

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.314/2012
M.A. No.427/2019**

Reserved on : 14.07.2020
Pronounced on : 17.07.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

S.C.Goyal S/o Shri H.C.Goyal aged about 68 years Retired Superintendent Custom & Central Excise Department, Jaipur R/o Flat No.F-2, Ashram Marg, Nemi Nagar, Vaishali Nagar, Jaipur (Raj.)

...Applicant.

(By Advocate: Ms.Sara Praveen for Shri Tanveer Ahmed)

Versus

1. The Union of India through Secretary to the Govt. of India, Ministry of Finance, Department of Revenue (A.D.V.Section), New Delhi.
2. The Commissioner Central Excise & Customs, New Central Revenue Building, Statute Circle, Jaipur.
3. The Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

...Respondents.

(By Advocate: Shri Kinshuk Jain)

ORDER

Per: Dinesh Sharma, Member (A):

MA No.427/2019 has been filed by the applicant seeking condonation of delay in filing the OA. The MA is allowed for the reasons stated therein. The delay is hereby condoned.

(2)

2. In the instant OA, the applicant has prayed for quashing the order dated 10.09.2010 (Annexure A/1) by which his pay and allowance for the deemed suspension period between 22.03.2000 to 31.08.2002 has been fixed at 50% under F.R.54 (4) & (7). The main grounds for seeking this relief is that the applicant is a senior citizen who has lost his young son and the charge for which he was punished did not involve any pecuniary loss to the Government.

3. A reply has been filed by the respondents denying the claim of the applicant. It is stated that the OA is barred by limitation. This Tribunal has already passed an order dated 29.10.2002 in OA No.26/2002 preferred by the applicant to set aside the penalty of dismissal, upholding the order of holding the applicant guilty of charge. The matter was remitted to the respondents only for reconsideration and to pass appropriate orders. The order of penalty has now been passed under Rule 9 of CCS (Pension) Rules, 1972 which empowers the President to withhold the pension or gratuity or both either in full or in part only if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the service period. The applicant's claim that such punishment can only be awarded when there is pecuniary loss is not correct and this Tribunal (and the Hon'ble High Court) have already found the applicant guilty of misconduct by way of unauthorised absence.

(3)

Since this Tribunal had upheld the order of holding the applicant guilty and only observation was with regard to quantum of punishment, the applicant cannot raise this matter again before this Tribunal. The reply also states that the applicant could have been paid full pay and allowance under sub rule (4) of FR 54 which stipulates that the Government servant shall be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant. In this case, a notice dated 01.07.2010 was issued to the applicant and the competent authority after considering the submission made by the applicant in written as well as made at the time of personal hearing decided to fix the pay and allowance at 50%, hence this OA deserves to be dismissed.

4. No rejoinder has been filed.

5. We have gone through the pleadings and heard the arguments advanced by learned counsels of both the parties. At the time of arguments, Ms.Sara Praveen, learned proxy counsel appearing for the applicant argued that the grave misconduct or negligence should be proved for withholding the gratuity or

pension of a pensioner. She cited the following judgments to support her contention:-

- i) D.V. Kapoor vs. Union of India and Others; AIR 1990 SC 1923
- ii) H.L.Gulati vs. Union of India and Others;
- iii) Judgment of the Allahabad High Court dated 02.03.2012 in the matter of Ahmadi Usman vs. State of UP and Ors.
- iv) Judgment of Ernakulam Bench of this Tribunal dated 21.04.2009 in the matter of K.Kunhikrishnan, Retired Deputy Director General, Doordarshan (Prasar Bharti) vs. Union of India represented by the Secretary, Ministry of Information and Broadcasting.
- v) Judgment of the Principal Bench of this Tribunal dated 29.05.2008 in the matter of S.K.Srivastava vs. Union of India through Joint Secretary (UT), Ministry of Home Affairs, Govt. of India and Government of NCT of Delhi through Chief Secretary.

6. After going through the pleadings and hearing the arguments, it is clear that what is in question before us is an order passed by the competent authority to treat the period of suspension by way of payment of 50% of pay and allowance.

(5)

Thus, the order of punishment is not in question in this OA before us. The impugned order gives full details of the facts in issue and has decided to fix the pay and allowance for the deemed suspension period at 50% applying the yardstick adopted in the punishment. Since the pension of the applicant was reduced by 50% after finding him guilty of unauthorised absence, this cannot be considered as full exoneration and therefore revising pay and allowance for the suspension on this ground is well within the powers of the competent authority under Rule F.R.54 (4) & (7) and we are reproducing the same:

(4) In cases other than those covered by sub-rule (2) (including the cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(6)

7. The employee, in this case, has not been fully exonerated and the competent authority has chosen to pass the order regarding treatment of suspension period after following the prescribed period and choosing the yardstick for reduction of pay and allowance for this period based on what was the outcome of the disciplinary action against the applicant. Hence, there is no justifiable reason to interfere with that decision. We have sympathy for the applicant on ground of his having lost his young son and for being a senior citizen, but these factors alone cannot justify quashing and otherwise legal order.

8. The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/