

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 2061/90
T.A. No.

199

DATE OF DECISION 3.5.1991.

Shri Jastinder Singh **Petitioner** Applicant

Shri S.S. Tiwari Advocate for the **Petitioner(s)** Applicant

Versus
U.O.I. through Secretary, Respondent
Industrial Development & Another

Shri P.H. Ramchandani Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, ADMINISTRATIVE 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
4. Whether it needs to be circulated to other Benches of the Tribunal? /No

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who has worked as a Development Officer in the Directorate General of Technical Development, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to fix his pension on the basis of the last pay he would have drawn on the date of superannuation in consonance with the IVth Pay Commission recommendations by ignoring invalid order of suspension;
- (ii) to quash and set aside the impugned order of suspension

On

dated 30.4.1976 and to direct the respondents to revoke the suspension and reinstate him retrospectively and allow him to retire with effect from 31.10.1986 without suspension;

(iii) to direct the respondents to treat the period of suspension from 30.4.1976 to 31.10.1986 as on duty and pay arrears of full pay as applicable to him as also the allowances within a specified period;

(iv) to direct the respondents to give all consequential benefits arising out of the said order being quashed especially when he will retire on 31.10.1986 as if he was on duty and not on suspension; and

(v) to direct the respondents to pay to him all provident fund dues, provisional pension etc. with effect from 31.10.1986.

2. The facts of the case in brief are as follows. The applicant joined Government service as Junior Field Officer in 1953. Thereafter, he was promoted as Assistant Development Officer in 1959 and as Development Officer in 1986.

3. The Central Vigilance Commission requested the CBI to register a case against him and inquire into the matter of his possession of assets disproportionate to his known sources of income. In March, 1976, the CBI informed that they have been able to discover disproportionate assets to the tune of Rs. 2, 80, 000/-.

The competent

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authority decided to place the applicant under suspension. Order of suspension dated 30.4.1976 was issued by the competent authority in exercise of the powers conferred by sub-rule (1) of Rule 10 of the CCS(CCA) Rules, 1965.

The reason given in the order of suspension was the contemplation of disciplinary proceedings against him.

4. The CBI has filed a case in the Criminal Court under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 on 5.10.1977. The Criminal Case is still pending trial. The applicant was allowed to retire on attaining the age of superannuation w.e.f. 31.10.1986. The order of suspension issued in 1976 was not, however, revoked till he retired from Government service.

5. The applicant has stated that on 1.7.1977, the respondents issued a memorandum to him under Rule 16 of the CCS(CCA) Rules, 1965. The Article of Charge framed against him was as under:-

" That the said Shri Jastinder Singh, while functioning as Development Officer in the D.G.T.E., New Delhi during the period 15.1.1974 and onwards failed to report to the competent authority of the Central Government about his wife Smt. Satpal Kaur, carrying on business in the name and style of M/s. Benur Cold Store w.e.f. 15.1.1974 knowing that she was so engaged in business.

And he, thereby committed a grave misconduct and contravened Rule 15(2) of the CCS(Conduct) Rules, 1964" *On*

6. The applicant sent a reply to the aforesaid memorandum and thereafter the competent authority passed an order on 23.3.1978 exonerating him from the said charge.

7. The applicant has contended that the order of suspension issued in 1976 has become invalid on account of his exoneration in 1978. If he has to be placed under suspension in connection with the criminal proceedings, the respondents should have invoked the power under Rule 10(1)(b) of the CCS(CCA) Rules, 1965, which was not done in the instant case.

8. The case of the respondents is that initially at the time of placing the applicant under suspension in 1976, the competent authority invoked the power under Rule 10(1) of the CCS(CCA) Rules, 1965, as disciplinary proceedings in connection with the alleged misconduct of possession of assets disproportionate of his known source of income, were contemplated. This was on the basis of the preliminary information given by the CBI, which did not initially suggest any criminal proceedings against the applicant. Later on it was decided to initiate criminal proceedings against him. The respondents have stated that the order of suspension issued in 1976 was not revoked at any time before the applicant retired from Government service. According to them, the disciplinary proceedings initiated against the applicant

in 1977 which ended in his exoneration in 1978 was an
altogether ~~✓~~ different matter.

9. We have carefully gone through the records of the case and have considered the rival contentions. The admitted factual position is that the order of suspension, which was issued in 1976, was not modified or revoked by the competent authority at any point of time. Under Rule 10(5) of the CCS(CCA) Rules, 1965, an order of suspension made shall continue to remain in force until it is modified or revoked by the competent authority to do so. The respondents have admitted that a fresh order under Rule 10(1)(b) could have been issued when the CBI filed a criminal case against the applicant. However, the cause of action in placing the applicant under suspension had arisen from the very beginning as he was placed under suspension pursuant to the suggestion of the CBI who was inquiring into the question of possession of disproportionate assets by the applicant.

10. As the applicant was allowed to retire on 31.10.1986, the order of suspension issued in 1976 must be deemed to have ~~been~~ ended with his retirement. This does not, however mean that the applicant must be deemed to have been on duty from 30.4.1976 to 30.11.1986 and that he would be entitled to full pay and allowances during the said period. The question of pay and allowances payable during the

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said period as well as the treatment of period of suspension for the purpose of duty has to be considered by the competent authority in the light of the judgment of the Criminal Court in the pending criminal case.

In case he is acquitted of the charges levelled against him, he would be entitled to full pay and allowances during the period of suspension and the period would also count for duty for all purposes.

At this stage when the criminal case is still pending, we are of the view that the applicant is not entitled to the reliefs sought in the present application.

II. In the light of the foregoing, we see no infirmity in the decision of the respondents to give the applicant only provisional pension on the pay drawn by him in 1976 at the time of placing him under suspension. We, however, make it clear that in case the criminal proceedings end in his ~~acquittal~~, he would be entitled to full pay and allowances during the period of suspension and that he would also be entitled to all consequential benefits. The application is disposed of on the above lines. There will be no order as to costs.

B.N. Dholiwal
(B.N. DHUNDIYAL)
MEMBER (A)

Parmit
(P.K. KARTHA)
VICE CHAIRMAN (J)