

Central Administrative Tribunal, Principal Bench

O.A. No. 1555/2004

New Delhi this the 7th day of April, 2005

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

S.K. Gandhi
D-7, P.W.D. Quarters,
Id Gah, Dehradun-248001. ...Applicant

By Advocate: Applicant in person.

Versus

1. Union of India through
The Controller General of Defence Accounts,
West Block V, R.K. Puram,
New Delhi-110 066.
2. The Contorller of Defence Accounts (Air Force)
107 Rajpur Road,
Dehradun -248001. ...Respondents

By Advocate: Shri B.S. Jain.

ORDER

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

The applicant has filed this OA for quashing the notice dated 21.10.2003 and the order dated 3.3.2004 passed by the respondent No.1 under FR 54(4) with cost.

2. Briefly, the facts are that the applicant was working as Sr. Auditor with the respondents when a Memorandum of Charge for major penalty was issued on 15.2.1999. On conclusion of the departmental enquiry proceedings, major penalty of compulsory retirement was imposed on him. The appellate authority in appeal, however, reduced the penalty of compulsory retirement to reduction of pay of the applicant by two stages in the

Leave on a lower

time scale for 2 years with cumulative effect. The applicant filed OA No.701/2004 assailing a notice dated 21.10.2003 issued in accordance with FR 54 (4). The Tribunal disposed off the OA with a direction to the respondent No.1 to pass suitable orders as per rules after considering the representation of the applicant. The applicant had submitted a representation in reply to the show cause notice dated 21.10.2003 (Annexure A-I). The respondent No.1 has passed the requisite order on 3.3.2004 (Annexure A-2) whereby the period from 3.7.2002 to 28.8.2003, i.e., from the date of his compulsory retirement to the date of his reinstatement in service was treated as "period not spent on duty" and that no pay and allowances for the above said period would be paid to him. The applicant felt aggrieved and has challenged this order in this OA.

3. The respondents in their counter-reply have raised a preliminary objection that the applicant has not exhausted the departmental remedy by filing a representation against the impugned order so the present OA is not maintainable in view of the order of the Full Bench in B. Parameshwara Rao Vs. The Divisional Engineer, Telecommunications, Eluru and another, Full Bench Judgments (CAT) Vol.II page 248.

4. It is further submitted that a penalty of censure was awarded to the applicant vide order dated 9.11.1998 against the major penalty charge-sheet issued on 5.1.1998 for making direct representation to the higher authorities and using unparliamentary language against LAO (AF) Halwara. At the first instance minor penalty charge-sheet dated 6.1.1999 was issued for marking attendance in the attendance register while actually he was not present and later on this was withdrawn and fresh chargesheet for major penalty was issued on 15.2.99. The charges were proved and penalty was awarded by the disciplinary authority which was reduced by the appellate authority, as aforesaid.

Re-consideration

5. In the rejoinder, the applicant has reiterated his own allegation and controverted those of the respondents. 15

6. The applicant, who has argued the case in person, has drawn our attention to FR 54 and has submitted that his case was covered by sub Rule (4) of FR 54 (1). It is submitted that in terms of this sub-rule he was entitled to be granted some financial benefits if not the full pay and allowances for the period from 3.7.2002 to 28.8.2003 and the order of respondent No.1 treating the entire period as spent on duty, is not in accordance with this rule. FR 54 reads as under:-

“ FR 54 (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 on 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.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsorily retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant it may, after giving him an opportunity to make his representation [within sixty days from the date on which the communication in this regard is served on him] and after considering

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the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such [amount (not being the whole)] of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of [clause (1) or (2) of Article 311] of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such [amount (not being the whole) of the pay and allowances] to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if an, submitted by him in that connection within such period [(which in no case shall exceed sixty days from the date on which the notice has been served)] as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

Note:- the order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

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(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) [The amount] determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant."

7. In K. Shamgunam Vs. U.O.I. 1996 (3) ATC 397 a Bench of this Tribunal considered the scope and import of FR 54 and observed as under:-

"8. Sub-section (1) provides that in case of reinstatement as a result of appeal or review, the authority competent shall (a) make a specific order regarding the pay and allowances for the period of absence from duty and (b) whether or not the said period shall be treated as period spent on duty. The question whether or not the period has to be treated as period on duty is answered in FR 54 (2), FR 54 (3) and FR 54 (4). FR 54 (2) provides that where the government servant has been fully exonerated, he shall be paid the full pay and allowances to which he would have been entitled and as per FR 54(3), the period would be treated as a period spent on duty for all purposes. FR 54 (3) deals with cases of government servants who are not fully exonerated. In this category, cases where compulsory retirement etc. have been set aside solely on the ground of non-compliance with the requirements of Article 311 (1) or (2) are also included by the words occurring within brackets of sub-section (4). Sub-section (4) of FR 54 provides that in these cases, "the government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amounts not being the whole of the pay and allowances to which he would have been



