

Listing see

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

24

O.A. No. 1907/89
~~11/11/89~~

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DATE OF DECISION 10.6.1994

| | |
|----------------------------------|--------------------------------|
| KAMTA SINGH | Petitioner |
| SHRI B.S. CHARYA | Advocate for the Petitioner(s) |
| Versus COMMISSIONER OF POLICE | Respondent |
| MRS. AVNISH AHLAWAT | Advocate for the Respondent(s) |

CORAM

The Hon'ble Mr. S.R. ADIGE, MEMBER (A)

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? YES
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
**

O.A.No. 1907/89.

Date of decision. 10.6.94.

HON'BLE SHRI S.R. ADIGE, MEMBER (A)

HON'BLE SHRIMATI LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Kamta Singh,
S/o Shri Ram Nandan Singh,
R/o C/1A, Ghonda Gamri Road,
PS Bhajanpuri,
Delhi-53.

... Applicant

(By Advocate Shri B.S. Charya)

versus:

1. The Commissioner of Police,
Delhi Police, Police Hqrs.,
M.S.O. Building, IP Estate,
New Delhi.
2. The Dy. Commissioner of Police,
(Central District),
Delhi Police, Police Hqrs.,
MSO Building, IP Estate,
New Delhi.
3. Union of India
Ministry of Home Affairs,
Government of India,
New Delhi (through its Secretary)

Respondents

(By Advocate Mrs. Avnish Ahlawat)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

PS.

The applicant, who was posted as Sub-Inspector of Police with the Respondents has challenged the order dated 31.8.1989 prematurely retiring him from service under Rule 48 of the CCS (Pension) Rules, 1972. and While he was posted at Karol Bagh Police Station

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he was put under suspension with effect from 25.4.1986 vide order dated 29.4.1986 for having been arrested in a criminal case in which he has been charged under Section 5(2)/47 of the Prevention of Corruption Act and Section 161 of the Indian Penal Code. The order stated that during the period of suspension, he will draw subsistence allowance at the rate equal to the leave salary which he would have drawn had he been on half pay leave and in accordance with the revision of the subsistence allowance under F.R. 53. By a subsequent order dated 15.10.1986 the subsistence allowance was increased to 50% with effect from 25.7.1986 which came to 75% of his pay. While the criminal case was still pending in the competent court, the Respondents passed the impugned order dated 31.8.1989 under Rule 48 of the CCS (Pension) Rules, 1972. This order reads as follows:-

" WHEREAS THE Dy. Commissioner of Police, Central District, Delhi (appropriate authority) is of the opinion that it is in the public interest to do so,
NOW THEREFORE, in exercise of the powers conferred by Rule 48 of the Central Civil Services (Pension) Rules, 1972, the Deputy Commissioner of Police, Central District, Delhi, (appropriate authority) hereby retires Shri Kamta Singh No. 1618/D SI with immediate effect, he having already completed 30 years qualifying service for pension on 20.1.1984

Shri Kamta Singh, Sl.No.1618-D shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement. "

2. The applicant has assailed the impugned order mainly on the following grounds namely -

(1) That he has not been paid 3 month's

pay and allowance in lieu of 3 months

notice as required under Rule 48 of the

Central Civil Services (Pension) Rules,

1972.

(2) That there is no public interest involved in passing the impugned order.

(3) That since the applicant was under suspension since 25.4.1986 and the suspension order has not been revoked, it is illegal.

3. According to the applicant, rule 48 of the CCS (Pension) Rules, 1972 has not been complied with since he has not been paid 3 months pay and allowances which are due to him in lieu of the notice required under the rules. In para 5(g) of the O.A. the applicant has alleged that the pay and allowances paid to him was equal to 3/4th of the pay and allowances and it was only the suspension allowance allowance-being paid

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to him on the date of the impugned order. Consequently, his pay and other benefits have also been calculated incorrectly on the basis of the reduced subsistence allowance instead of the pay and allowance for which he was entitled to under the rules. The learned counsel for the applicant has drawn our attention to Note 2, below Rule 34 and Rule 54(14)(c) of the CCS (Pension) Rules and submits that the subsistence allowance, which has been treated as pay and allowances, is ultra vires the rules and hence illegal.

4. Rule 34 refers to the emoluments drawn by a Government servant during the last 10 months of his service. Note 2 below this rule states that if a Government servant had been under suspension during the last 10 months of his service, the period of suspension for the last 10 months shall be disregarded in the calculation of the average emoluments and equal period before the 10 months shall be included. Rule 54(14)(c) defines 'pay' for the purposes of family pension as the emoluments specified in Rule 33 or the average emoluments referred to in rule 34. The expression 'pay' has been defined in F.R.9(21)(a) as the amount drawn monthly by a Government servant as .

(i) the pay, other than special pay or pay

granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

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(iii) any other emoluments which may be specially classed as pay by the President.

