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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24th October, 2019

Decided on: 8th November, 2019

+ **W.P.(C) 3327/2018**

U. C. SHARMA

..... Petitioner

Through: Mr. Amit Singh Chauhan and
Mr. Hemant Chauhan, Advocate
along with the Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Dev. P. Bhardwaj, CGSC for
UOI with Ms. Anubha Bhardwaj and
Mr. Jatin Teotia, Advocates

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The present petition is directed against an order dated 15th September, 2017 passed by the Central Administrative Tribunal (CAT), Principal Bench in C.P. No.52/2017 in O.A. No.285/2008 filed by the Petitioner as well as an order dated 15th November, 2017 passed by the CAT dismissing the Petitioner's Review Application No.238/2017. The Petitioner has sought specific directions to the Respondents to pay the Petitioner interest at 12% per annum on a sum of Rs.1,19,220/- being the pay of the Petitioner from

1978 to 1984 and further a sum of Rs.50,944/- (as increment together with interest at 12% p.a.) from 22nd July, 2013 to 24th March, 2018. The Petitioner has also claimed a sum of Rs.2.50 lakhs from the Respondents as compensation for mental and physical harassment.

2. This case has a long and chequered history. The Petitioner was appointed to the post of Store Keeper, Grade-II at the office of the Garrison Engineer (MES) (Respondent No.2) on 22nd December, 1963. He challenged a transfer order dated 26th October, 1978, whereby he was sought to be transferred from Lucknow to Bihar, by filing Regular Suit No. 97/1981 in the Court of the Additional District Judge, Lucknow. By an order dated 6th September, 1982 the said Court restrained the Respondents permanently from implementing the said transfer order as it was violative of an office circular dated 29th November, 1972 issued by the Ministry of Defence (MoD). According to the Petitioner, although he started reporting for duty thereafter, he was not assigned any work by Respondent No.2. Ultimately, only by an order dated 12th April, 1984 was the Petitioner reinstated in service with effect from 9th/10th May, 1984. In the said order, it was directed that the intervening period would be treated as having been spent on duty.

3. The Petitioner refers to a Posting Order dated 14th March, 1985 which notes that the Petitioner had “already been adjusted in GE (West), Lucknow in the grade of Group B” in accordance with an Office Memorandum (‘OM’) dated 15th June, 1968.

4. The Petitioner filed Case No.563/1983 before the Prescribed Authority

(‘PA’) under Section 15 (2) of the Payment of Wages Act, 1936 (‘POWA’) seeking arrears of pay for the interregnum period. Respondent No. 2 raised a preliminary objection before the PA as to the maintainability of the above claim. By an order dated 21st April, 1984, the PA directed that the said issue would be considered at the time of the final arguments of the case on merits. Respondent No. 2 challenged the said order by filing W.P.(C) No. 2879/1984 at the Lucknow Bench of the High Court of Allahabad. By an order dated 7th May, 1987 the Lucknow Bench held that the PA had jurisdiction over the matter.

5. Meanwhile, the Petitioner also filed Case No. 330/1986 before the PA on 19th July, 1986. This was for the arrears of pay for the period between October, 1983 to 19th July, 1986. By an order dated 16th July, 1992, the PA held in favour of the Petitioner.

6. Respondent No. 2 challenged the aforementioned order dated 16th July, 1992 of the PA under Section 17 (1) (a) of the POWA in M.C. Appeal No. 205/1992 before the Additional District Judge (‘ADJ’), Lucknow. Initially the appeal was allowed ex parte on 30th August, 1993. Later, by an order dated 11th January, 1995, the learned ADJ recalled the said order allowing the Petitioner’s application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (‘CPC’).

7. The Revision Petition filed by Respondent No.2 against the said order in the High Court of Allahabad stood dismissed for default on 20th September, 1999. M.C. Appeal No. 205/1992 itself stood dismissed for default by the

ADJ on 29th July, 2000 after it was revived on an application by Respondent No. 2. Once again it was restored and once again dismissed in default on 23rd July, 2002. A third application for restoration was dismissed in default on 11th October, 2002.

