

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No.292 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Satya Ranjan Dash, aged about 43 years, S/o Shri Maheswar Dash, at present working as P.G.T. Mathematics, Kendriya Vidyalaya, Gandhi marg, Angul-759122, Odisha.

.....Applicant

VERSUS

1. Commissioner of Kendriya Vidyalaya Sangathan, New Delhi, 18th Institutional Area, Sahid Jeet Singh marg, New Delhi – 110016.
2. Additional Commissioner (Admin)/Establishment, Kendriya Vidyalaya Sangathan (Head Quarter), New Delhi, 18th Institutional Area, Sahid Jeet Singh marg, New Delhi – 110016.
3. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar Colony, Mancheswar, Bhubaneswaer-751017.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.H.K.Tripathy, counsel

Heard & reserved on : 4.2.2020 Order on : 17.3.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

- “(i) To quash the order treating the period from 02.02.2013 to 28.05.2013 and DIESNON under Ann.-A/9;
- (ii) And to direct the Respondents to regularize the period from 02.02.2013 to 28.05.2013 as duty with all consequential and financial benefits;

And pass any other order as this Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall every pray."

2. The factual position in this OA is that the applicant, a Post Graduate Teacher (in short PGT) under Kendriya Vidyalaya Sangathan (in short KVS), was detained in police custody on 2.2.2013 for which he was placed under deemed suspension w.e.f. 2.2.2013 under the rule 10(2) of the CCS (CCA) Rules, 1965 vide the order dated 4.2.2013 (Ann. A/1 of the OA). The applicant faced the criminal trial, in which he was acquitted of charges vide the judgment dated 28.8.2014 of the trial court (Ann. A/2). The applicant was thereafter

reinstated in service after revocation of the suspension order vide order dated 11.12.2014 (Ann. A/4) and he joined duty on 12.12.2014. He submitted a representation dated 12.1.2015 (Ann. A/5) requesting regularization of his suspension period from 2.2.2013 to 11.12.2014. He also followed up by the reminders. By the order dated 22/25.4.2016 (Ann. A/9), the respondent No. 3 decided to treat the period from 2.2.2013 to 28.5.2013 as dies non, since the applicant was in jail during this period and treated the rest of the period of deemed suspension as duty. The applicant is aggrieved by the impugned order as far as the treatment of the period from 2.2.2013 to 28.5.2013 is concerned and claims that he is entitled for treating this period as duty as he was acquitted from the criminal case by the court and there is no basis to treat the period in question as dies non.

3. Counter filed by the respondents stated that the competent authority has treated the period in question as dies non as the applicant was in the jail custody and the rest of his suspension period has been treated as duty and that the competent authority has passed a reasoned order as required under the rules. It is also stated that the impugned order at Ann. A/9 of the OA is legally valid. The Rejoinder filed by the applicant stated that the applicant was falsely implicated in the criminal case and he was not responsible for the jail custody.

4. We have heard learned counsels for both the parties and considered the pleadings on record. Learned counsel for the applicant has cited the judgment of Hon'ble Andhra Pradesh High Court in the case of Kudikyala Kankaiah vs. The Superintending Engineer, P.R. Circle, Karimnagar and others in Writ Petition No. 290 of 2017, in which a similar issue of regularization after reinstatement on acquittal in criminal case was considered. In that case, the petitioner was convicted of murder charge by the trial court in 2006 and he was acquitted in criminal appeal in 2012 and during this period, he was under suspension. On reinstatement after acquittal, he claimed back wages of the period of suspension. It was held by Hon'ble Andhra Pradesh High Court as under:-

"9. In view of subsequent pronouncements of Hon'ble Supreme Court, the decisions relied by petitioner do not come to his rescue. As held by Supreme Court in precedent decisions grant of back- wages for the period of suspension consequent to acquittal cannot be as a matter of course (Krishnakant Raghunath Bibhavnekar - *supra*). The employer is well within his right to deny back-wages for the period employee was out of service (Union of India - *supra*). Merely because there was acquittal does not automatically entitle employee to claim salary for the period concerned. This is more so on the logic of no work no pay (Baldev Singh *supra*). No hard and fast rule can be laid down in regard to grant of back-wages. Each case has to be determined on its own facts (Banshi Dhar *supra*). Subsequent acquittal though obliterates conviction, does not operate retrospectively to wipe out the legal consequences of conviction and the entitlement of employee for back-wages has to be judged on the aforesaid basis (State Bank of India *supra*).

