

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 25th DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.1492 of 2005

(U/s 19, Administrative Tribunal Act, 1985)

Hari Prasad Gupta
S/o Late Shri Ram Lal Gupta
Resident/village-Agrahari, Niwas,
Betihata South National Highway,
Post Sheopuri, New Colony,
District Gorakhpur.


..... ***Applicant***

Present for Applicant : Shri Rakesh Verma, Advocate.

Versus

1. Union of India through Ministry of Communication and Posts Department of Postal, New Delhi.
2. Chief Post Master General, Lucknow.
3. Post Master General Region, Gorakhpur.
4. Director Postal Services Gorakhpur Region Gorakhpur.
5. Senior Superintendent R.M.S. Division Gorakhpur.
6. Head Record Officer, R.M.S. Division Gorakhpur.

..... ***Respondents***

 ***Present for Respondents : Shri S. Srivastav, Advocate***

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

Heard Shri Rakesh Verma, learned counsel for the applicant and Mr. S. Srivastava, learned counsel for the respondents.

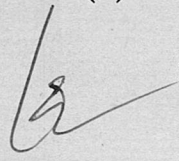
2. Briefly the facts of the case are as under:-

(a) The applicant, while working as Accountant in R.M.O. Gorakhpur was placed under suspension vided Memo dated 14-08-1981 and the said suspension was revoked on 31-08-1987. The entire period of suspension had been treated as duty only for purposes of qualifying service for pension and the pay was restricted to the extent of subsistence allowance granted to the applicant. The applicant was, (as reflected in order dated 11-12-2001 in OA No. 1442 of 2001) on a disciplinary proceedings, removed from service but on appeal, he was allowed to be reinstated.

(b) On appeal before the appellate authority, viz the Director of Postal Services, the period of absence had been bifurcated as under:-

(i) 14-08-1981 to 13-09-1985: Treated as duty for the purpose of pension only and the pay during this period restricted to subsistence allowance;


(ii) 14-09-1985 to 31-08-1987: Treated as duty for all purpose including full pay and allowances.



(c) the Senior Superintendent of Post Office had by communication dated 08-03-1991 ordered that the period of suspension from 14-08-1981 to 13-09-1985 shall count (i) for pension purposes and (ii) for the purpose of annual increments, while the pay during that period would be restricted to subsistence allowance only and for the rest of the period of suspension, the same would be treated as duty for all purposes.

(d) On the applicant's raising the level upto the Member, Postal Board, the said authority has upheld the order of the appellate authority, vide (b) above.

(e) The Office of the P.M.G. Gorakhpur vide its letter dated 02-04-1998 referred to the order of the Senior Superintendent of Post Office (vide © above) and that of the Director of Postal Service (vide (b) above) and directed the Senior Superintendent of Post Office to have the order of the Director of Postal services implemented in toto. 3. As the above order was not implemented, the applicant moved the Tribunal in OA No. 1442 of 2001 which was disposed of on 11-12-2001 permitting the applicant to move a representation and directing the respondents to consider and decide the representation. Applicant's repeated representation did not yield any fruitful result and in the meantime, the applicant superannuated on 31-07-2003. The authorities had cancelled the order dated 08-03-1991 passed by the Senior Superintendent of Post Office whereby the applicant's period of suspension from 14-



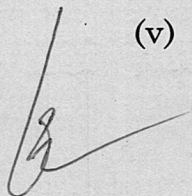
08-1981 to 13-09-1985 shall count (i) for pension purposes and (ii) for the purpose of annual increments, while the pay during that period would be restricted to subsistence allowance only and for the rest of the period of suspension, the same would be treated as duty for all purposes. Order at Annexure A-1 dated 31-01-2005 refers.

Hence, this O.A.