8. Against the last order dated 11th October, 2002, Respondent No. 2 filed W.P.(C) No. 6741/2002 in the High Court of Allahabad. The High Court, by an order dated 2nd May, 2005, remanded the entire matter back to the PA for a fresh decision.

9. The Petitioner in the meanwhile went before the Central Administrative Tribunal ('CAT'), Lucknow Bench for the execution of the decree of the PA in O.A. No. 103/1993. He filed a further O.A. No. 168/1998 in the CAT for increments.

10. In the meanwhile, the Chief Engineer, Central Command, Lucknow wrote a letter dated 18th March, 1996 taking note of the non-payment of the increments to the Petitioner. A detailed report was sought from the concerned authorities to furnish reasons for such non-payment. This was reiterated subsequently by another letter dated 30th April, 1996 by the Garrison Engineer (West), Lucknow Cantonment. The Petitioner also made a representation on 1st October, 1997 but there was no response to either the letters or the representation.

11. The CAT allowed O.A. No. 168/1998 by an order dated 27th April, 2001. In terms thereof, the Petitioner was required to be paid the increments within

three months of the order, failing which the amount would carry simple interest at 18% p. a.

12. In June, 2001, the Petitioner superannuated. By a letter dated 10th August, 2001, the Engineer-in-Chief's Branch, Army Headquarters, New Delhi gave a direction to the Chief Engineer, Lucknow Zone that the Petitioner may be regularised by granting extra-ordinary leave as per the Central Civil Services (Leave) Rules, 1972. This was in purported compliance with the order of the CAT.

13. The Petitioner on the other hand contended that such regularisation ran counter to the treatment of the period of absence between 1978 to 1984 as having been spent on duty by way of the order of reinstatement dated 12th April, 1984 and the Posting Order dated 14th March, 1985. According to Respondent No. 2, when a cheque was handed over to the Petitioner in compliance with the above order of the CAT, the Petitioner declined.

14. The Petitioner filed the Contempt Petition being C.C.P. No. 125/2001 in O.A. No. 168/1998 before the Lucknow Bench of the CAT. This was dismissed by the CAT on 14th May, 2002 on the ground that the decision in the O.A. No. 168/1998 did not require treating the period of absence of Petitioner as having been spent on duty.

15. On 19th September, 2002 Respondent No. 2 issued a Show Cause Notice ('SCN') to the Petitioner requiring him to show cause why the period of absence should not be regularised in accordance with Fundamental Rule

17A, as proposed by the aforesaid direction.

16. On 4th October, 2002, the Petitioner replied to the SCN. The Petitioner also points out that the SCN itself was issued 20 years after the event and after the superannuation of the Petitioner, which is “against the rules”.

17. Meanwhile, since the matter was remanded by the High Court of Allahabad to the PA, the SE, Commander Works Engineer issued a speaking order dated 22nd June, 2005 in response to the SCN stating that the matter was still sub-judice. The said speaking order was passed after an application by the Petitioner for a personal hearing was dismissed on 15th June, 2005.

18. What prompted the impugned contempt petition filed before CAT was that Respondent No.2 had calculated the arrears of increment at the rate of Rs.8/- per month, which according to the Petitioner is contrary to his calculations and is also violation of Fundamental Rules (‘FRs’) 24 and 29A.

19. According to the Petitioner, the period between 1978-1984 was already treated as having been ‘spent on duty’ and could not unilaterally be changed to his having been on ‘extra ordinary leave’. The Petitioner further claims that under the ACP Scheme, he is eligible to receive grade progressions from Grade ‘C’ to Grade ‘B’ on 9th August, 1987 and from Grade ‘B’ to Grade ‘A’ on 9th August, 1999. He has also claimed the increments that go with the said appointments.

