

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 772 of 2016

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

Satyananda Nayak, aged about 62 years, S/o late Basudeba Nayak, Draftsman Div. I (retired), DP & GIS Wing, OGDC, Survey of India, Bhubaneswar at present Adimata Colony, Mancheswar, Bhubaneswar.

.....Applicant.

VERSUS

1. Union of India represented through the Secretary, Department of Science & Technology, New Merhauili Road, New Delhi-110001 .
2. The Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun-248001, Uttarakhand.
3. Additional Surveyor General of India, Survey of India, Eastern Zone, 15, Wood Street, Kolkata-700016.
4. The Director, OGDC, Survey of India, Survey Bhawan, Bhubaneswar-13.

.....Respondents.

For the applicant : Mr. S. Rath and Mr. B.K. Nayak-3, Counsel

For the respondents: Mr. D.K. Mallick, Counsel

Heard & reserved on : 27.02.2020

Order on : 13.05.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs as under:-

- a) To quash the order dt. 25.8.2016 under Annexure-A/11.*
- b) To direct the respondents to pay the salary for period from 1.3.1999 to 17.8.1999 with interest @ 18% for the delayed payment by treating the period of suspension spent on duty.*
- c) To grant service benefits such as ACP and promotion.*
- d) To give any other direction/directions, order/orders as the Hon'ble Tribunal deems fit and proper."*

2. The applicant is aggrieved by the order date dated 25.8.2016 (Annexure-A/11) by which the applicant's representation to treat the period of his suspension as on duty has been rejected. While working as a Draftsman, he was placed under suspension vide order dated 15.3.1999 (Annexure-A/10) w.e.f. 1.3.1999 since a criminal case was initiated against him in Chandrasekharpur Police Station on complaint by one Kabita Pradhan who claimed herself to be the applicant's wife. The applicant filed the T.S. No. 21/1999 in the civil court and finally vide order dated 3.12.2010 of Hon'ble

High Court, it was declared that Kabite Pradhan was not the applicant's wife. The applicant's suspension was revoked vide order dated 11.8.1999 (Annexure-A/2) without specifying anything about the period of suspension.

3. The applicant submitted the representations for treating the suspension period as duty, but due to pendency of the criminal case against him, no decision could be taken by the respondents. Finally, as per the order dated 23.9.2011 of Hon'ble High Court (Annexure-A/4) the criminal case against the applicant was quashed. The applicant filed representation to treat the suspension period as duty and as no decision was taken he filed the OA. On being directed by the Tribunal to consider the applicant's representation, the respondents rejected the claim vide order dated 6.6.2012 (Annexure-A/9). The applicant challenged that order by filing OA No. 567/2012 in second round of litigation and the Tribunal quashed the order dated 6.6.2012, remitting the matter to the authorities to reconsider the applicant's case. Accordingly, the respondents have passed the impugned order dated 25.8.2016 (Annexure-A/11) which is impugned in this OA, filed by the applicant in third round of litigation.

4. It is stated that the impugned order at Annexure-A/11 is same as the order as at Annexure-A/9 except for addition of para 6.9 and 6.10 in order at Annexure-1/11. The order at Annexure-A/9 was quashed by the Tribunal while disposing of the OA No. 567/2012 and that after quashing of the criminal charges by Hon'ble High Court, there is no criminal case against the applicant, for which he was entitled for full salary for the suspension period. It is stated by applicant that a similar case of Sri D.K. Acharya, the respondents allowed full salary vide order dated 15.9.1999 (Annexure-A/12), where as in case of the applicant, a different order was passed by the respondents, resulting in discrimination and that the deemed suspension was valid till his release from custody or it should have been extended after review, which was not done, for which the suspension order was bad in law and wholly unjustified and under the FR 54-B(3) and (4), he was entitled for the salary during the suspension period.

