kumar had been granted Lecturer pay scale w.e.f. 21/2/1984 in compliance of the order passed in the Contempt Petition No.7 of 98. A Selection committee was constituted on the advise of Shri N.K.Modi and Vinod Kumar Sharma, Senior Central Government Standing Counsel, "In other words the direction of the Hon'ble Tribunal for constitution of selection committee is nothing but empty formality which amounts to absorption of the Petitioner". As such a selection committee was constituted consisted of:

- (1) Prof. (Dr.) Kanwaljeet Singh Sindhu - President's Nominee
- (2) Prof. (Dr.) K.K.Verma - Expert
- (3) Dr. P.K.Pand - Departmental Head
- (4) Dr. T.S.Brar - Coordinator Research Program
- (5) Dr. J.S.Naruka (Director) - Chairman

The committee found Dr. Amaresh Kumar, Research Assistant suitable for the absorption on the post of Lecturer. (The Minutes of the Selection Committee for absorption of Research Assistant on the post of Lecturer dated 1.6.2000 will be placed on the table before the members). The statement of the case and judgments passed by various courts are ANNEXURE-V."

4.3 It is clear from these background materials put up to Board of Directors, that the CAT judgment referred is the one delivered on 31.07.1998 in TA No. 1/1996, which was already complied with but this material fact is not reflected in the information put up to the Board of Directors even though reference to CAT's decision is mentioned. Thus, the contention of respondents, with regard to non-sustainability of recommendations of this Second Selection Committee considering the applicant fit for the post of Lecturer, are upheld.

5. It was also brought out by respondents that as soon as the fact of misrepresentation of relevant information to Board of Directors came to light, the respondents had initiated necessary actions and in follow up thereof the Registrar of the respondents, namely, Dr. Rishi Pal Singh was compulsorily retired from service vide order dated 12.12.2008, as a mark of punishment. The charges laid against Dr. Rishi Pal Singh also include that full facts in respect of the applicant were not brought out before the Board of Directors when the second Selection Committee was constituted. The relevant portions of this letter dated 12.12.2008 are reproduced below:

"AND WHEREAS the Disciplinary Authority received the said report vide Institute's letter No. Estt./PF/A/10/1477-88 dated 15.5.2008, wherein the Inquiry Officer held that out of 35 charges levelled against him, 8 charges were partially proved, 1 charge fully proved, 1 charge was not concluded and remaining not proved."

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ii) Dr. Rishipal Singh had acted against the interest of the Institute in withdrawing the Special Leave Petition preferred by the Institute in the matter of Dr. Amaresh Kumar, wherein the interim order was in force in favour of the Institute.

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THEREFORE, The Disciplinary Authority analysed the role of Dr. Rishipal Singh as Registrar in the various irregularities referred to in the report of the Inquiry Officer and recognized that the said Dr. Rishipal Singh while serving as Registrar failed to protect the interests of the Institute and was responsible for gross violation of established rules and procedures in critical matters such as recruitment, admissions, engagement of contract labour, procurement and legal issues.

AND THEREFORE, the Disciplinary Authority considered the case fit for imposition of one of the major penalties.

AND THEREFORE, THE Disciplinary Authority was of the unanimous and considered view that the Penalty of "Compulsory Retirement" would be sufficient in the facts and circumstances of the case and it should, therefore, be imposed upon the said Dr. Singh.

AND THEREFORE, THE Disciplinary Authority decided to impose the penalty of

"Compulsory Retirement" on Dr. Rishipal Singh, Reader.

AND THEREFORE, the penalty of "Compulsory Retirement" is imposed on Dr. Rishipal Singh, Reader with immediate effect."

5.1 As a parallel action, a show cause notice was also issued to the applicant on 22.04.2003, wherein his action in mis- representation of facts in respect of his own case while putting up papers to 10th Board of Directors for consideration, was also brought out as under:

"The fact remains that you had been functioning as the I/c Asstt. Director (Legal)/ Dy. Director (Legal) during the period of 5th Nov. 2001 to 6th June, 2002 but you, either in individual capacity or in your official position as I/c Legal Section, had never brought the dismissal or W.P.No.1397/1998 to the notice of authorities of the Institute. Which is viewed as misuse of your official position and concealed this fact for self-interest."

