

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 886
XXXXXX6X

1987

DATE OF DECISION 11.8.87

Shri C. P. Kapoor Petitioner/Applicant

Shri Umesh Mishra Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M. L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)

S.P.M.
(S. P. MUKERJI)

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 86/87

Date of Decision : 11.8.87

Shri C.P. Kapoor . . . Applicant
Vs.
Union of India . . . Respondents
Shri Umesh Mishra . . . Counsel for applicant
Shri M.L. Verma . . . Counsel for respondents

CORAM

The Hon'ble Mr. S. P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

(Judgment pronounced by Hon'ble Mr. S. P. Mukerji,
Administrative Member)

JUDGMENT

The admitted facts of the case ^{are} ~~is~~ that the applicant who has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 was retired compulsorily as a measure of punishment on 9.7.86. He filed an appeal on 21.7.86 which was decided in his favour ^{by an order dated} ~~on~~ 4.4.1987, by which the appellate authority ^{is} ~~set aside~~ the punishment. On 5.5.87 the impugned order was passed by the disciplinary authority in compliance with the order of the appellate authority ^{stating that dehova} ~~proceedings be started and the order of compulsory~~ retirement with effect from 9.7.86 ^{be} ~~is~~ set aside. The disciplinary authority by the same order placed

the services of the applicant under suspension with effect from 4.4.87 i.e. the date on which the appellate order was passed and concluded the impugned order with the following observations.

"The question of treating the period from the date of compulsory retirement from service till 3.4.87 will be decided after *denovo* proceedings are completed and action taken accordingly."

The grievance of the applicant before us is that by the postponement of a decision as to how the period between 9.7.86 when he was compulsorily retired and 3.4.87, he has been financially impoverished and handicapped in engaging a defence counsel to contest the departmental enquiry proceedings against him.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The case is squarely covered by FR 54, Clause 1 of which reads as follows.

"(1). When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement or superannuation while under suspension or not, 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 his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty."

From the bare reading of the above provisions will make it clear that the competent authority should, while passing the order of setting aside the punishment of compulsory retirement, simultaneously consider and

pass a specific order as to how the period of absence from duty after compulsory retirement should be treated. It does not lie within the discretion of that authority to defer a decision in this regard.

3. It is an admitted fact that the order of compulsory retirement was set aside because of some technical defects and the fact that the applicant has been placed under suspension and disciplinary proceedings have been initiated *denovo* shows that he was not fully exonerated by the appellate authorities. As such, *ab-initio* he is not entitled to get the period of absence as being treated to be on duty with full pay and allowances. We leave this matter to the discretion of the competent authority but considering the fact that the applicant has been placed under suspension with effect from 4.4.87 only without reference to the period prior to that; i.e. from the date of compulsory retirement on 19.7.86, we feel that in the interest of justice and disciplinary proceedings it will be fair and proper that the applicant should be deemed to have been placed under suspension with effect from 9.7.86 and not from 4.4.87. In view of this, we allow the application.

4. Accordingly, we allow the application to the extent of directing the respondents that the applicant should be deemed to have been placed under suspension with effect from 9.7.86 when he was compulsorily retired ~~on 19.7.86~~ ^{on 19.7.86} till 4.4.87 and that he is entitled to subsistence allowance for the period from 9.7.86 to 3.4.87. His subsistence allowance from 9.7.86 onwards should be

recalculated as the subsistence allowance after 3.4.87 may undergo some change in view of the revision of the subsistence allowance to be considered three months after 9.7.86. Orders regarding the ~~placement~~ ^{of} the applicant under suspension with effect from 9.7.86 and revision of subsistence allowance and payment of arrears from 9.7.86 onwards including arrears, if any, of the revised subsistence allowance with effect from 4.4.87 should be passed and payment made good to him within four weeks of the date of communication of this order. The enquiry proceedings ^{are} to continue but should not conclude before full payment of subsistence allowances has been made. The application is disposed of on the above lines and there will be no order as to costs.

Announced in open court.

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
JUDICIAL MEMBER

S. P. Mukerji
(S. P. MUKERJI)
ADMINISTRATIVE MEMBER

11.8.87