3. In this O.A. the applicant has prayed for the following relief

:-

- (i) To issue a Original Application order or direction in the nature of Certiorari quashing the order dated 31.1.2005 passed by respondent No. 5 vide their letter No. B-1-2/Disc./Petition H.P. Gupta/92.
- (ii) Issue an order or direction in the nature of mandamus direction for the implementation of orders dated 9.3.90 and 8.3.991 so that the applicant may get his pay fixed on 14.9.85 and get his pension @ Rs. 7400/- instead of Rs. 6800/-
- (iii) Issue an order or direction in the nature of mandamus directing the respondents to pay difference of pay & allowances from 14.9.1985 and pension from 1.8.2003 along with interest and cost of suit.
- (iv) Issue any other order or direction which this Hon'ble Tribunal may deem, fit and proper in view of the facts and circumstances of the case.
- (v) And award cost of the application in favour of the applicant.



4. Respondents have contested the O.A. According to them, the applicant had been penalized during the aforesaid period, debarred from the post of accountant vide CPMG order dated 28-08-1986 and was allowed to function as Sorting Assistant from 01-09-1987 and thereafter, was awarded one time bound promotion w.e.f. 14-09-1989. It has been contended by the respondents that the Senior superintendent has no power to widen the scope of the appellate authority's order by introducing the element of increment for the first part of the suspension period. In fact, after the decision of the Tribunal in OA No. 1442 of 2001, the matter was taken up to the level of the Director General's office and it was held that all that the applicant was entitled to was as contained in the order of the Director of Postal Services.

5 Counsel for the parties had presented their case and the counsel for the applicant has also furnished his written arguments.

6. Arguments were heard and documents and written submission perused. The rule on the subject, as contained in FR 54 is as under:-

"54. (1) When a government servant who has been dismissed, removed, compulsorily retired or suspended is reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the 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 or for the period of suspension ending with the date of his retirement on superannuation 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 mentioned in sub-rule (1) is of opinion that the government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the government servant shall be given the full pay and allowances to which he would

have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(3) In other case, the government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible:

Provided further that such portion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 53.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty, for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

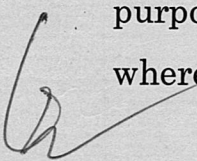
Provided that if the government servant so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the government servant."

7. In the instant case, the Director of Postal Services had considered the entitlement of the applicant and using his discretion treated the period of absence as under:-

a) 14-08-1981 to 13-09-1985: Treated as duty for the purpose of pension only and the pay during this period restricted to subsistence allowance;

b) 14-09-1985 to 31-08-1987: Treated as duty for all purpose including full pay and allowances.

8. Obviously, the reason for the entire period not having been treated as duty for all purposes is that the applicant was not fully exonerated in the disciplinary proceedings and reduced penalty was inflicted upon him. If the applicant's claim is to be accepted and the entire period of suspension is treated as duty for all purposes, then there wont be any difference between the case where there is complete exoneration and where there be reduced




penalty. Further, the individual during the period of suspension did not render any service. It was for this reason that the authorities have been empowered to consider and pass specific order to regulate the period of suspension.

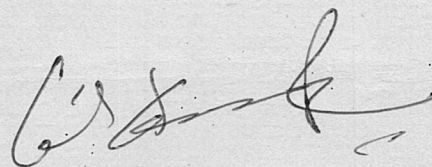
9. In the instant case, certainly the Sr. Superintendent had exceeded his jurisdiction by widening the scope of the order passed by the Appellate authority. As such, the order dated 08-03-1991 was rightly cancelled by the impugned order dated 30-01-2005. That the order dated 08-03-1991 refers to the G.O.I. orders of 1962 which are to be read with FR 54 B would not be of much assistance to the applicant since the order of the Director of Postal Services is crystal clear and did not require any interpretation as done by the Sr. Superintendent.

10. In view of the above, we do not find any legal infirmity with the order impugned. It is presumed that the applicant's pension has been rightly fixed after treating the period of suspension as contained in the order of the Appellate authority and by taking into account the pay and increments for the latter part of suspension.

11. The O.A. is dismissed. No cost.


Member (A)

Shashi


Member (J)