In follow up of this show cause notice, the decision that applicant's services are no more needed, was communicated on 06.04.2004. The present OA has generated out of this order and applicant has claimed retiral benefits as he claims to have completed more than 20 years of service w.e.f. 21.02.1984 to 06.04.2004.

Certain extracts of this letter dated 06.04.2004 are reproduced below to bring out the context:

"The than(sic.) Registrar in his capacity as Non-member Secretary of Board of Management had placed the matter before the Board of Management in its 10th meeting held on 9th Sept. 2001 vide agenda item 3 (A), seeking approval to the absorption of Dr. Amaresh Kumar on the post of Lecturer, based on the recommendation of the review Selection Committee without submitting the information about his being un-suitable in earlier assessment as well as Board's proceedings in the meeting held on 7th Jan. 1999."

6. The applicant also claimed benefit of special voluntary retirement scheme for surplus Central Government employees. He also mentioned that even though there were contributions to GPF by him, the same have also not been released. He also claimed that he had applied for release of pension which was not granted. The applicant had approached the Hon'ble Supreme Court under Article 32 for redressal of his grievances. Hon'ble Supreme Court vide their orders dated 17.02.2017 reproduced below, have transferred the matter to this Tribunal:

"The petitioner has filed this petition under Article 32 of the Constitution of India claiming pension. Though he has rendered 20 years service, pension is denied to him. The respondents are disputing the above facts. Be that as it may, having regard to the Seven Judge Bench Judgment of this Court in L.Chandra Kumar vs. Union of India and Others, (1997) 3 SCC 261, it would be appropriate for the petitioner to approach the Central Administrative Tribunal in the first instance.

We may make it clear that this Court has not expressed any opinion on the merits of the case and dismissing this petition on the aforesaid ground of maintainability.

Let this petition be transferred to the Principal Bench, Central Administrative Tribunal, New Delhi which may be treated as Original Application (O.A.) under Section 19 of the Administrative Tribunal Act.

The writ petition is dismissed with the aforesaid observations."

7. In view of foregoing, the respondents pleaded as under.

7.1 Once the factum that full information was not put up to the Board of Directors by the then Registrar (namely Sh. Rishi Pal Singh), who was the Secretary to the Board of Directors and that the applicant who was working as Assistant Director (Administration) at that point of time and was assisting the Registrar, had come to light, the respondents had initiated necessary action against the applicant as well as the then Registrar. Eventually, the services of the applicant were terminated w.e.f. 06.04.2004.

This is the order being assailed by the applicant under Article 32 before the Hon'ble Supreme Court. This assailing after lapse of more than ten years, is barred by limitation now and in support thereof he quoted many judgments of the various Courts.

7.2 Learned counsel for respondents also brought out that the petition of the applicant for grant of 'equal pay for equal work' was already implemented long back and due to subsequent developments, the services of the applicant were terminated as Research Assistant and thereafter even though he was re-appointed (which was not in order as full facts were not brought out before the competent authority, namely, the Board of Directors), the re-appointment order dated 03.07.1999, does not hold good and that as soon as this fact of not putting full information to the Board of Directors came to light, action was taken against the Registrar as well as the applicant and he was finally removed from service on 06.04.2004 after giving a show cause notice. As such, even otherwise, he was not due for pension etc.

7.3 Learned counsel for respondents also brought out that the Board of Directors' decision in their 10th meeting was in the context of this Tribunal's order dated 31.07.1998 where directions were issued for constitution of a Committee for judging the eligibility of applicant for the post of Lecturer, whereas this process was already completed. As such, there was no need for appointment of second Selection Committee in follow up of this Tribunal's directions. Since these full facts were not brought out before the Board of Directors, and thus, the action taken in follow up of the decision of Board of Directors cannot stand being devoid of merit.

