



**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE**

ORIGINAL APPLICATION NO.170/00934/2019

ORDER RESERVED ON 10.08.2021

DATE OF ORDER: 01.10.2021

CORAM:

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)
HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

Gayathri Bai
 W/o N.C.Narayana Rao
 Aged 63 years, residing at
 No.9/2, 1st Floor, 2nd Cross
 S.C.Garden
 Opp: BSNL Exchange
 Bengaluru-560 042.Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. The Director
 National Institute of Mental Health & Neurosciences
 (Institute of National Importance)
 Bengaluru-560 029.
2. Board of Management
 National Institute of Mental Health & Neurosciences
 (Institute of National Importance)
 Bengaluru-560 029
 By its Registrar.
3. The Administrative Officer
 National Institute of Mental Health & Neurosciences
 (Institute of National Importance)
 Bengaluru-560 029.Respondents

(By Advocate Shri K.Prabhakar Rao)



ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. Quash the (a) Order No.NIMH/PER(5)/GB/2014-15 dated 05.01.2015, issued by the respondent No.1, Annexure-A15 and (b) Official Memorandum No. NIMH/PER(5)/GB-PF/2019-20 dated 15.07.2019, issued on behalf of the respondent No.2, Annexure-A20.
 - ii. Direct the respondents to extend her consequential benefits accordingly treating her suspension period as on duty.
2. The facts of the case as pleaded by the applicant are as follows:
 - a. The applicant joined the National Institute of Mental Health & Neurosciences(NIMHANS) on 25.10.1982 as LDC. She was subsequently promoted as UDC w.e.f. 03.04.1995.
 - b. The applicant was issued with a Memo dated 27.06.2003 containing the charges alleging lack of devotion to duty and insubordination. The applicant was placed under suspension in contemplation of further disciplinary proceedings vide order dated 29.07.2003.
 - c. Subsequently, vide another memo dated 12.08.2003, a separate charge sheet was issued to the applicant containing 6 separate articles of charges alleging acts of subversive of discipline.
 - d. An enquiry was held against both these charges which finally culminated into imposition of penalty imposed by the disciplinary authority (Respondent No.1) vide orders dated 03.06.2005. A minor penalty under Rule-11 (iv) of CCS(CCA) Rules, 1965 was imposed



on her of withholding of two increments with cumulative effect. The suspension of the applicant was also revoked with immediate effect and it was ordered that the suspension period from 29.07.2003 till the date of her reporting back for duty be treated as 'Leave of the kind Due' comprising EL/HPL/EOL on private affairs.

- e. The applicant preferred an appeal against the order of penalty on 15.07.2005. The Appellate Authority i.e. the Board of Management, NIMHANS, Bangalore considered the appeal and vide orders dated 18.11.2005/01.12.2005 confirmed the punishment imposed by the Disciplinary Authority. However, the Board of Management resolved to consider her request for second Financial Upgradation under 'Time Bound Promotion Scheme' as per Rules and in accordance with provisions of Time Bound Promotion Scheme.
- f. The applicant challenged the order of penalty imposed on her by the Appellate Authority by approaching the Hon'ble High Court in WP.No.17967/2007 which was later on transferred to this Tribunal and renumbered as TA.No.222/2009. This Tribunal dismissed the TA No.222/2009 vide order dated 07.04.2011. Aggrieved by the dismissal of the TA, the applicant challenged the same before the Hon'ble High Court of Karnataka in WP.No.19213/2011. The High Court disposed of the said WP, setting aside the impugned order vide order dated 11.09.2012 on the grounds that the respondents had not furnished a copy of the inquiry report to her, which would have enabled her to defend herself, before the penalty was imposed on her, having regard to the nature of charges and the reply filed by her. The



High Court directed the respondents to furnish a copy of the inquiry report to the applicant and pass an order after considering her reply to the findings of inquiry.

- g. In compliance of the orders of the Hon'ble High Court, the respondents vide OM dated 11.10.2012 furnished a copy of the inquiry report to the applicant with directions to make her submission on the same. The applicant submitted her reply which was considered by respondent No.1. After consideration, he again imposed the penalty of withholding of two increments with cumulative effect and treating the period of her suspension from 29.07.2003 to 07.05.2005 as 'Leave of Kind Due' on 8.03.2013. This order issued by respondent No.1 was appealed against before respondent No.2 which was rejected vide orders dated 17.07.2013.
- h. The applicant subsequently challenged the order dated 17.07.2013, before this Tribunal in OA.No.647/2013. This Tribunal, vide orders dated 06.08.2014 disposed of the OA.No.647/2013 setting aside the order of penalty and remitting the matter back to the disciplinary authority to pass a reasoned order in accordance with the CCS(CCA) Rules, 1965. In pursuance of the said order of this Tribunal, the disciplinary authority passed the order dated 05.01.2015 again holding that the charges contained in the Memorandum dated 27.06.2003 are proved, whereas the charges levelled against the applicant in the Memorandum dated 12.08.2003 are not proved. On the proven charges, the penalty of withholding two annual increments of the applicant with cumulative effect was imposed along with the



direction that the period of suspension undergone by the applicant from 27.08.2003 till the date of her reporting back for duty be treated as “leave of the kind due”. This order was again appealed against before the Governing Body of the respondent No.2 (Board of Management) and the Governing Body resolved that the disciplinary action taken by NIMHANS is in order and the appeal of the applicant was rejected vide orders dated 29.07.2015.