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entitled had he not been dismissed, removed or compulsorily retired....., as the case may be, as the competent authority may determine after giving notice to the government servant of the quantum proposed after considering representation, if any, submitted by him in that connection within such period as may be specified". In other words, a government servant in such cases has to be paid some amount, not being the whole of the pay to which he would have been entitled. Sub-section (7) provides that such amount shall not be less than the subsistence allowance admissible under FR 53 during a period of suspension. FR 54(1)(ii)(a) provides that the subsistence allowance will be an amount equal to the leave salary which the government servant would have drawn if he had been on leave on half average pay or half pay, with dearness allowance thereon. FR 54 (5) provides that a government servant has the option to convert the period of absence from duty intervening between the compulsory retirement or removal and his reinstatement into leave of any kind due and admissible to him. In whatever manner the appropriate authority proposes to determine the pay and allowances to be paid during the period in question. FR 54 (4) makes it clear that the government servant shall be given notice for making representation against the proposal.

9. This, it is clear that the authority reinstating the government servant after modifying the earlier penalty of compulsory retirement has necessarily to pass an order as provided therein. In the present case, we find that the order passed by the respondents cannot be held to be an order passed under FR 54. The portion of the order dealing with the intervening period merely states that "it will be treated as dies non".

8. We are in respectful agreement with the observation of the Bench in the cited case. Sub-rule (1) of FR 54 postulates, after an employee has been reinstated as a result of an appeal or review, passing of two orders. First order regarding the pay and allowances for the period of absence from duty and the second order for deciding as to whether the period of absence should be treated as a period spent on duty or not. Sub-rule (4) which has been relied upon by the applicant, has provided, subject to the provisions of sub (5) and (7), such amount not being the whole of pay and allowances to which an employee would be entitled had he not been dismissed, removed or compulsory



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retired from service, to be determined by the competent authority "after giving notice to the government servant of the quantum proposed and after considering representation, if any, submitted by him in that connection within such period as may be specified". The Government servant by virtue of this sub-rule could be paid some amount, if not the full pay and allowances to which he would have been entitled. The order has to be passed after service of a notice on the employee and taking into consideration any representation made by him. In the present case the competent authority had issued notice dated 21.10.2003, Annexure A-1 to the applicant in accordance with sub-rule (4) of FR 54. The applicant had challenged this notice in OA 701/2004 which was disposed off by order dated 25.3.2004 (Annexure A-8). The Tribunal had allowed the respondent No.1 to pass appropriate orders as per rules after considering the representation made by the applicant. The applicant did not care to submit the representation. The respondent No.1 then passed the order dated 3.3.2004 and has decided not to pay any amount to the applicant and had treated the period of absence of the applicant, i.e., from 2.7.2003 to 28.8.2003 as 'not spent on duty'. As such, the respondent No.1, the competent authority, had taken a decision in the matter by its order dated 3.3.2004, which is impugned in this OA.

9. At the hearing, the learned counsel for the respondents was fair enough to submit that the applicant should have filed a representation to the respondents for redressal of his grievances against the order dated 3.3.2004 before rushing to file the OA. He has submitted that in case the applicant files a representation against this order now, the same would be considered and decided in accordance with law.

Learned Counsel

10. The applicant has not filed any reply to the show cause notice dated 21.10.2003.

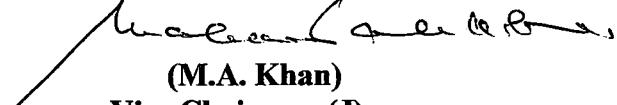
He is aggrieved by the order dated 3.3.2004. In view of the provision of FR 54, we are of the view that the applicant should be given one more opportunity to file a representation against the order dated 3.3.2004 so that the competent authority exercises its power and pass appropriate orders in accordance with sub-rule (4) of FR 54 after considering the pleas of the applicant. Such a course would be perfectly in consonance with the decision of this Tribunal in B. Parameshwara Rao (Supra).

11. Accordingly, we allow the applicant to file a representation to the respondents for redressal of his grievances against the order dated 3.3.2004 (Annexure A-2) within 2 weeks from today. We further direct the respondent No.1 to consider the representation submitted by the applicant and dispose it of by a reasoned and speaking order within a period of 2 months from the date on which the copy of this order along with the representation of the applicant is received by it. The applicant shall furnish a copy of this order along with his representation to the respondent no. 1 within ten days. It will be open to the applicant to challenge the final order of the respondent No.1, if necessary, in a proceedings as per law.

12. The OA stands disposed of in terms of the above said order but without any order as to costs.


(S.K. Malhotra)
Member (A)

Rakesh


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