No reference has been made by the learned counsel for the Respondents to any such order passed by the President classifying any other emoluments, including suspension allowance, as 'pay' under F.R. 9(21)(a). Rule 33 of the CCS (Pension) Rules refers to the expression 'emoluments' as the basic pay as defined in F.R. 9(21)(a)(i) which a Government servant was receiving immediately before his retirement or on the date of his death. Note 3 below Rule 33 provides as follows :-

" If a Government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule."

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5. Having regard to the provision of Rule 33 read with F.R. 9(a)(i), therefore, the emoluments

which a Government servant will be entitled to

receive as 'pay' will be the emoluments he drew

immediately before being placed under suspension.

In this case, the learned counsel for the applicant

has stated that the applicant was not given the 3

months pay and allowances as required under the rules

but only an amount equivalent to 3/4th of the pay

and allowances which he was drawing as suspension

allowance. The Respondents have merely denied the

avermments made in para 5(g). However, from perusal

of the impugned order it is clear that the applicant

was to be paid "a sum equivalent to the amount of his

pay plus allowances for a period of 3 months calculated

at the same rate which he was drawing immediately

before his retirement," which amount will be the subsistence

allowance payable to him while under suspension.

6. The learned counsel for the Respondents submitted

at the time of hearing that the Respondents will now make

good the difference and pay the actual pay and allowances

for 3 months as required under the rules in order to

validate the impugned order.

7. It is clear from the above referred to rules that

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the applicant was entitled to be paid the pay and allowances for 3 months in lieu of the notice period ^{as} in accordance with the pay/defined in F.R. 9(21)(a)(i) read with Rule 33, note 3. Since the Respondents have merely paid him the pay and allowances calculated at the same rate of his subsistence allowance, it is ultra vires the rules. Hence, the impugned order is liable to be set aside on this ground.

8. Any subsequent rectification of the aforesaid ^{does not} payment in lieu of notice period ^{does not} cure the defect. The provisions of Rule 48 of the CCS (Pension) Rules are in pari materia to F.R. 56(j) which empowers the appropriate authority to compulsory retire a Government servant in the public interest by giving him 3 months notice in writing or 3 months pay and allowances in lieu of such notice. In L.C. Bawa v. V.K. Kapoor [1987 (5) SLR 575] ~~case~~ the Delhi High Court held that under F.R. 56(j) it was the duty of the Respondent to give a proper cheque to the petitioner before or at the time of passing the impugned order of compulsory retirement and the defective cheque having been dishonoured by the bank on presentation tantamounts to non-payment. The court further held that "even the subsequent rectification of the cheque could not cure the defect for the reason that the payment of 3 months pay and allowances is mandated to be made

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before or simultaneously with the passing of the order of premature compulsory retirement." So on this ground the impugned order was invalidated. In a similar case of compulsory retirement arising under Rule 2046(8) of the Indian Railway Establishment Code, this Tribunal held [A. Muthuswamy & Ors. v. DPO/ Southern Railway & Ors. - 1987(1) SLJ 52 & 56] that the impugned order stands vitiated for non-payment of 3 months salary and allowances in lieu of notice simultaneously with the service of the said order.

In this case, the Tribunal rejected the learned counsel for the Respondents' submission that the requirement for payment has been substantially complied with as the payment was arranged the next date.

9. Having regard to the provisions of Rule 48 and the judicial observations referred to above, the offer of the learned counsel for the Respondents that 3 months' pay and allowances in lieu of the notice period will be made good at this stage is rejected.

The payment of the 3 months pay and allowances in lieu of the notice period has to be made before or simultaneously with the service of the order of compulsory retirement. In the facts and circumstances of the case, the impugned order dated 31.8.1989 compulsorily retiring the applicant from service is invalid and

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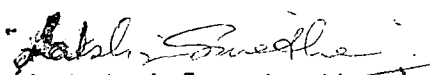
consequently quashed and set aside.

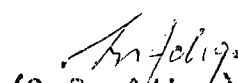
10. It is also observed that the applicant has contended that the earlier suspension order dated 29.4.1986 had not been revoked before the impugned order was passed. This order of 1986 has also not been challenged in these proceedings. It is also stated that the criminal proceedings against the applicant are ~~stated to be~~ still pending in the court.

In the mean time, the applicant would have normally retired from Government service on superannuation on 31st December, 1993. Having regard to the facts of this case, therefore, the applicant shall be deemed to have continued under suspension till the date of his superannuation i.e. 31.12.1993, and shall be paid subsistence allowance according to Rules.

11. In view of the above, we do not think that it is necessary to deal with the other ground taken by the applicant against the impugned order dated 31.8.1989 that it was not in public interest.

12. In the result, the application is allowed as directed above. There will be no order as to costs.


(Lakshmi Swaminathan)
Member (J)


(S.R. Adige)
Member (A)