- i. The said order was again challenged before this Tribunal in OA.No.1603/2015 and this Tribunal, vide orders dated 18.08.2016 allowed the OA.No.1603/2015 in part quashing the orders rejecting the appeal of the applicant and remanded the matter back to the appellate authority to pass a reasoned and speaking order in accordance with the rules within 3 months from the date of receipt of issuance of the order.
- j. The respondent No.3 (appellate authority) reconsidered the applicant's appeal and vide OM dated 15.07.2019 disposed of the appeal on the following terms:
 - i. Appeal allowed in part;
 - ii. Recovery of Rs.44,256/- effected from the subsistence allowance paid to the appellant shall be restored to the appellant;
 - iii. Appellant is exonerated of the charges levelled against her by article of charge dated 12.08.2003;
 - iv. The finding that the appellant is guilty of misconducts levelled against her by articles of charge dated 27.06.2003 is confirmed.



v. The penalty of withholding of two annual increments with cumulative effect from 03.06.2005 imposed by the Disciplinary Authority is substituted by penalty of withholding of two annual increments without cumulative effect with effect from 03.06.2005.

3. The respondents have filed their reply statement wherein they have averred as follows:

- a) The National Institute of Mental Health and Neuro Sciences called as 'NIMHANS' is a premier institute of national importance which comes under the Ministry of Health and Family Welfare, Union of India. The Institute is governed by the provisions of the National Institute of Mental Health and Neurosciences, Bangalore Act, 2012 which came into force w.e.f. 29.11.2013. The employees and their service conditions are governed by the Central Civil Services (Conduct) Rules, 1964, under Section 41 of the abovementioned Act.
- b) The applicant is challenging two OMs first one dated 05.01.2015 issued by 2nd respondent imposing penalty of withholding two increments with cumulative effect to be effective from 03.06.2005 and treating her suspension from 29.07.2003 to 06.06.2005 as 'leave of kind due' and second OM dated 15.07.2019 wherein the Appellate Authority i.e. 2nd respondent, after considering the case of the applicant on merits, took a lenient view.
- c) It is apparent that the applicant was shown leniency by the 1st respondent and he has passed a reasonable order instead of awarding harsh



punishment to the applicant. There is no cause of action for the applicant to approach this Tribunal for any relief in the application.

- d) The disciplinary authority's penalty order of withholding of two increments with cumulative effect from 03.06.2005 was substituted with the penalty of withholding of two annual increments without cumulative effect w.e.f. 03.06.2005. This order of Appellate Authority did consider the case of the applicant in a lenient manner and passed an order of withholding two annual increments without cumulative effect. Hence, the respondent Institute was justified in passing the order dated 15.07.2019 and the same may not be interfered by this Tribunal.
- e) The applicant has received a sum of Rs.44,256/- under the head of Subsistence Allowance on 23.09.2019. Having accepted the findings of the Appellate Authority dated 15.07.2019, the applicant is estopped from filing the present Appeal contending that there was a delay in considering her appeal dated 20.01.2015.

4. Heard the learned counsels for the parties.

5. The facts of the case reveal that there has been a plethora of litigations in this matter from the year 2003 onwards, when the charges were initially framed against the applicant. The disciplinary authority had held the applicant guilty of the charges and imposed on her a penalty of withholding of two annual increments with cumulative effect. Besides this, the period of suspension was also ordered to be treated as "leave of kind due".



6. The Appellate Authority issued the impugned order dated 15.07.2019 after considering the entire history of the case and reviewing the orders of the disciplinary authority dated 05.01.2015. The representation of the applicant has also been considered in detail by the Appellate Authority in their orders dated 15.07.2019. After due consideration of the entire case, and having regard to the totality of the circumstances and the fact that the employee has since retired on reaching the age of superannuation, the Appellate Authority has taken a lenient view and reduced the penalty to withholding of two annual increments without cumulative effect. It has also ordered restoration of the recovery of Rs.44,256/- which had been affected from the subsistence allowance paid to the applicant.
7. As regards treating the period of suspension is concerned, the Appellate Authority has taken a view that unless the disciplinary authority comes to the conclusion that the suspension was wholly unjustified and the period of suspension has to be treated as on duty, the suspension period cannot be treated as on duty. It has also stated that the competent authority has the discretion to regulate the manner in which the period of suspension has to be treated. It has further stated that the orders treating the period of suspension as "leave of the kind due" is in sound exercise of such discretion and cannot be faulted except to the extent of recoveries made from the subsistence allowance. Since, according to the Appellate Authority, the recovery from the subsistence allowance has already been annulled, hence, no further direction regarding treating the period of suspension as on duty can be allowed.
8. After going through the detailed order issued by the Appellate Authority dated 15.07.2019, this Tribunal does not find any ground to disagree with the final



orders issued by the Appellate Authority as far as it relates to the quantum of punishment now imposed on the appellant, amounting to minor penalty of withholding of two increments without cumulative effect.