5. The respondents have filed Counter without disputing the basic facts of the case and averring therein that the applicant was arrested by police in a criminal case filed by one Pramila Kabita Nayak who claimed to be the applicant's wife and since he was under detention for more than 48 hours, he was placed under suspension vide order dated 15.03.1999. It is further averred that the competent authority did not agree to treat the suspension period as duty due to the following reasons (as extracted from para 7 of the Counter):-

“i) Shri Satyananda Nayak was arrested and kept under judicial custody beyond 48 hours fore his involvement in a criminal proceeding for his personal reasons and such involvement was in no way connected with official work of the department.

ii) He was arrested prosecuted.

iii) He received subsistence allowances during the period of his suspension.

iv) He did not render any service to the Govt. During the whole period of his suspension.

v) He was kept under suspension for his own involvement in an offence for which Deptt. is no way responsible.

vii) Even if he was not suspended, he would not have attended office during the period of his arrest and detention in judicial custody.”

It is also averred in the Counter that the competent authority has acted in this matter as per the Ministry of Home Affairs OM dated 8.8.1977 and that the order of Hon’ble High Court in CRLMC No. 1983/2011 quashing the criminal proceeding against all accused, was because of the offer of appointment to one of the accused. It is further stated in the Counter that the case of D.K. Acharya, cited by the applicant, was totally different for which the competent authority has concluded that Sri Acharya was entitled for full salary for the suspension period taking into account the facts of that case and the applicant cannot claim parity.

6. No Rejoinder has been filed by the applicant. We have heard learned counsels for applicant and the respondents, who also filed their respective written note of submissions. On behalf of the applicant, learned counsel has cited the following judgments of Hon’ble Apex Court in his written note:-

- a. Sharda Singh vs. State of Uttar Pradesh & others, (2009) 11 SCC 683
- b. Union of India & others vs. Dipak Mali, (2010) 2 SCC 222
- c. A.N. Das vs. Union of India, 41(1975) CLT 1387
- d. Sulekh Chand & ors. vs. Commissioner of Police & ors. 1994 Suppl (3) SCC 674
- e. Ghurey Lal vs. State of U.P. (2008) 10 SCC 450
- f. Brahma Chandra Gupta vs. Union of India, AIR 1984 SC 380

Learned counsel for the respondents, in his written note, mainly reiterated the stand in the Counter while submitting that the OA is devoid of merit.

7. The respondents have referred to the Ministry of Home Affairs OM dated 8.8.1977 (Anneure-A/13 of the OA) which states as under:-

“2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention or on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted by a Court would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds but the suspension might be fully justified. The Staff Side were, however, informed that if a Government servant was detained in police custody erroneously or without any basis and thereafter he is released without any prosecution, in such cases the official would be eligible for full pay and allowances.

3. It has accordingly been decided that in the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having

been launched, the competent authority should apply its mind at the time of revocation of the suspension and re-instatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed.”

The respondents have averred in the Counter that the competent authority has applied his mind to the matter and has decided not to pay full salary to the applicant in term of the OM dated 8.8.1977 (A/13) after going through the judgment of Hon'ble High Court by which the criminal proceeding against the applicant was quashed.

8. The relevant question to be decided in this case is whether the respondents were justified in reaching the conclusion that the suspension of the applicant was not wholly unjustified. If the suspension will be held to be wholly unjustified, then the applicant will be entitled for full salary for the period of suspension.

9. The applicant has taken one ground in the OA that his deemed suspension was not extended after review after his release from the custody, for which the suspension order was bad in law. In this OA, no challenge has been made to his suspension order. The applicant has restricted his claim to full salary for the suspension period as would be clear from para 8 of the OA. It is also seen from the order dated 18.5.2016 of this Tribunal passed in OA No. 567/2012 (copy enclosed with the written note of the applicant) that there was no challenge to the suspension order on the ground of non-review after his release from custody on bail. Hence, any challenge to the suspension order at this stage is not tenable.

10. The judgment dated 23.9.2011 (Annexure-A/4) in CRLMC No. 1893 of 2011 in which one of the petitioner was the present applicant, was perused by the competent authority who passed the impugned order dated 25.8.2016 (A/11) and as stated in para 8 of the Counter, he was of the opinion that the criminal charge was quashed by Hon'ble High Court for appointment to one of the accused Shri Manas Ranjan Barik (copy of para 8 of the Counter has been extracted in paragraph 5 of this order). We have no hesitation to reject the above opinion of the competent authority (respondent no. 3) as recorded in para 8 of the Counter as totally misconceived in view of the fact that the judgment, based on all relevant facts and circumstances of the case as mentioned therein, had the effect of nullifying the criminal charges against the applicant as recorded by this Tribunal in order dated 18.5.2016 passed in OA No. 567/2012. The findings of the Tribunal in aforesaid order were as under:-

“17. However, in the instant case, the conclusion arrived at by the authorities concerned that applicant's suspension was fully justified appears to be based on no credible evidence. In addition to this, the conclusion so arrived is bereft of consideration that the indictment which had led to arrest and detention of the applicant in judicial custody and had formed the subject matter of G.R. Case No.

