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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.252/89

New Delhi this the 28th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (A)

Balwant Singh Solanki,
son of Sh. Jandu Ram,
r/o Villa Baprola
P.O. Najafgarh, New Delhi. ...Applicant

(By Advocate Shri B.B. Raval)

Versus

1. Union of India through
the Cabinet Secretary,
Government of India,
Rashtrapati Bhavan,
New Delhi.
2. The Secetary,
Research and Analysis Wing,
Cabinet Secretariat,
Government of India,
Room NO.8-B, South Block,
New Delhi. ...Respondents

(By Advocate Shri P.P. Khurana)

ORDER(Oral)

Mr. N.V. Krishnan:

This case was part-heard on 25.2.94 when Shri B.B. Raval, learned counsel for the applicant concluded his arguments relying on an earlier judgement. This case was adjourned only to hear the learned counsel for the respondents, if he had any argument that the earlier judgement does not apply. He was heard today.

2. The applicant is aggrieved by the order dated 17.10.88 (Annexure A-16) by the Additional Secretary (Pers) and the appellate authority in the the Cabinet Secretarit, i.e., the second respondent.

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3. It appears that the applicant was placed under suspension on 29.11.80 for his involvement in a criminal case vide FIR No.311 dated 27.11.80 of Police Station, Lodhi Colony. While the case was pending trial it was withdrawn by the prosecution due to special circumstances.

After the said withdrawal the order of suspension was revoked and the applicant resumed duty on 2.3.87. A departmental enquiry was initiated and a penalty of censure was imposed on him by the (Annexure A-6) (Annexure A-8) order dated 28.4.87/ It was proposed/that the period of suspension from 29.11.80 till 1.3.87, i.e., before reinstatement should be regularised as the period of suspension itself and the emoluments restricted to the subsistence allowance already paid. Such an order was passed on 19.1.88 (Annexure A-10) after a notice was issued to the applicant and after considering his representation. The applicant filed an appeal which has been disposed of by the impugned Annexure A-16 order. The appeal preferred by him has been rejected after holding that special consideration has already been shown to him by way of withdrawing the case on his tendering an unconditional apology and also by showing him a considerable leniency by awarding a penalty of censure.

4. The applicant, therefore, filed this OA seeking a direction to the respondents to treat the period of suspension as spent on duty and pay the balance of pay and allowances as arrears and give him all consequential benefits such as crossing the EB, increments, promotion etc.

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5. The respondents have filed a reply stating that in order to maintain cordial relations between the Government employees and the department the prosecution moved an application on 6.2.87 for permitting them to withdraw the criminal case registered against the applicant and others. This was allowed and a disciplinary proceeding was initiated in which the applicant was given the penalty of censure vide order dated 28.4.87 (Annexure A-6). Subsequently, the question of regularisation of the period of suspension was taken into account and after hearing the applicant it was held that the period of suspension would be treated as suspension and the emoluments restricted to the subsistence allowance already paid to him. His appeal has been rejected by the Annexure A-16 order. In the circumstances, it is pointed out that the application has no merit and it should be dismissed.

6. When the case came up for final hearing Sh. B.B. Raval, on 25.2.94 the learned counsel for the applicant submitted that in all 33 persons belonging to the Research and Analysis Wing Unit of the Cabinet Secretariat were proceeded in this manner, the criminal cases against them were withdrawn, disciplinary proceedings were initiated, minor penalty was imposed and the period of suspension was treated in the manner it has been done in the applicant's case. Against this decision many persons, including the applicant, filed applications in this Tribunal, challenging such orders. The case of J.M. Soni who filed OA-866/90 has been decided by the Tribunal on 22.4.92 (1992 (2) ATJ 378). The learned counsel has also filed a copy

of that judgement with his application for early hearing. It is seen that the facts in J.M. Soni's case are practically identical with those of the present applicant. In that case also after withdrawal of prosecution a penalty of censure was imposed and the period of suspension from 29.11.80 to 1.3.87 was ordered to be treated a period not spent on duty and the emoluments were restricted to the subsistence allowance already paid. It was, however, ordered that the period of suspension though not treated as duty shall count for earned leave, annual increments and pensionary benefits. After allowing the OA, the following directions were issued to the respondents:-

"(i) The respondents are directed to treat the period of the applicant's suspension from 29.11.1980 to 1.3.1987 as 'on duty'. They shall pay him full pay and allowances from 29.11.1980 to 1.3.1987. He is also entitled to other monetary benefits which would have accrued to a Government servant who was not placed under suspension.

(ii) The respondents shall take steps to constitute a review DPC to consider the case of the applicant for crossing the Efficiency Bar when it fell due. Similarly, his case for further promotion should also be considered by a review DPC. The review DPC should also take into account the order of the Metropolitan Magistrate acquitting the applicant in the criminal case. The D.P.C. also should not take into account any remarks contained in the annual confidential reports of the applicant relating to his suspension or pendency of criminal case against him. In case, the review D.P.Cs find him fit for crossing the E.B. from the due date, the applicant shall be allowed to cross the Efficiency Bar from the said date. Similarly, if the review DPC finds him fit for promotion he shall be promoted from the date his immediate junior was so promoted. In that event, he would also be entitled to the arrears of pay and allowances.

(iii) The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of four months from the date of communication of this order."

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7. The learned counsel for the respondents Shri P.P. Khurana fairly submitted that he was not in a position to distinguish the applicant's case from the case of J.L. Soni already decided by this Tribunal. He, however, had a feeling that there ought be some point of distinction in the matter. He sought a short adjournment for this purpose.

8. Accordingly, the case was listed for final hearing today. Shri P.P. Khurana is unable to state why that judgement cannot be followed.


9. In the circumstances, we are satisfied that there is no difference between the case of this applicant and that of J.L. Soni whose OA-866/90 has already been decided in the manner indicated above.

10. In the circumstances, we are satisfied that this application can also be disposed of in the light of the above. Accordingly, we dispose of this OA with the following directions:-

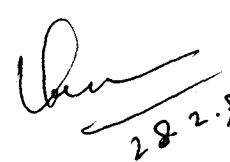
- i) The impugned Annexure A-10 order dated 14.10.88 and Annexure A-16 order dated 17.10.88 are quashed.
 - ii) The respondents are directed to treat the period from 29.11.80 to 1.3.87 as period spent by the applicant on duty for all purposes and grant him all consequential benefits flowing from this direction within a period of three months from the date of receipt of this order.
 - iii) As the applicant was due to cross the Efficiency Bar in the pre-revised scale at the stage of Rs.290/- from 1.1.85 (Annexure A-14) but was not considered
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on the ground that he was under suspension, a review DPC shall now be constituted within one month from the date of receipt of this order, in consequence of the direction at (ii) supra, to consider his case for crossing the E.B. from that date and the respondents are directed to pass such order, as they consider appropriate.

- iv) It is open to the applicant to make any specific claim about the dues that would be payable to him in the light of the above directions, within a period of one month from the date of receipt of this order and in case such a representation is received the respondents are directed to consider the same and dispose it of in accordance with law, keeping in view our direction at (ii) above.
- v) Consequential benefits from the directions in (iii) & (iv) above shall be granted as expeditiously as possible and in any case, not later than six months from the date of receipt of this order. No costs.


(B.S. Hegde)
Member(J)

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28.2.94
(N.V. Krishnan)
Vice-Chairman