10. In the case on hand, the involvement of petitioner in criminal case is not at the instance of employer. He was convicted and pain of conviction continued till he was acquitted in his appeal. Ordinarily, employee would be removed on conviction, but in the case on hand, employer waited for criminal appeal to be decided and, therefore, continued him under suspension. Having regard to these peculiar facts, the decision of Government denying back-wages cannot be faulted.

11. Further, the petitioner is governed by the Fundamental Rules. FR-54, FR-54A, FR-54B deal with various contingencies as to how the period of suspension can be regulated and when the full pay and allowance or partial pay and allowance can be paid to the employee. Rule 54-B deals with regulation of period of suspension of an employee. Sub rule (5) of 54-B indicates that in cases other than those falling under sub rules (2) and (3), the employee is not entitled to pay and allowances other than the subsistence allowance already paid. This case is not covered by the exception provided in Sub Rules (2) and (3). According to sub rule (7), in cases falling under sub rule (5) the period of suspension shall not be treated as a period spent on duty.....”

5. In Kudikyala Kankaiah (supra) case, the petitioner was first convicted in the criminal case by the trial court, but he was acquitted in criminal appeal. In the instant OA, the applicant was acquitted in the trial court itself and he was never convicted. But the legal principles followed in the said judgment that the facts of each case have to be examined before deciding whether the applicant will be entitled for back wages or not, is based on the judgment of Hon'ble Apex Court in a catena of cases and it will also be applicable to the instant OA. Further, the provisions of the FR 54-B will be applicable as to how the period under suspension is to be treated. In this case, for the period in question, the competent authority has not treated the period in question to be on duty, since the applicant was in jail custody. Hence, the sub rule (5) of the FR 54-B will be applicable to the applicant's case, which is also observed in paragraph 11 of the judgment in the case of Kudikyala Kankaiah (supra). The sub rule (5) of the FR 54-B states as under:-

“(5) In case other than those falling under sub rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such amount not being the whole of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.”

It is clear that there is no provision under the FR 54-B including in the sub rule (5) of the said rule to treat the period of suspension as dies non. In addition, the FR 54-B(5) requires the competent authority to give a notice to the government servant concerned before taking a decision about entitlement of pay and allowances for the period under suspension if it is not treated as duty. Clearly, the competent authority has not followed the provisions of the FR 54-B(5) while deciding that the period in question will be treated as dies non.

6. Learned counsel for the respondents, in his written notes of arguments has cited a number of judgments. In those cases, the issue/dispute related to

the payment of back wages for the period the employee concerned was out of job due to conviction in criminal cases. In none of the cases cited by the respondents' counsel, the period of suspension has been decided as dies non as in the instant OA in similar circumstances. Hence, the judgments cited by the respondents' counsel will not be helpful for their case. The respondents in their pleadings have also not cited any rule or circular of the Government or of KVS providing for treatment of the period of suspension as dies non.

7. In the circumstances as discussed above, we are not able to agree with the averments of the respondents in the Counter to justify the decision of the competent authority treating the period in question as dies non. On the other hand, such a decision is not in accordance with the provisions of the FR 54-B (5) as discussed in paragraph 5 of this order. As a consequence, the impugned order dated 22/25.04.2016 (Ann. A/9 of the OA) as far as the decision to treat the period from 2.2.2013 to 28.5.2013 as dies non is concerned, is not sustainable under law and hence, it is set aside, without affecting the decision in respect of the period from 29.5.2013 to 11.12.2014. The matter is remitted to the respondent No.3/competent authority to take an appropriate decision regarding the period from 2.2.2013 to 28.5.2013 in accordance with the provisions of the FR 54-B, keeping in mind the observations in this order and communicate such decision to the applicant by a speaking order within two months from the date of receipt of a copy of this order.

8. The OA stands allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

