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V

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

New Delhi, the the 12nd ^{January} day of December, 1995

O.A. No. 792 of 1991

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri H.K. Aggarwal,
s/o late Shri Babu Ram,
r/o 67-B, Richpal Puri,
Ghaziabad, U.P.

... Applicant

By Advocate: Shri S.C. Luthra

vs.

Union of India,
through
Secretary to the Govt. of India,
Ministry of Personnel, Public Grievances
and Pensions,
North Block, New Delhi.

... Respondent

By Advocate: Shri M.K. Gupta

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

This application was heard together with
O.A. No. 2416 of 1990, which is between the same parties.

In the circumstances, the facts are not narrated in detail
here and the same may be referred to in O.A. No. 2416 of 1995.

2. The main grievance of the applicant in this
case is with the decision of the disciplinary authority
in the order dated 29.3.90 (Annexure A-20). By this
order, the disciplinary authority has considered the question
of regularisation of the period of his suspension from 1.8.79
when he was suspended till the date of revocation by order

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dated 31.8.81/2.9.91 under the provisions of F.R. 54-B. This order had been passed after giving an opportunity to the applicant to submit his representation, which he did on 24.11.89. The disciplinary authority after considering his representation, has come to the conclusion that the provisional decision to restrict the pay and emoluments of the applicant to 75%, during the period of suspension is justified. Further, the disciplinary authority ordered that the period of suspension from 1.8.79 to 1.9.81 will be treated as qualifying service for computing pension.

3. ^{SC} Shri Luthra, learned counsel for the applicant contends that the impugned order dated 29.3.90 has been passed after much delay. The applicant had been suspended on account of the criminal offence, the trial of which was going on, when the disciplinary proceedings were taken against him. The suspension had also been revoked in 1981 whereas the order regulating his payment for this period had been passed only in 1990. He claims that there was, therefore, no justification to wait till 1990 to pass this order as the same should have been done under FR 54-B within a period of six months. He also drew our attention to the notice given by the applicant on 1.10.82, seeking voluntary retirement after the notice period of three months in which he had mentioned that the order under FR 54-B for the period of suspension had not yet been passed.

4. The other main contention of the applicant's counsel is that since the suspension has been revoked, he should have been paid the full pay and allowances for this period. He also claims that the criminal court did not impose any punishment against him

5. The respondents have filed a reply denying the above claims. They have stated that initially

he was allowed subsistence allowance in accordance with F.R.53(1)(ii), which was subsequently raised by 50% w.e.f. 1.11.79 by order dated 9.11.82. They have also stated that in the criminal case, ^{although} ~~the~~ applicant was ^{found} guilty, ~~he was~~ allowed the benefit of being the first offender and was enlarged on probation for a period of two years on two securities of Rs.5000/- each and on his personal bond. under the Probation of Offenders' Act.

6. Regarding the delay in passing the impugned order dated 29.3.90, Shri M.K.Gupta, learned counsel for the respondents submitted that under F.R.54-B, no time limit of six months, as claimed by the applicant, has been mentioned. Further, he referred to para 3 of the order dated 31.8.81 revoking the order of suspension, in which it has been specifically mentioned that a decision regarding pay and allowances etc. for the period of suspension will be taken after all pending cases against the applicant have been decided.

Accordingly, he submits that there was no delay in passing the impugned order, which has been correctly done after issuing a show-cause notice giving an opportunity to the applicant to submit a representation. In this representation, the applicant had pleaded for payment of 95% of pay and allowances for the period of suspension.

7. We have considered the pleadings and arguments of the counsel of both the parties.

8. F.R.56-B(5) provides that in cases

other than those falling under sub-rules(2) and (3), the Govt. 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 suspended as the competent authority may determine after giving notice to the government servant on the quantum of punishment proposed and after considering the representation, if any, submitted by him in that connection within the period specified in the notice. Sub-rules(2) and (3) deal with the cases where the government servant, under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded and the cases where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified. These two situations are not applicable to the facts in this case. The applicant's counsel fairly admitted that in the reply to the notice issued by the disciplinary authority under F.R.54-B, the applicant had pleaded that he may be paid atleast 95% of the pay and allowances for the period of suspension. It is also an admitted fact that while the criminal Court has found him guilty in the criminal case for which he had been suspended, he was given the benefit under the provisions of Probation of Offenders Act, being the first offender and enlarged on probation for a period of two years. The fact that he has therefore, been found guilty of the offence charged by the criminal court against him cannot be questioned and the suspension cannot be held to be wholly unjustified.

9. FR 54(5) also clearly provides that the

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amount payable to the government servant during his period of suspension cannot be the whole amount and, therefore, the claim of the applicant for a direction to the respondent to pay him full pay and allowances is not tenable. The claim, therefore, is rejected. The plea that there has been inordinate delay of more than six months is also without any basis, as there is no such provision under the relevant FR and the same is, therefore, rejected. Apart from this the impugned order has been passed after the pending cases against the applicant have been concluded.

10. In the result, we find no merit in the O.A. and the same is accordingly dismissed leaving the parties to bear their own costs.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

21/1/96

N.V. Krishnan

(N.V. KRISHNAN)
ACTING CHAIRMAN

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