

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.100/1998

New Delhi, this 23rd day of April, 1999

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Hoshiar Singh
Ch. Chand Numberdar
Village Rangpuri
PO Mahipalpur, Delhi

.. Petitioner

(By Shri B.B. Raval, Advocate)

versus

1. Secretary
Ministry of Home Affairs
Nirman Bhavan, New Delhi

2. Commissioner of Police
Delhi Police, Police Hqrs.
New Delhi

.. Respondents

(By Shri Anoop Bagai, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The question that arises for determination in this application lies in a narrow compass. The applicant is aggrieved because of non-consideration of his qualifying service for the period from 9.4.84 to 14.5.87 while issuing Pension Payment Order dated 31.7.97.

2. The applicant, an ASI with Delhi Police, was removed from service vide order dated 14.5.87. His appeal to the appellate authority was rejected by an order dated 3.8.87. His revision petition was also rejected by order dated 2.12.87. He approached this Tribunal through OA 955/98 which was dismissed. He preferred an SLP which was partly allowed by the Hon'ble Supreme Court with the following observations:

95

"The appeal is, therefore, partly allowed to the extent that penalty of removal from service is substituted by the penalty of compulsory retirement from service with effect from the date of passing of the order of removal. The appellant will not be entitled to any back wages as a result of substitution of this penalty. He will, however, be entitled to retiral benefits"

3. Learned counsel for the applicant vehemently argued to say that in view of the aforesaid directions, respondents were bound to treat the period of suspension till the date of removal from service as the period spent on duty, which would have entitled the applicant to get full pension on the presumption that he would have completed more than 31 years and that he could get his pay fixed at Rs.1320/- from 1.1.86 as per the recommendations of the Fourth Pay Commission. This would have further resulted in refixation of pension favourably.

4. On the other hand, respondents would submit that the applicant was placed under suspension from 9.4.84 to 3.1.85 due to refusing to perform arrangement duty for DELHI BANDH and because of his being arrested in FIR 49/84 under Section 471 CPC, the applicant's two years service was forfeited. In the judicial case that followed, the Hon'ble Court rather than sentencing the applicant to any punishment, had given the benefit of probation under Section 360 Cr.P.C. and he was directed to be released on his entering into a bond for a sum of Rs.5000 with two sureties to appear and receive sentence when called upon during a period of two years from 18.1.90 and in the meantime to keep peace and to maintain a good behaviour. We find that the applicant has concealed all these facts from the Court.

Respondents would further contend that while computing the retiral benefits, the department did not allow the period of suspension from 9.4.84 to 14.5.87 (date of removal from service) as period spent on duty in view of Rule 23 of CCS (Pension) Rules. The applicant had performed duty upto 8.4.84. Therefore, his pay could not be fixed at Rs.1320 as on 1.1.86. Though he was compulsorily retired on 14.5.87, he was given retiral benefits upto 8.4.84, i.e. the last date of his performance of duty, the respondents would contend.

5. Rule 23 of CCS (Pension) Rules stipulates that "Time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified; In other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare". Rule 23(2) further stipulates that "where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Accordingly where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of


9
1

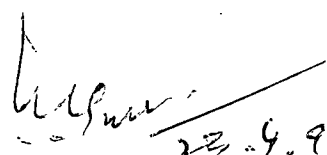
13

suspension by passing a suitable order under FR 54-B. This is not the case with the applicant herein. Admittedly, the applicant was imposed a major penalty of compulsory retirement, even as per the directions of the apex court as stated above, with effect from 14.5.87 and the competent authority has rightly treated the period of suspension as not spent on duty. Therefore, the applicant's contention to the contrary is not tenable.

6. We further find that there was no specific direction whatsoever in the judgement of the Hon'ble Supreme Court that the period of suspension of the applicant should be treated as spent on duty, as has been wrongly interpreted by the applicant in his submission.

7. In view of the detailed discussions aforesaid, the applicant has not come with a justifiable case that could warrant our intervention. The OA fails on merit and is accordingly dismissed. There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)
23.9.99

/gtv/