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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P. No. 63/98
in
O.A. 2029/92

Decided on 19. 8. 1998

Petitioner

Shri D.S. Sindhu
(By Advocate: Shri G.S. Bedrar)

Vs:

Respondents

Shri N. Gopalan, Controller
General of Defence Accounts
(By Advocate: Shri P.H. Ramchandani)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? Yes

S.R. Adige
(S.R. ADIGE)
Vice Chairman (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P. No. 63 of 19998
in

O.A. No. 2029 of 1992

New Delhi, dated this the 19th August, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri D.S. Sindhu,
S/o late Shri Dalmor Singh,
R/o C-49, Sector 9, New Vijay Nagar,
Ghaziabad (U.P.) PETITIONER
(By Advocate: Shri G.S. Beqrar)

Versus

Shri N. Gopalan,
Controller General of Defence Accounts,
West Block V,
R.K. Puram,
New Delhi-110022. RESPONDENTS
(By Advocate: Shri P.H. Ramchandani)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Petitioner alleges contumacious and culpable non-compliance by respondents of the Tribunal's order dated 8.9.97 in O.A. No. 2029/92.

2. A perusal of the aforesaid order indicates that petitioner was proceeded against departmentally on certain charges of misconduct along with two others. The E.O. recorded a finding that petitioner and two colleagues had committed the misconduct, ^{but,} ~~and~~ petitioner himself had no role to play and accordingly absolved him of the misconduct. The disciplinary authority, however, disagreed with the findings of the E.O., but without communicating the reason for his disagreement to petitioner, and giving him an

opportunity to represent before inflicting any punishment upon him, issued order dated 1.10.91 dismissing applicant from service along with his two colleagues, which order was upheld in appeal.

3. Holding that applicant had been gravely prejudiced thereby, the Tribunal in its aforesaid order dated 8.9.97

- (i) quashed the impugned order of the disciplinary authority and appellate authority, giving liberty to respondents to continue with the proceedings from the stage of the disciplinary authority communicating the reasons for his disagreement with the E.O's findings and giving applicant a notice in respect of the same for representation, if any.
- (ii) directed reinstatement of applicant in service with grant of all consequential benefits.
- (iii) directed that the aforesaid orders were to take effect immediately and were to be implemented within 8 weeks from the date of receipt of a copy of the same.

4. Petitioner contends that as per aforesaid order respondents ^{were} ~~were~~ to reinstate him in service on the post from which he had been dismissed, and he should have been released in full ^{his} consequential benefits by 30.11.97, but for from reinstating him and releasing his consequential benefits within the stipulated period he was placed under deemed suspension w.e.f. 1.11.91 under Rule 10(4) CCS (CCA) Rules vide order dated 19.11.97 (Ann. CCP-4) and the DE against him is deemed to be pending against him from the stage of serving a copy of the enquiry report intimating reasons for disagreement with

the findings of the E.O. which amounts to contumacious and culpable non-compliance of the Tribunal's order dated 8.9.97.

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5. We have heard applicant's counsel Shri Beqrar who has also filed written arguments and respondents' counsel Shri Ramchandani. With our permission Shri B.B. Raval also made submissions supporting Shri Beqrar's contention.

6. In this connection during hearing of the C.P. on admission on 3.3.98 before notice was directed to be issued to respondents, the Bench (it was another coordinate Division Bench), while considering this very issue raised by applicant's counsel, namely, that instead of reinstating applicant, respondents had suspended him and had thereby committed contempt, had observed thus

" The fact that applicant was again put under suspension itself would amount to first reinstatement of applicant in service and thereafter suspension, because had he not been taken back in service, no action of suspension could have been taken against.

The next question is that of consequential benefits. After the termination order was initially passed, applicant ought to have been deprived of the subsistence allowance which he was getting till that date. Since by implication, applicant was first reinstated and thereafter put under suspension, he is entitled to subsistence allowance which he was getting on the date of termination of his service and that amount must continued to be paid to him until termination of the departmental disciplinary proceedings started afresh against him after the aforesaid order was made on 8.9.97.

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Presently, we do not know if applicant is or is not getting subsistence allowance. Ld. counsel says that although the suspension order was received by applicant on 19.11.97, he has not been paid the arrears of subsistence allowance after the date of the suspension order."

