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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2125 of 1998

New Delhi, this the 18th day of November, 1999

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (ADMN)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Kundan Lal
S/o Late Pt. Jugal Kishore
R/o 48/43-A, Gali No. 7
Nai Basti, Anand Parbat
New Delhi.

.....Applicant

(By Advocate: Sh. J. L. Kalra, through proxy counsel Shri
Sanjay Sethi)

versus

1. Union of India, through

Post Master General
Meghdoot Bhawan
Jhandewalan, Link Road,
New Delhi

2. Sr. Superintendent of Post Offices
(North Division)
Civil Lines,
Delhi-110054

.....Respondents

(By Advocate: None)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

In this OA, the applicant is stated to be aggrieved by an order dated 14.1.98 passed by the respondents' department whereby his period of suspension i.e. from 5.11.80 to 27.3.91 had been treated as period spent on non-duty for all purposes. In order to satisfy his grievance, the applicant has prayed to this Tribunal to direct the respondents to consider the suspension period from 5.11.80 to 27.3.91 as duty period for all purposes and to pay consequential reliefs and retirement benefits arising out of the relief.

2. Facts in brief are that the applicant was working with the respondents as Sub-Post Master (TS) at

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Mangolpuri, 'I' Block Post Office. A criminal case was registered against him for misappropriation of certain amounts from savings accounts maintained at his post office. An FIR was registered. However, the applicant was acquitted in the criminal trial. On acquittal, he was reinstated also and was allowed to superannuate. His pension etc. was fixed but the applicant was not satisfied so he filed an OA-150/97, wherein he had made the following prayers:-

"(a) direct the Respondents to pay full salary for the period of suspension from 5.11.80 to 27.3.91 after deducting the amount already paid;

(b) direct the Respondents to fix the pay of the applicant after taking into consideration the earned increments, time bound promotions and all other benefits to which the applicant is entitled as on 27.3.91;

(c) direct the respondents to pay gratuity to the applicant.

(d) direct the respondents to pay pension in accordance with the entitlement of his pay on the date of retirement;

(e) direct the respondents to pay the arrears of pay due from 27.3.91 till his retirement;

(f) direct the respondents to pay encashment of leave standing at the credit of the applicant at the time of his retirement;

(g) direct the respondents to pay Group Insurance Bonus due to the applicant.;

(h) direct the respondents to pay all other benefits, if any, payable to the applicant;

(i) award interest at the rate of 18% per annum on all the arrears payable to the applicant, from the dates it became due till its payment."

3. The said petition was decided vide judgement dated 7.10.97 wherein the Tribunal passed the following order:

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"In the result the O.A. succeeds and is allowed to this extent that Respondents are directed, within two months of the date of receipt of copy of this order, to pass appropriate orders in accordance with rules and instructions regarding the treatment of the suspension period from 5.11.80 to 27.3.91; the determination of applicant's salary as on 27.3.91 in the background of the orders so passed; as well as the consequential benefits including retirement benefits flowing from the same. Necessary payments admissible to applicant in terms of the orders so passed, should be released to him with arrears within three months from the date of those orders."

4. Since the respondents had not complied with the orders of the Tribunal, a C.P. was also filed and during the pendency of that C.P., a compliance report was filed vide Annexure 'H'. In the said compliance report, it was stated that in the order passed on 14.1.98 in compliance of the Tribunal's directions, it was decided that the period in question i.e. from 5.11.80 to 27.3.91 was to be treated as spent on non-duty for all purposes. That C.P. was disposed of with the directions that if the applicant feels aggrieved by the ultimate decision taken by the respondents, he was at liberty to file a fresh petition. In this background, the present OA has been filed and the petitioner has addressed his grievance on the orders dated 14.1.98 and made the prayers as stated above.

5. The main ground taken by the applicant is that since he had been acquitted by the criminal court, he was entitled to full pay and allowances even for the period during which he remained under suspension. It is also stated that since no departmental proceedings were initiated, the order dated 14.1.98 should not have been

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passed as the respondents had no right to pass the same. The respondents have violated all the principles of natural justice etc.

6. The respondents have contested the O.A. by filing the counter affidavit. They have pleaded that since in the criminal trial, the applicant was acquitted on the grounds that the material witnesses could not be produced, his acquittal cannot be regarded as honourable and he cannot be said to have been exonerated on merits. As such, the respondents justified the order dated 14.1.98 passed by the Senior Superintendent of Post Offices, treating the period in question as on non-duty for all purposes.

7. We have heard the learned counsel for the parties and gone through the records.

8. Learned counsel for the applicant relied upon the judgements in the case of Brahma Chandra Gupta vs. Union of India reported in 1984 (2) SCC 433 and in the case of Union of India & Anr. vs. Shri Chand Ram & anr. reported in 1990(3) (CAT) AISLJ 189 wherein it was held as under:-

"Acquittal, on merit or by benefit of doubt - Appellate court set aside the conviction holding that the case against accused nor proved - Held this is clear acquittal and disciplinary authority has no right to analyse the judgment of the criminal court to see whether acquittal was on merit or by giving benefit of doubt."

9. Relying upon the above two judgements, learned counsel for the applicant submitted that in case the order passed by the respondents is altogether without any

right vested with the respondents and the same being illegal, is liable to be set aside and the applicant is entitled to the payment of full salary and allowances etc.

10. Before discussing the case on merits and the contention of the rival parties, we may mention that in this case the applicant has not filed the petition properly. First of all, he has not expressly challenged the order dated 14.1.98 which can be said to be the impugned order of which the applicant is aggrieved. That is why, probably, the applicant has not annexed the same in compilation I of the paper book. Even in the relief clause in paragraph 8, the applicant has not prayed for quashing of the order dated 14.1.98. In the relief clause, he has simply stated that the respondents be directed to treat the suspension period from 5.11.80 to 27.3.91 as spent on duty. Not only this, the impugned order dated 14.1.98 specifically mentions in the last paragraph as under:-

"However, the official if he so desires can get such period of absence converted into leave of any kind due. For this purpose he should apply within two weeks of the receipt of this letter."

11. It appears that the applicant has not exhausted this remedy at all. Even in paragraph 6 of the petition i.e. in the column "Details of remedy exhausted", the applicant has referred about his earlier O.A. but has not stated as to what action he had taken at the departmental level against the order dated 14.1.98. To that extent, the application appears to be premature. In view of the fact that the applicant has

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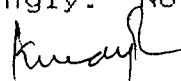
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not exhausted the remedy as provided to the applicant
vide impugned order itself, the application is even
otherwise barred by Section 20/25 of the Administrative
Tribunals Act.

12. Even in the grounds in paragraph 5 of the OA,
the applicant has pleaded at sub-para 5.4 that the
respondents have failed to appreciate that the benefit of
F.R.54 B(3) and F.R.54 B(4) are available to the
applicant. But he had never applied to the department
for getting the benefit of F.R.54 (B)3 and F.R.54 (B)4
after the impugned order had been passed despite the fact
that the said order had clearly directed the applicant to
apply within two weeks of the receipt of the order in
question.

13. Now coming to the merits, we find that except
for one statement that the respondents had no right to
treat the period from 5.11.80 to 27.3.91 as spent on
non-duty, the applicant has not urged any other legal
ground for challenging the order dated 14.1.98.

14. In view of the above findings, the rulings
cited by the learned counsel for the applicant cannot be
applied in the present case since the applicant has not
pleaded properly for quashing the order in question. We
are therefore of the considered view that this O.A. has
no merit and it deserves to be dismissed. We order
accordingly. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(S.R. ADIGE)
VICE CHAIRMAN(A)

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