356 of 1999 pending in the file of JMFC(O), Bhubaneswar has already been quashed by the Hon'ble High Court in CRLMC No. 1893 of 2011. Therefore, applicant's case is not covered by the decision of the Hon'ble Supreme Court in Management of Reserve Bank of India vs. Bhopal Singh Panchal (SC) 1994 SLR 9 : 1994(1) SLJ 147, as relied by the respondents in support of their stand point. Since, the entire criminal case as referred to above has been quashed by the Hon'ble High Court, it was incumbent upon the authorities to take a decision having regard to this. It is also not the case of the respondents that with the simultaneous progress of criminal case, they had initiated a disciplinary proceedings against the applicant. Since the criminal proceedings have been quashed, applicant ought to have been held innocent as on date when he had been arrested and sent to judicial custody. In such a situation, the decision taken by Government of India vide O.M. dated 8.8.1977, cited supra, comes to play and thus casts a duty on the respondent-authorities to take a decision regarding the treatment of period of suspension."

11. The matter was remitted by the Tribunal with above findings for fresh consideration by the competent authority (respondent no. 3) and after consideration, he has passed the impugned order dated 25.8.2016 (A/11), reiterating the same contentions which have been already rejected by the Tribunal vide order dated 18.5.2016 passed in OA No. 567/2012. As pointed out in para 5.a of the OA, the difference between the order dated 6.6.2012 which was quashed by the Tribunal in OA No. 567/2012 and the present order dated 25.8.2016 (A/11) is two additional para 6.9 and 6.10. Para 6.9 of the impugned order for not accepting the representation of the applicant is the judgment of Hon'ble High Court in CRLMC No. 1983/2011 (Annexure-A/4 of the OA). The respondent no. 3 is of the view that the aforesaid judgment of acquittal of the applicant was due to the receipt of the offer of appointment to one of the accused Manas Ranjan Barik. We have already rejected the above view of the respondent no. 3 as discussed in paragraph 10 of this order. Regarding para 6.10, the applicant in para 5.a of the OA has averred that it was not relevant to the present matter and there was no departmental proceeding pending against the applicant arising out of the criminal case in question. Such averment has not been denied by the respondents in their Counter. Hence, both the para 6.9 and 6.10 are not sufficient ground to take a different view other than the decision of the Tribunal vide order dated 18.5.2016 in OA No. 567/2012.

12. We have perused the judgments cited by the applicant's counsel. The facts of the cited cases related to either departmental proceeding or the criminal proceedings where the accused-employees were acquitted. In the case Dipak Mali (supra), the dispute pertained to the sub rules (6) and (7) of the rule 10 for review of the suspension or deemed suspension. Hence, the cited cases are factually distinguishable.

13. In the facts and circumstances of the case as discussed above and taking into consideration of the order dated 18.5.2016 of this Tribunal passed in OA No. 567/2012 filed by the applicant on the same issue, we have no hesitation

to set aside and quash the impugned order dated 25.8.2016 (Annexure-A/11 of the OA) and hold that the applicant is entitled for full salary and allowances treating the entire period of his suspension as per the order dated 15.3.1999 (Annexure-A/1) as duty with all consequential service benefits as per law. The respondents are directed to pay the difference between the salary and allowances as per rules and the subsistence allowance received by him during the period of suspension within 1 (one) month from the date of receipt of a copy of this order, failing which the applicant will also be entitled for an interest on the amount payable to the applicant at the rate of 9% per annum from 15.9.1999 till the date of actual payment subject to recovery of such interest amount from the officials found responsible for failure to pay the above dues to the applicant within the time as stipulated in this order.

14. The OA is allowed as above. Under the circumstances, there will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

bks