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7. Rule 10(4) CCS (CCA) Rules reads thus:

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Govt. servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

8. In the present case, a perusal of the Tribunal's order dated 8.9.97 makes it abundantly clear that the Bench did not go into the merits of the allegation of misconduct against the applicant, but set aside the dismissal order and appellate order, on account of procedural lacunae, namely non-communication to applicant by Disciplinary Authority of reasons for his disagreement with the E.O's findings, before imposing the penalty of dismissal. It is for this reason that the Tribunal quashed the impugned

order and directed reinstatement with consequential benefits but at the same time gave liberty to respondents to proceed from the stage of the Disciplinary Authority communicating his reasons for disagreeing with the EO's findings, and giving applicant reasonable opportunity to represent against the same, before taking a final decision in the matter. Shri Beqrar has contended that Rule 10(4) is applicable to cases decided by Court of Law on technical grounds, but cannot be invoked in cases decided by the Civil Court/ Administrative Tribunal on the basis of violation of procedure of Article 311 (2) of the Constitution. We are unable to agree with the view that technical grounds do not include procedural violations. It is precisely because of procedural violation of Article 311(2) or, indeed of Articles 14 & 16 which amounts to denial of the fundamental rights of a Govt. servant that the Tribunal intervenes in a service matter in the exercise of its writ jurisdiction, as is apparent from the Tribunal's intervention by its order dated 8.9.97 in the present case and as manifestly the Bench did not go into the merits of applicant's misconduct, it is clear that Rule 10(4) CCS ((CCA) Rules would squarely apply. It is true that in the aforesaid order dated 8.9.97 the Bench while quashing the dismissal order and appellate order directed reinstatement with consequential benefits and Shri Beqrar has

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referred to FR 54A(1) at Appendix A; Chapter 5 of Swamy's Compilation of CCS (CCA) Rules 1997 Edition at Appendix B and Chapter 2 of that compilation at Appendix C of his written submissions to emphasise that reinstatement involves resumption of office by a person who has been dismissed, and applicant should have first been allowed to resume office and paid his consequential benefits in terms of the judgment dated 8.9.97 before respondents suspended him, but we have to interpret the Bench's ruling dated 8.9.97 harmoniously with the provisions of Rule 10(4), and in doing so, we find that the action taken by respondents vide order dated 19.11.97 in no way violates the judgment dated 8.9.97, because by placing applicant under suspension w.e.f. 1.11.91 would itself amount to applicant being taken on the strength of the organisation w.e.f. 1.11.91 as only a serving Govt. servant can be placed under suspension.

9. Respondents in Para 6 of their reply have stated, and it is not denied in rejoinder, that subsistence allowance for the period 1.11.91 to 30.11.97 and from 1.12.97 to 28.2.98 amounting to over Rs.2.41 lakhs (after deducting Income Tax) have been paid to applicant in consequence of his deemed suspension under Rule 10(4) and it is further stated that whether the intervening period should be treated as period spent on duty with

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full pay and allowances or not can be decided only after conclusion of the D.E. proceedings under Rule 53.

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10. In so far as the period laid down in the order dated 8.9.97 is concerned, Respondents state, which is also not denied in rejoinder that the Tribunal's order dated 8.9.97 was despatched by Registry on 16.9.97 and was received in the Dept. on 22.9.97. Applicant himself despatched the impugned order on 26.9.97 (Ann. A-9) and respondents issued the impugned order on 19.11.97, that is within the prescribed period of 8 weeks.

11. In this connection the Hon'ble Supreme Court's judgment in J.S. Parihar Vs. G. Duggar & Ors. JT 1996(9) SC 608 is also relevant. Relevant extracts of which read thus

"Once there is an order passed by the Govt. on the basis of the directions issued by the Court there arises a fresh cause of action to seek redress in an appropriate forum. The preparation of the seniority list may be wrong or may be right, or may or may not be in conformity with the directions. But that would be a fresh cause of action (and)..... cannot be considered wilful violation of the orders."

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12. In view of the above, we are unable to hold that respondents are prima facie guilty of contempt of court and the CCP is dismissed. Notices to alleged contemnors are discharged.

A. Veda Vahi
(DR. A. VEDAVALLI)
MEMBER (J)

Antelope
(S.R. ADIGE)
VICE CHAIRMAN (A)

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