

Central Administrative Tribunal, Principal Bench

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O.A. No. 1302/2004

New Delhi this the 3rd day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Hon'ble Mr. S.K. Malhotra, Member (A)

Shri J.B. Gupta

Sr. Auditor A/c No. 8312329

Last posted in LAO (CVD)

Delhi Cantt.

R/o X/3368/6, Gali No. 2,

Raghubarpura No. 2,

Gandhi Nagar, Delhi-110 031.

Applicant

By Advocate: Shri G.S. Lobana.

Versus

1. Union of India
Through Secretary,
Ministry of Defence,
New Delhi.
2. The Financial Advisor
(Defence Services)
Government of India,
Ministry of Defence
(Finance Division)
New Delhi.
3. The Controller General of Defence Accounts
West Block V,
R.K. Puram,
New Delhi-110066.
4. The Principal Controller of Defence Accounts.
G-Block, New Delhi.
5. The Principal Controller of Defence Accounts.
Western Command,
Sector 9-C,
Chandigarh.

Respondents

By Advocate: Shri T.S. Malik for Shri S.K. Gupta.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The OA is filed for grant of following relief:

- (1) Quash and set-aside the impugned order dated 28/1/2003 passed by the Disciplinary Authority viz. respondent No.4 (A-1) and to quash and set-aside the order dated 12/6/2003 passed by the appellate authority viz. respondent No.3 (A-3) and also to quash the set-aside the order dated 26/3/2003 passed by the respondent No.5 giving the effect to the order dated 28/1/2003 passed by the respondent No.4 (A-2) and

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direct the respondents to pass under-mentioned appropriate order.

- (a) To release pay and allowance of the applicant pertaining to the period 31/8/1999 to 16/2/2002 during which period the penalty order passed by the respondent No.4 and modified by the respondent No.3 stand quashed and set-aside employment during this period due to settled principle of law.
- (b) To pass appropriate order granting consequential relief during the intervening period and continuity of service and increments during this period.
- (2) Direct the respondents to grant the applicant full pay and allowances as admissible for the period he was under suspension i.e. from 24/10/1997 (AN) to 7/4/1998 (FN) and the suspension period may be treated as on duty for all intent and purposes.
- (3) Direct the respondents to treat the date of retirement of the applicant 16/2/2002 as the appellate authority passed the penalty order after personal hearing on 14/2/2002, which was received by the applicant on 16/2/2002 and all the previous orders of Disciplinary Authority as well as appellate authority stand quashed vide Hon'ble Tribunal order dated 18/5/2003 passed in OA No.448/2001.
- (4) Any other relief deemed fit and proper and efficacious in the facts and circumstances of the case be awarded in favour of the applicant and against the respondents.
- (5) Cost of the OA be awarded in the favour of the applicant and against the respondents."

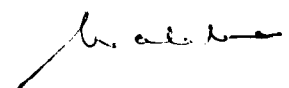
2. The applicant was Senior Auditor in the office of the CGDA Headquarters, New Delhi. In October, 1997 charge memos for holding disciplinary proceedings for major penalty was served on him, Assistant Accounts Officer and Senior Accounts Officer imputing that they had authorised payment against false and fraudulent claims during the year 1997. The applicant remained under suspension from 29.10.1997 to 7.4.1998. On the conclusion of enquiry, the disciplinary authority by order dated 17.8.1999, removed the applicant from service with effect from 31.8.1999. The applicant preferred an appeal and the appellate authority vide order dated 8.2.2000 modified the punishment order to compulsory retirement with 20% cut in the pension for 5 years and 20% cut in the gratuity amount. The orders were challenged by the applicant in OA 448/2000 which was partly allowed by order dated 18.5.2001 (Annexure A/4) and the order of penalty was quashed and the applicant was directed to be taken back in service and the matter was remitted back to the appellate authority for passing fresh order after providing an opportunity of personal hearing to the applicant etc. The respondents filed CW

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5466/2001, which was disposed off by a consent order on 13.9.2001 (Annexure A/5). The appellate authority was directed to provide an opportunity of personal hearing to the applicant and decide the appeal afresh within the time stipulated. The direction about the reinstatement of the applicant was stayed till the appeal was disposed off.