20. In response to the notice issued in the present petition, the Respondents

have contended in their counter affidavit that the requisite incremental amounts have been tendered by the Respondents in accordance with an order dated 4th November, 2013 which adheres to the calculations of the Petitioner. It is further submitted that a remainder occasioned by the various orders of the courts detailed above has also been paid in the Court of the ADJ in Lucknow on 20th February, 2014. Both the amounts, it is claimed and sought to be demonstrated, have been received by the Petitioner. In response to the argument relating to the ACP and the membership of the Petitioner in Group 'B', the Respondents refer to a Standard Routine Order('SRO') 309 of 1971 to claim that the post of Store-Keeper, Grade-II is in Class III (Non-Gazetted). The successive SRO 58 of 2018 also places the post of Store-Keeper, Grade-II in Grade 'C'. The Respondents submit that the Posting Order referred to hereinabove merely adjusted the Petitioner in the vacancy of Grade 'B'. He still remained in Group 'C'. Therefore, it is implied that the provisions of the ACP were not attracted.

21. In the Contempt Petition No. 52/2017, in its order dated 15th September, 2017, the CAT dismissed the petition by holding that there was sufficient compliance with the judgment dated 16th July, 2013 of this Court in W.P.(C) No. 8392/2008. Although the Petitioner did not dispute the fact of the deposit of the money before the ADJ, the Petitioner was unable to show how the said calculation was incorrect and how much according to him was payable. Nevertheless, liberty was granted to the Petitioner to go before the ADJ, Lucknow if the calculations were wrong. The contempt petition was accordingly closed.

22. By a subsequent order dated 15th November, 2017 the Petitioner's aforementioned Review Petition was dismissed. The operative portion of the order reads as under:

"2. The instant RA has been filed by the applicant/petitioner to review the aforesaid Order dated 15.09.2017, passed in CP No.52/2017 in OA No.285/2008, stating that there is an error apparent on the face of the record inasmuch as this Tribunal by "overlooking the evidence produced in compliance report for non-compliance of order of this Tribunal and order of Hon'ble Delhi High Court to calculate annual increments in terms of order dated 20.08.2008 in OA 2008 of this Tribunal."

3. We have perused the contents of the RA and also the orders passed by this Tribunal in OA and CP. This Tribunal, while disposing of the aforesaid CP, clearly observed, in Para 6 of the Order dated 15.09.2017, that the applicant failed to state how the calculation of the respondents is incorrect and according to him, how much is still due to be deposited, and in any event, in view of the orders of the Hon'ble High Court, as observed above, the applicant may agitate this fact, before the ADJ Court, Lucknow. We noticed that instead of availing the said remedy, he filed the instant RA, which is not maintainable.

4. In view of the above, we are of the view that review applicant is trying to reargue the CP. In the circumstances, we do not find any merit in the RA and accordingly, the same is dismissed. No costs."

23. This Court has heard the submissions of Mr. Amit Singh Chauhan, learned counsel for the Petitioner and Mr. Dev P. Bhardwaj, Central Government Standing counsel for the Respondents.

24. The scope of the present writ petition is very narrow. It is confined to two orders of the CAT: one in the CP, and the other in the RA, filed by the

Petitioner alleging that there has been wilful disobedience of previous orders in his favour. The orders passed by the CAT on 15th September, 2017 dismissing Contempt Petition No. 52/2017 as well as the order dismissing Review Application No. 238/2017 dated 15th November, 2017 have both reiterated that the Petitioner had failed to state how the calculation of the Respondents was incorrect and how much was still due. The situation is no different as of today.

25. Consequently, the CAT cannot be faulted for declining to entertain the Contempt Petition. Further, no grounds were made out for recall of the order dated 15th September, 2017. Accordingly, the present petition is dismissed. Liberty to the Petitioner to seek other appropriate remedies has already been granted by the CAT and therefore nothing further needs to be added on that score.

26. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 08, 2019

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