7.4 The grant of Lecturer's scale to the applicant by Hon'ble High Court vide orders dated 28.4.1998, was subsequently challenged by respondents through a

SLP in Hon'ble Supreme Court and Hon'ble High Court orders were stayed vide order dated 22.01.1999 (SLP (C) No.1292/1999).

However, the respondents brought out that the same Registrar, namely, Dr. Rishi Pal Singh submitted an affidavit in Hon'ble Supreme Court that the matter of grant of same pay scale has already been decided in a compromise with the applicant and thus the said SLP was withdrawn on the basis of this affidavit of Dr. Rishi Pal Singh vide Hon'ble Supreme Court's order dated 20.09.1999. The respondents also brought out that this submission of affidavit by Dr. Rishi Pal Singh in his capacity as Registrar was not authorised. (Please refer para 2.1 above.)

8. From the foregoing it emerges that the applicant had felt a grievance that equal salary was not being paid to him for equal work (he was being paid salary of a Research Assistant whereas he claimed that of Lecturer). This grievance was fully redressed as he was paid the salary of the Lecturer.

8.1 Since the respondents did not have need for the post of Research Assistant, the same were abolished and the existing Research Assistant were given an opportunity for absorption as an Assistant Director, if found fit. In the instant case, this consideration was also extended to the applicant but unfortunately he was not found fit.

8.2 Thereafter, the subsequent act of re-appointment of the applicant on 03.07.1999, with continuity of past service was with mis-representation of facts to Board of Directors in respect of CAT judgment dated 31.07.1998, and thus is taken to be faulty and cannot be upheld, and especially so in view of:

(a) The main officials responsible to present the full facts to the Board of Directors, namely, the then Registrar, Dr. Rishi Pal Singh was found guilty and, as a punishment thereof he was compulsorily retired subsequently when this misdemeanour came to light. (Please refer para 2.1 and 4.1 to 5 above)

(b) At the relevant point of time, the applicant was himself working as Assistant Director (Administration) and he was assisting the Registrar (namely, Dr. Rishi Pal Singh) and therefore the applicant was playing some role in putting up information to the Board of Directors. For this the applicant was also given a show cause notice on 22.04.2003 and his services were eventually discontinued. (Please refer para 5.1 above)

9. In view of the foregoing, the appointment letter issued on 03.07.1999 does not hold good as it was issued with misrepresentation of facts. Moreover, the termination letter issued on 06.04.2004 is quite old with respect to the date of filing of the present OA. Therefore, the present OA is barred by limitation also.

10. Even if for argument sake, it is pleaded that the re-appointment letter dated 03.07.1999 was issued by the Registrar, who was otherwise the appropriate authority to communicate the decisions of the Board of Directors, who were otherwise competent to consider appointment, it can at best be taken to be some

kind of a fresh appointment only, as the factum of action already taken by the respondents by constituting a Selection Committee in the past, in compliance of Tribunal's prevailing order, was already completed, and for past service to be taken to be continued, it is considered essential that this factum should necessarily have been brought out to the notice of the Board of Directors while a Second Selection Committee was got constituted on the plea of same CAT orders. This was not the case as brought out above.

Therefore, the past service cannot be taken to be continued through this letter dated 03.07.1999 and as such, it can, at best, be treated to be a case of a fresh appointment only. In this theoretical scenario also, the applicant has not completed requisite service for grant of pensionary benefits during the period 03.07.1999 to 06.04.2004, when the termination order was finally issued on 06.04.2004.

11. In view of the foregoing, the OA is dismissed being devoid of merit.

12. This is with the further direction to the respondents that in case some GPF amounts were deducted from the applicant while he was in their service, the same needs to be released following due instructions on the subject. For this limited purpose of seeking refund of GPF, the applicant is directed to submit a representation with supporting documents to the respondents. On receipt of the same, respondents are directed to pass a speaking order within a period of six months from the date of receipt of such a representation. No costs.

13. In view of the above, MAs No.1379/2017 and 1380/2017 are accordingly disposed of.