3. The appellate authority disposed off the appeal by order dated 14.2.2002 (Annexure A/6) reducing the penalty of removal from service to that of compulsory retirement from service with a cut of 20% for 5 years and 20% cut in gratuity otherwise admissible to him. The applicant filed OA 562/2002 on 24.8.2001 for a direction to the respondents to release the pay and allowances pertaining to the period from 31.8.99 to 16.2.2002 on the ground that the penalty order which was modified by the appellate authority had been quashed so he shall be deemed to be in service and was entitled for the consequential relief. The Tribunal disposed it off on 18.9.2002 (Annexure A/9) by directing the respondents to pass appropriate order as to the date from which the applicant was entitled to the pension and the date from which he was to be given subsistence allowance for the period of suspension subject to the outcome of OA 563/2002. OA 563/2002 was filed challenging the order dated 14.2.2002 (Annexure A/6) by which penalty of compulsory retirement with a cut of 20% in pension for 5 years and 20% cut in gratuity was imposed upon the applicant. The said OA was dismissed on merit on 29.11.2002. In compliance with the order of this Tribunal dated 18.9.2002 passed in OA 562/2002, the respondents had passed an order-dated 28.1.2003 (Annexure A-1), which is impugned in this OA. It was directed that the applicant would be entitled to pay and allowances to the extent of 75% during the period of suspension and the period of suspension will not be treated as period spent on duty and the applicant would be entitled to compulsory retirement pension as admissible under the rules with effect from 1.9.1999.

4. By the order-dated 28.1.2003 (Annexure A/1) the appellate authority rejected the representations of the applicant and held that fresh order dated 14.2.2002 did not change the date of effect of penalty order which will be operative w.e.f. 31.8.1999 (AN) and that the applicant will be entitled to pay and allowance for the suspension period to the extent of 75% and the said period shall be treated as a period spent on duty and further that the applicant shall be entitled to compulsory pension as per Rule 40 CCS (Pension) Rule.



1972 w.e.f. 1.9.1999. Order dated 26.3.2003 (Annexure A/2) is passed by the appellate authority that the applicant is entitled for pay and allowance for the period of suspension from 29.10.1997 to 7.4.1998 to the extent of 75% of pay and allowances and the period of suspension shall not be treated as a period spent by him on duty and further that he will be entitled to compulsory retirement pension as admissible under Rule 40 of CCS (Pension) Rules, 1972 w.e.f. 1.9.1999 with 20% cut in pension for 5 years and 20% cut in gratuity as otherwise admissible to him. The applicant's representation was rejected by the appellate authority on 12.6.2003 (Annexure A-3) holding that the order of the disciplinary authority of removal of the applicant from service with effect from 31.8.99 was modified by reducing the penalty to that of compulsory retirement with a stipulation to impose some percentage cut in pension and gratuity and the said order was not a fresh penalty order but was modification of the earlier order of removal from service which was in operation with effect from 31.8.1999 onwards.

5. Though the applicant has assailed the orders and has claimed the relief, as reproduced above, on diverse grounds pleaded, but during the course of arguments, the learned counsel for the applicant has urged and pressed only one ground. It is argued that the penalty order could not have been given effect to retrospectively.

6. We have heard the learned counsel for the parties and have also perused the relevant record.

7. The learned counsel for the applicant has argued that the penalty can be imposed only prospectively and not with retrospective effect as a general rule. He fairly admitted that the rules in this regard are silent but the penalty of compulsory retirement which was imposed vide order dated 12-6-03 could not have been given effect with retrospective effect from 31.8.99(AN). The arguments, to our view, in the peculiar facts and circumstances of the case, are not tenable. Normally the penalty is imposed with prospective effect but it depended upon the facts and circumstances of the case. In the present case the disciplinary authority by order dated 17.8.1999 imposed the penalty of removal from service on the applicant with effect from 31.8.99. In appeal, which was decided in pursuance to the order of the Tribunal dated 18.5.2001 the appellate authority on 14.2.2002 modified and reduced the penalty to compulsory retirement with cut in the pension and gratuity. The penalty of compulsory retirement, which was imposed in

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modification of the order of the disciplinary authority, also came into effect on 31.8.1999

The appellate authority was not required to specify the date of compulsory retirement. Anyhow by the subsequent orders impugned in the OA, this clarification was also given. By no stretch of reasoning it could be said that the penalty imposed by the appellate authority while disposing of the appeal is with retrospective effect. The argument of the learned counsel for the applicant to the contrary is, therefore, not sustainable.

