

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 794/1989

Date of decision:22.10.1993

Shri T.R.C. Nair

...Petitioner

Versus

1. Union of India through Cabinet Secretary, Cabinet Secretariat, Rashtrapathi Bhavan, New Delhi-110 011. ...Respondents
2. Secretary, Research & Analysis Wing (R&AW) Room No.8B, South Block, New Delhi-110 011.

For the Petitioner

...Shri B.B. Raval, Counsel

For the Respondents

...Shri P.P. Khurana, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN

THE HON'BLE MR. P.T. THIRUVENGADAM, MEMBER (A)

JUDGMENT (ORAL)

(of the Bench delivered by Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman(J))

The petitioner, an Assistant in the Research and Analysis Wing (R&AW) remained suspended from service from 01.12.1980 to 14.10.1986. He has approached this Tribunal with the principal prayer that the respondents may be directed to pay him full salary and allowances and other benefits as admissible along with interest thereon for the entire aforesaid period.

2. In contemplation of disciplinary proceedings an order purported to be under sub-rule (1) of Rule (10) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was passed suspending the petitioner from service. A number of enquiry officers were appointed. However, none of them could complete the enquiry. The petitioner submitted his resignation from service on 01.05.1986. On 14.10.1986, an order was passed by the Joint Secretary (E). In it, the recitals, as material, are these.

The resignation order is accepted with the approval of the competent authority. Since the petitioner continues to be under suspension, the disciplinary proceedings against him were deemed to be dropped. The order of suspension could not be revoked prior to the date of acceptance of the resignation.

3. Paragraph 4 of the aforesaid order is material for this case. It may be extracted:-

"It is, therefore, proposed to treat the subsistence allowance paid to Shri Nair during the period of his suspension as pay and allowances for that period. The period spent under suspension till date of acceptance of resignation will not be treated to be spent on duty".

4. The petitioner was given an opportunity to make a representation against the aforesaid order. He availed of that opportunity.

5. On 18.11.1986, the Joint Secretary(E) issued an Office Order No.872-E.9/86 stating therein that the resignation tendered by the petitioner had been accepted with effect from 14.10.1986(F/N) with the approval of the competent authority. Copy of the said order was sent to a number of officers including Shri Vir Chandra, I.O. The endorsement to Shri Chandra was:

"It is intimated that the D.E. Proceedings against Shri T.R.C. Nair will be deemed to have been withdrawn. He is requested to return the enquiry papers".

The petitioner sent a detailed representation. We need not refer to the same.

6. On 19.04.1988, the Under Secretary(Pers-IV) to the Government of India in the Cabinet Secretariat issued a Memorandum stating therein that the resignation of the petitioner had been accepted with effect from 14.10.1986. However, the letters dated

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14.10.1986 and 22.07.1987 have been withdrawn.

7. The stand taken by the respondents is that the petitioner is not entitled to be paid any amount during the period of his suspension apart from the subsistence allowance which he had already withdrawn. The respondents have also taken the stand that the cases of S/Shri G.B. Chakma and T.K. Philipose are not comparable to that of the petitioner.

8. The question to be considered is whether the petitioner is entitled to the benefit of FR 54-B. On the mere reading of the same, it appears that it has application only to a Government servant who has <sup>and has been</sup> been suspended ~~and~~ reinstated (or would have been so reinstated but for his retirement). It has to be remembered that the petitioner was suspended from service in pursuance of a statutory rule, namely, Rule 10 of the CCS(CCA) Rules, 1965. The normal law is that there is an implied term between the master <sup>the</sup> and /servant so far as suspension is concerned. However, such a suspension does not sever the relationship of employer or employee. The employer has a limited right to ask the employee not to do work. However, his obligation to pay ~~the~~ the usual amounts will continue. In a case where an order is passed under a term of contract or under a statute, the situation is different. There a temporary severance of relationship comes into existence. Neither the employee is entitled to work ~~nor~~ nor an employer is under an obligation to pay. This is subject to some rule providing for payment of subsistence allowance. The position, therefore, is whenever a power of suspension is exercised under a statute or under a ~~term of contract~~ term of contract, the usual relationship between the master and the

servant is under a state of suspended animation. This was exactly the case of the petitioner. Once the petitioner was not in service, the question of tendering his resignation and the same not having been accepted did not arise. It follows that the disciplinary proceedings had to be dropped first and then the order of suspension had to be revoked. Thereafter, the petitioner could be entitled in law to tender his resignation and then the respondents could exercise the power of accepting his resignation. Therefore, notionally and in the eye of law the petitioner stood reinstated and thereafter a severance of relationship between the master and the servant came into existence upon his tendering the resignation and acceptance of the same. If that be so, there should be no difficulty in applying FR 54-B.

9. Now we may consider FR 54-B. It, inter alia, provides that "when a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or (the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as period spent on duty".

The said rule, on the face of it, mandates the authority concerned while passing the order of reinstatement to consider and make a specific order. We may go back now to the order dated 14.10.1986. We find that

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probably the Joint Secretary had in his mind the provisions of Rule 54-B when he made a specific provision in paragraph 4 of his order. However, for reasons best known to the Under Secretary, the said order dated 14.10.1986 was withdrawn on 19.04.1988. We may also note that the order dated 22.07.1987 was also withdrawn. This was a Memorandum wherein an admission had been made by the Joint Secretary(Pers.) that FR 54-B was applicable to the case of the petitioner.

10. Having considered the matter carefully, we are of the opinion that the authority concerned mis-interpreted and misapplied FR 54-B. It fully applied to the case of the petitioner. We are refraining from making any comment on the submission of the counsel for the petitioner that the respondents have discriminated between S/Shri Chakma and Philippose and the petitioner. The officer concerned shall apply his mind afresh to the terms of FR 54-B and the cases of S/Shri Chakma and Philippose and pass a speaking order in the light of the observation made above. Since the petitioner has already resigned from service, the officer concerned shall act as expeditiously as possible and pass an order within a period of 3 months from the date of presentation of a certified copy of this order by the petitioner before it.

11. With these directions, this application is disposed of finally but without any order as to costs.

*P.T. Thiruvengadam*  
(P.T. THIRUVENGADAM)  
MEMBER (A)  
22.10.1993

*S.K. Dhaon*  
(S.K. DHAON)  
VICE CHAIRMAN  
22.10.1993