

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No./T.A. No. 150256f 1997 Decided on: 7.10.97

Kundal Lal Applicant(s)

(By Advocate: Shri/~~Ms~~/~~Ms~~.Shri Rajeev Nehru)

VERSUS

U.O.I. & Anr.

Respondents

(By Shri/~~Ms~~/~~Ms~~.KCD Gangwani)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal?NO

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

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No. 150/97

New Delhi : dated this the 7th October 1997.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A)
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

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

.... Applicant.

(By Advocate: Shri Rajeev Nehru)

Versus

Union of India through

1. The Post Master General,
Meghdoot Bhawan,
Jhandewalan, Link Road,
New Delhi- 110055.

2. The Sr. Supdt. of Post Offices,
Civil Lines,
Delhi - 110054

.... Respondents.

(By Advocate: Shri K.C.D.Gangwani)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN(A)

Applicant prays for treating the period of suspension from 5.11.80 to 27.3.91 as period spent on duty for all purposes including salary, increments and promotions, and on that basis for refixation of salary as on 27.3.91 with all consequential benefits including retirement benefits.

2. As pleadings in this case were complete, with the consent of both parties, we have heard Shri Nehru for applicant and Shri Gangwani for respondents.

3. Applicant, while working as Sub-Post Master, is alleged to have misappropriated a sum of Rs.16,368.35 in respect of certain

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Savings Bank Accounts on various dates between 28.1.78 to 5.11.80. He was suspended vide order dated 5.11.80 and a criminal case bearing FIR No. 50/80 under Section 409/201 IPC was registered at Police Station, Mangolpuri, Delhi on 12.11.80. The criminal case was decided by the Court on 22.5.96 and the applicant was acquitted by giving him benefit of doubt. Meanwhile the suspension order was revoked on 26.3.91. Applicant retired on superannuation on 31.5.95 and is being paid only provisional pension w.e.f. 1.6.95.

4. Admittedly, despite the applicant having been suspended as far back as 5.11.80 Respondents did not initiate any Departmental Proceedings against him till date. The reason given in the Respondents' reply is that the relevant records were seized by the police and were produced in the Court and no departmental action could be taken till the records were returned. A request was made to the Court vide Office letter dated 10.10.96 and 13.11.96 to return all the relevant records but the records have not been returned by the Court as yet.

5. It is stated that Departmental Proceedings under Rule 9 CCS(Pension) Rules will be taken only when the relevant records are returned by the Court.

6. In this connection, Rule 9(2)(b)(ii) CCS (Pension) Rules is relevant which states that the

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Departmental proceedings, if any, instituted while the Govt. servant was in service whether before retirement or during his re-employment shall not be in respect of any event which took place more than four years before such institution. As per Respondents' own reply the alleged misappropriation took place between 28.1.78 and 5.11.80 which is well beyond the aforesaid period of four years. When this position was pointed out to the Respondents' counsel he sought to argue that the alleged misconduct of misappropriation was a continuing one as the alleged misappropriation sums had not been returned. He prayed for two weeks adjournment to satisfy us on this account and also to ascertain the present position regarding initiation of Departmental Proceedings.

7. As pointed out above, respondents have not denied that till date no departmental proceedings have been instituted against the applicant. Since the suspension has already been revoked by the respondents by their order dated 26.3.91 under Rule 10 (5)(c) of the CCS (CCA) Rules, 1965 (Ann.) stating therein that "the period of suspension will be decided only after the court/departmental cases pending against the official are finalised", the competent authority under FR 54-B(1) is under a duty to review the matter on its own motion and pass an appropriate order under FR 54-B(6) regarding

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the pay and allowances due to the applicant and the treatment of his suspension period as the criminal court case has already been decided on 22.5.96 (Annexure 4) and no departmental proceedings were initiated or pending as on that date. Moreover, final orders are to be passed by the competent authority regarding the provisional pension sanctioned to the applicant under Rule 69(2)(b) of the CCS (Pension) Rules, 1972 by the Respondents' order dated 20.6.95 (Annexure 3) since the criminal case has already been decided.

8. Under the circumstances the prayer of Respondents' counsel for granting him an adjournment at this stage after the hearing has commenced appears to us to be an attempt only to delay adjudication on the just claims of the applicant. If respondents had wanted an adjournment they should have made the prayer before hearing commenced. The prayer for adjournment at this stage is therefore rejected.

9. Respondents' counsel also sought to argue that the O.A. was premature, and that if eventually respondents did initiate departmental proceeding and issue a charge sheet, applicant could always impugn the same. That argument is also misconceived in view of the foregoing discussion.

10. 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 a copy of this order, to pass appropriate orders in accordance with rules

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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.

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11. The O.A. is disposed of in terms of para 10 above. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)

/GK/

S.R. Adige

(S.R. ADIGE)
Vice Chairman (A)