8. It is noteworthy that the applicant had filed OA No. 448/2000 assailing the order of the appellate authority dated 8.2.2000 only and the Tribunal partly allowed and remitted the appeal to the appellate authority for fresh decision. The order of disciplinary authority seemed to have been interfered with to enable the respondents to take back the applicant in service which order was stayed by the Hon'ble High Court in CW 5466/2001. The order of disciplinary authority was not specifically under challenge since it stood merged with the order of the appellate authority and in case it is treated to have also been quashed by the Tribunal there was no order for the appellate authority to consider in appeal. The order of the Tribunal and the Hon'ble High court should be construed in perspective and peculiarity of facts. The Tribunal had dismissed OA No. 563/2002 which was filed for setting aside order dated 14.2.2002 passed by the appellate authority, in compliance with the order of the Tribunal dated 18.5.2001 and order of Hon'ble High Court in CW 5466/2001. The order has become final. As such it will be incongruous to contend that the order of disciplinary authority appealed against was non-existent. Even according to the learned counsel for the applicant by application of doctrine of merger, the order of disciplinary authority stood merged with the order of appellate authority. As a consequence, the order of compulsory retirement which was passed by the appellate authority by reducing/modifying the order of disciplinary authority came into effect from the same date i.e. 31.8.1999 (AN) from which the applicant was removed from service by the disciplinary authority.

9. Learned counsel for the applicant has referred to the order of the **Punjab and Haryana High Court in Ex.Constable Satinder Pal Singh Vs. State of Punjab, 2002 (1) SCT 614** wherein relying upon a Division Bench judgement of the Court in Rajinder Singh Vs. Board of School Education Haryana and Another, 1996 (4) RSJ 417 it was held that the order of dismissal from service cannot be made operative retrospectively

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and the relationship of master and servant may be brought to an end only from the date of the order or subsequent date thereto. The judgment is of no help to the applicant since the appellate authority has simply modified and reduced the order of penalty passed by the disciplinary authority removing the applicant from service to compulsory retirement. The compulsory retirement order would also come to effect from the very date from which the applicant was removed from service. The applicant was not in service of the respondent after the order of the disciplinary authority was passed. The Hon'ble High Court had stayed his reinstatement during the pendency of the appeal. Even otherwise, no benefit, monetary or otherwise, could have accrued to the applicant after the order of removal came into effect from 31.8.1999(AN). The order of disciplinary authority stood merged with the order of the appellate authority under the final order passed by the disciplinary authority under the doctrine of the merger. Accordingly, it cannot be said that the applicant was in service after 31.8.1999 (AN).


10. Applicant has next cited Atma Singh Vs. Punjab State, 2002 (1) ATJ 53 where it was held that as the order of termination was quashed by first appellate court, the applicant would be deemed to be in service and entitled to all his wages and benefits till a fresh order was passed by the punishing authority. In the instant case vide the order of this Tribunal dated 18.5.2001 in OA 448/2000 (Annexure A-4) the appeal was remitted back to the appellate authority for re-deciding the appeal after providing an opportunity of hearing to the applicant and in the meantime the order of reinstatement of applicant was stayed by the Hon'ble High Court in CW 5466/2001 on 13.9.2001, Annexure A-5. If the order is read as a whole, it is clear that the Tribunal had remitted the appeal to the appellate authority, which was filed against the order of disciplinary authority, for passing a fresh order after hearing the applicant. Accordingly, it is not a case where the applicant could be deemed to be in service after 31.8.1999 (AN).

11. The learned counsel for the applicant next cited the order of this Tribunal in Moti Lal Shakya Vs. U.O.I. & Others (OA 1713/2001) decided on 4.12.2001. It was case where the applicant prayed for grant of full pension from 1.4.1993 to 18.2.2001 and it was held that it could apply only prospectively. That order of withholding of pension under Rule 9 of CCS (Pension) Rules, which was passed on 19.2.2001 could apply with retrospective effect. The facts of the case were peculiar. The applicant was placed under

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suspension on 3.10.1989. He superannuated on 31.1.1991. The disciplinary proceedings against him continued by virtue of Rule 9 of CCS (Pension) Rules. By order dated 16.4.1998, the competent authority withheld the full pension of the applicant permanently. The Tribunal quashed the penalty. However, liberty was given to take further steps in the matter by allowing opportunity of showing cause to the applicant against the proposed action. The competent authority then considered the matter afresh and tentatively came to the conclusion that the misconduct proved was grave enough and warranted action against him under Rule 9 aforesaid. A show cause notice was served on the applicant, who submitted representations in the matter on 15.2.2000 and 22.2.2000. Thereafter, in consultation with UPSC, an order of withholding of pension was passed on 19.2.2001. The grievance of the applicant was that the order should be operative prospectively. This contention was upheld. The facts of the present case are clearly distinguishable.

12. In the peculiarity of the facts and circumstances of the case we do not find force in the OA and dismiss it. Parties are left to bear their own costs.


(S.K. Malhotra)
Member (A)

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(M.A. Khan)
Vice Chairman (J)