9. The Department of Personnel and Training (DoP&T), Govt. of India had issued consolidated instructions on suspension vide their OM No.11012/17/2013-Estt (A) dated 02.01.2014. As per these guidelines, the following general instructions/guidelines have been reiterated:

Suspension, though not a penalty, is to be resorted to sparingly. Whenever a Govt. servant is placed under suspension not only does the Govt. lose his services but also pays him/her for doing no work. It also has a stigma attached to it. Therefore, the decision to place a Govt. servant under suspension must be a carefully considered decision and each case would need to be considered on merits.

Disciplinary Authority may consider it appropriate to place a Government servant under suspension in the following circumstances. These are only intended for guidance and should not be taken as Mandatory: -

- (i) Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);*
- (ii) where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working;*
- (iii) where the continuance in office of the Government servant will be against the wider public interest [other than those covered by (i) and (ii)] such as there is public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals, particularly corruption;*
- (iv) where allegations have been made against the Government servant and preliminary inquiry has revealed that a *prima facie* case is made out which would justify his prosecution or is being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.*



*NOTE: In the first three circumstances the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.*

Suspension may be desirable in the circumstances indicated below: -

- (i) any offence or conduct involving moral turpitude;*
- (ii) corruption, embezzlement or misappropriation of Government Money, possession of disproportionate assets, misuse of official powers for personal gain;*
- (iii) serious negligence and dereliction of duty resulting in considerable loss to Government;*
- (iv) desertion of duty;*
- (v) refusal or deliberate failure to carry out written orders of superior officers.*

In respect of the types of misdemeanor specified in sub clauses (iii) and (v) discretion has to be exercised with care.

10. With regards to treatment of the period of Suspension after conclusion of Departmental Proceedings, in these instructions issued by the DoP&T, GOI, vide OM No.11012/17/2013-Estt (A) dated 02.01.2014, it has been categorically stated as follows:

On Conclusion of Proceedings

A. If Exonerated

- a) Where the Competent Authority is of the opinion that the suspension was wholly unjustified, the Government servant may be paid full pay and allowances.*
- b) Where the Competent Authority is of the opinion that the proceedings were delayed for reasons directly attributable to the Govt. servant, it may after notice to the Govt. servant and considering his representation-if any, order a reduced amount to be paid.*
- c) The period of suspension will be treated as period spent on duty for all purposes.*

B. Minor Penalty is imposed

Where the proceedings result only in minor penalty being imposed, then the suspension is treated as wholly unjustified.

(DoPT O.M. No. 11012/15/85-Estt (Al dt, 3-12-1985)



11. A perusal of the DoP&T OM No: 11012/15/85- Estt dated 03.12.1985 indicates that it contains the following guideline/instructions:

"The Government servant could be placed under suspension if a prima-facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty, The Staff Side of the Committee of the National Council set up to review the CCS(CC&A) Rules, 1965 had suggested that in cases where a government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension Period. Government have accepted this suggestion of the staff accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR(54-3) and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B".

12. In the present case, the final penalty imposed upon the applicant is a minor penalty of withholding of two annual increments without cumulative effect. Hence, in this case, as per the instructions issued by the Government vide DoP&T OM No: 11012/15/85- Estt dated 03.12.1985, referred to above, the period of suspension from 29.07.2003 to 07.05.2005 should be considered as wholly unjustified in terms of FR (54-3) and the applicant should be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

13. In view of the above, this Tribunal, does not find any reason to disagree with the final orders issued by the Appellate Authority as far as they relate to



imposition of a minor penalty of withholding of two increments without cumulative effect. However, as far as the treatment of the period of suspension of the applicant is concerned, the OA is partly allowed, with the directions that the period of suspension from 29.07.2003 to 07.05.2005 shall be treated as on duty for all purposes and all consequential remaining monetary benefits of pay and allowances be paid to the applicant after taking into account the subsistence allowance, and any other allowances, if any, already paid to her, for the period of suspension. There shall be no interest due for these remaining monetary benefits, as long as the due payment is made to the applicant within a period of two (2) months from the date of receipt of a certified copy of this order. Interest charges, for any further delay beyond two months, shall also be paid, at the prevailing interest rates paid by banks for their savings bank accounts.

14. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(SURESH KUMAR MONGA)
MEMBER (JUDL)

/ps/