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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1408/2004

New Delhi, this the 28 day of February, 2005

Hon'ble Shri S.K. Naik, Member(A)

G.L. Aggarwal
911/8, Govind Puri
Kalkaji, New Delhi

Applicant

(Shri M.K. Bhardwaj, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Information & Broadcasting
Shastri Bhavan, New Delhi
2. Director General
Delhi Akashvani
Akashvani Bhavan, New Delhi

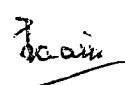
Respondents

(Shri Sanjay Goel, Advocate)

ORDER

By virtue of the present application, applicant has assailed the order dated 5.12.2003 by which respondents have decided to grant him the pensionary benefits only for the period rendered as service other than suspension period as the period of suspension from 2.2.85 till his retirement i.e. 31.8.04 was treated as not spent on duty and also order dated 5.3.2004 by which applicant's appeal dated 31.12.2003 against the impugned order dated 5.12.2003 has been rejected.

2. Briefly stated, according to the applicant, he was falsely implicated in a criminal case of accepting bribe on the alleged complaint of one Shri Bhoop Singh in the year 1985 with the result he was placed under suspension with immediate effect by order dated 2.2.1985. Thereafter he retired from service on 31.7.1994 on attaining the age of superannuation. Learned counsel appearing for the applicant has contended that only after repeated representations, respondents have released retiral benefits to the applicant in part when no departmental enquiry was pending against him and that the applicant had never undergone any imprisonment. Further, no notice under FR 54-B was given to him while deciding the period of suspension from 2.2.85 to 31.7.1994 as period not spent on duty, vide the impugned order dated 5.12.2003 and that his appeal was rejected by order dated 5.3.2004 without application of mind.



3. Respondents have contested the application. In their reply they have stated that the applicant has made misrepresentative assertions in the OA. While the applicant claims that he had never undergone any imprisonment, it has been proved beyond doubt in the Court of Special Judge, CBI, Delhi that he had taken bribe and was a dishonest official and has been awarded punishment of rigorous imprisonment for two years in case No.11/85 dated 26.11.87. His conviction has been upheld by the Hon'ble Delhi High Court vide its order dated 5.3.2001.

4. With regard to the contention raised by the learned counsel for the applicant that no notice as required under FR 54-B has been issued to the applicant before the passing of the impugned order, learned counsel for the respondents has submitted that provisions of FR 54-B are not applicable to the facts of the case herein. It is not a case where pending finalisation of any disciplinary proceedings the applicant had been placed under suspension by the disciplinary authority. The case in hand is that the applicant had been convicted by the Special Judge under Section 5(2) of the Prevention of Corruption Act and it was incumbent upon the respondents to place him under suspension after he was detained in Police custody for more than 48 hours. Thereafter criminal proceedings continued culminating in conviction vide order dated 26.11.1987 and thereafter in an appeal before the Delhi High Court until 5.3.2001. In the meantime he retired on superannuation on 31.7.1994. Thus, the question of possible reinstatement of the applicant prior to his date of superannuation never arose. According to the learned counsel, FR 54-B would have been applicable if the applicant had the possibility of being reinstated prior to his retirement while under suspension.

5. I have heard the learned counsel for the parties and considered the pleadings available on record.

6. I find that the learned Special Judge, Delhi in his order dated 26.11.1987 has held as under:

"2. After hearing the learned counsel for the accused, with the provision of law where minimum punishment is prescribed, in my opinion, the interest of justice shall be fully met by sentencing the accused G.L.Agarwal u/s 161 IPC to RI for 2 years and a fine of Rs.500/- . In default of the payment of fine, he shall undergo further RI for 3 years. Under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption, he is also sentenced to RI for 2 years and a fine of Rs.500/- . In default of the payment of fine, he shall undergo further RI for 3 months. Both the sentences of imprisonment shall, however, run concurrently."

Besides, the order of the Delhi High Court dated 5.3.2001 in Cr. IA 241/87 affirms the order of conviction. Thus the contention of the applicant that he was never convicted by the Court has no force and needs to be rejected.

*Y
SAC*

7. The main ground on which the learned counsel for the applicant has assailed the impugned order is that the applicant was entitled to show cause notice under the provisions of FR 54-B before the final order not to treat his period of suspension as duty has been passed by the respondents.

8. I have carefully perused the provisions under FR 54-B. FR 54-B(1) is applicable to a Government servant who is to be reinstated after suspension or who would have been reinstated but for his retirement while under suspension. In the case of the applicant, there was not even remote possibility of his reinstatement while under suspension since he had been convicted by the Criminal Court to undergo RI and his appeal was pending before the Delhi High Court when he had retired. Similarly FR 54-B(3) and (4) would also be not applicable since they relate to matters where disciplinary proceedings were in progress. I find from Rule 23 of CCS(Pension) Rules that time passed by a Government servant under suspension pending inquiry into conduct shall count as qualifying service only if he is fully exonerated on conclusion of such enquiry. It is laid down therein that in other cases, the period of suspension shall not count unless the authority competent to pass orders under the rule governing such cases expressly declares at the time that it shall count to such extent as the competent authority may declare. Thus, I find that neither the provisions of FR nor the Pension Rules provide for any notice to be given to an errant employee who has been convicted by a Court of Criminal Jurisdiction. To raise an objection for the sake of it without indicating as to how the interest of the applicant has been prejudiced for want of show cause notice cannot be sustained. Thus, I am unable to sustain the objection raised by the learned counsel for the applicant that lack of show cause notice has in any way prejudiced his cause, because the mere fact of enabling him to represent to show cause notice would not alter the fact that he has been awarded with conviction of two years RI which has been upheld by the Hon'ble Delhi High Court.

9. Under these circumstances, I do not find any merit in the present OA and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)

/gtv/