

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.699/2004

New Delhi this the 15th day of October.2004

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

Jage Ram,
S/o Shri Ram Jee.
R/o WZ-25/1, Village Deshopur,
New Delhi.

.....Applicant

(By Advocate Shri Susheel Sharma)

Versus

1. Union of India
through the Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110 011
2. Project Manager,
Dr.Ambedker Hospital,
Sector VI Rohini,
Delhi.
3. Executive Engineer
PWD Division XIII, Kashmere Gate,
Delhi 110 006

.....Respondents

(By Advocate Shri R.O.Bhutia)

O R D E R

This OA has been filed by the applicant with the prayer that the impugned order dated 26.2.2004 be quashed and set aside, his suspension period may be treated as on duty and he may be allowed increased suspension allowance and arrears of pay and allowances.

2. The facts of this case, in brief, are that the applicant has been working as Carpenter in PWD (Respondent No.3) since 1967. In May,1988, he was involved in a quarrel with his relatives and was implicated in a criminal case and remained in Jail from 30.5.88 to 8.6.88. Consequently the respondents vide order dated 15.6.88 suspended the applicant from service w.e.f. 30.5.88. During the trial in criminal case, the applicant was found guilty under Section

2

324 IPC. The Court, however, released the applicant on probation of one year on good conduct vide order dated 30.7.99. After his release on probation, the applicant made a representation on 17.8.99 to revoke his suspension enclosing a copy of the judgment dated 30.7.99. He has been following up the representation through reminders and by legal notice but to no avail. After completion of the probation period, the Court issued a certificate dated 23.10.2002 to the applicant confirming that the applicant has completed successfully the probation period. The copy of this certificate was sent by him to the department on 1.11.2002, based on which the department revoked his suspension order on 28.1.2003. The applicant thereafter joined his duties on 14.2.2003. The applicant was issued a show cause notice on 29.1.2003 giving him an opportunity to file an appeal against the proposed decision of the Deptt. declaring the entire period of his suspension as non-duty for all purposes. He made a representation against the above show cause notice. The respondents, however, passed an order on 26.2.2004 in which the period of suspension upto 31.10.2002 has been treated as non-duty period for all purposes. The period from 1.11.2002 onwards has been treated as duty period with full salary and allowances. The pay and allowances for the suspension period have been limited to subsistence allowance already drawn by him. He has also been given option to get the period of absence converted into any kind of leave admissible. It is against this order that the applicant has filed the present OA.

3. It has been contended by the applicant that the order of treating his entire suspension period as "non-duty" is totally unjustified. The respondents should have reviewed the suspension order periodically, in accordance with the rules and he should have been reinstated in service long time back. In any case, he should have been reinstated on his release on probation of one year on good conduct vide order dated 30.7.99. He was also entitled to increased suspension allowance after revision of pay scales w.e.f. 1.1.1996

4. The respondents have filed a counter reply in which they have taken the stand that the applicant was on probation for one year on good conduct upto 30.7.2000. He was asked to submit the proof of successful completion of probation period but he failed to do so even



after several notices of the department. It was only on 28.1.2003 that the applicant submitted a certificate based on which he was reinstated w.e.f. 28.1.2003. It has further been stated that the applicant had been under suspension for acts of his own upto 1.11.2002 and had not provided any service to the government during this period. He, therefore, cannot be treated as on duty, for the purposes of pay and allowances. The rule on this point is very clear that where an Officer who has been kept under suspension on account of the charges/detention for 48 hours and continued to remain under suspension pending the trial of the criminal charge, statutorily he is disabled to perform his duties. On reinstatement, the competent authority has to consider whether the suspended officer would be entitled to the salary or not. This decision is discretionary, depending on the facts of the case. The competent authority in the instant case decided that the payment of salary during the suspension period was not justified.

5. I have heard both the Ld. Counsel for the parties and have also gone through the pleadings.

6. The main argument advanced by the Ld. Counsel for the applicant was that it was mandatory on the part of the respondent Deptt. to review his case of suspension. In this connection, he referred to instructions under FR-53, according to which it is obligatory that in sufficient time, before the expiry of the first 6 months of suspension, the competent authority should review each case in which period the suspension is likely to exceed six months. He stated that if his case had been reviewed periodically, he would not have remained under suspension for a long period of about 14 years. If he had been reinstated in time, he would have got full pay and allowances which were denied to him.

7. The Ld. Counsel for the respondents could not confirm whether his case was reviewed from time to time, as provided under FR 53 but the fact remains that since a criminal case was going on against him, the Department could not have re-instated him. It was also the duty of the applicant to approach the Department to re-instate him, if he felt that the suspension was un-warranted. He did not approach the Department during all these years

1

with any such request. The Department could, therefore, re-instate him only after he produced a certificate of his successfully completing the probation period.

8. In so far as revision of scale of pay while under suspension is concerned, the Ld. Counsel for the applicant referred to provision in para 2(a) of DOPT's instructions dated 27.8.1958 according to which a person under suspension has the option to elect the revised pay scale introduced during his suspension. It was, however, pointed by the learned counsel for the respondents that the benefit of such an option will accrue to the person in respect of suspension period, only after his reinstatement, depending on the fact whether the period of suspension is treated as duty or not. The relevant portion of these instructions is reproduced below.

“(a) Under suspension a Government servant retains a lien on his substantive post. As the expression ‘holder of a post’ occurring in FR 23 includes also a person who holds a lien or a suspended lien on the post even though he may not be actually holding the post, such a Government servant should be allowed the option under FR 23 even while under suspension. The benefit of option will, however, practically accrue to him in respect of the period of suspension, only after his reinstatement depending on the fact whether the period of suspension is treated as duty or not.”

In the instant case, since his period of suspension has not been treated as “non-duty” period, the benefit of revision cannot be extended to him.

9. The learned counsel for the applicant also referred to two judgments of the Hon'ble Supreme Court in support of his case i.e. 2002 (1) JCC 148 in case of **Ashutosh Kumar Manoj Vs. State of Bihar** and AIR 1985 SC 1278 in case of **Rajbir Vs. State of Haryana**. Both these judgments pertain to release of petitioners on probation under Section 4 of Probation of Offenders Act, 1958. However, in these judgments, there is no ruling regarding pay and allowances etc. payable to the petitioners after his probation period is over. In my view, these judgments have no direct relevance to the case under consideration.

10. After hearing the rival contentions of both the parties, I am of the view that the applicant could not have been re-instated as long as a criminal case was going on against him in the Court, nor he could be reinstated while on probation. He was supposed to complete

2

one year's of probation. The respondent Department re-instated him after he produced the good conduct certificate issued by the Court, after completion of probation period. While he completed the probation period on 30.7.2000, he could produce the certificate of good conduct only on 1.11.2002(i.e. after a lapse of more than 2 years). The Department have, therefore, rightly considered the period from 1.11.2002 onwards as duty period. As he did not perform any Govt. duty during the period of his suspension, he is not entitled to full pay and allowances for the relevant period and that period has rightly been considered as "non-duty". The benefit of revision of pay is also not admissible to him, in view of the clear provision in the instructions dated 27.8.1958, reproduced above.

11. As a result of the above discussions, no merit is found in the OA which deserves to be dismissed. It is accordingly dismissed, without any order as to costs.


(S.K. Malhotra)
Member (A)

New Delhi
15.10.2004
/ug/