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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

....

O.A. No. 965 Of 1988

Dated: 11th August, 1995.

Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. T.L. Verma, J.M.

Kamlakar Chaubey, Postal Assistant,
Sub-Post Office, B.H.U. Varanasi ... Applicant.

(By Advocate Sri S.P. Sinha)

Versus

1. Union of India,
through Senior Superintendent Post
Offices(East) Varanasi.
2. The Director Postal Services,
Allahabad. ... Respondents.

...
(By Advocate Sri N.B. Singh)

ORDER

(By Hon. Mr. S. Das Gupta, Member(A))

The applicant was a postal Assistant under
The Sr. Superintendent of Post Office(E) Varanasi. He
was suspended w.e.f. 10.1.1978. The suspension was
revoked w.e.f. 24.7.1987. Nearly, a year and half
~~there~~ after he was served with a charge-memo which finally
ended by awarding the punishment of censure. The
order of penalty, however, did not indicate as to
how the period of suspension would be treated. In
March, 1988 the disciplinary authority finally
decided after giving a notice to the applicant to
show cause that the entire period of suspension would
not count for anything other than pension and the
applicant would not get anything more than ^{what} he had

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received by way of sustenance allowance. The applicant appealed to the Director Postal Services, Allahabad against the decision of the disciplinary authority not to grant him full pay and wages for the entire period of suspension and by the impugned appellate order dated 1.7.1988, the appellate authority confirmed the ~~same~~ decision of the disciplinary authority. Challenging this decision, the applicant has approached this Tribunal through this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief of a declaration that the applicant is entitled to full pay and allowances for the entire period of suspension from 10.1.1978 to 27.7.1981 and to direct the respondents to pay the arrears.

It has already been prayed that the period of suspension be treated as on duty not only for the purposes of pension but also for other benefits like increment and fixation of pay accordingly. Yet another prayer is that a direction be issued to the respondents to grant selection grade pay to the applicant from 30.11.1983 which was delayed due to penalty of censure. The applicant's case rests on the instructions issued by the department of Personnel and Training vide their O.M. No. 11012/15/85-Estt(A) dated 3.12.1985. A copy of the circular is at Annexure- A 3. The instructions contained therein take away the discretion on the part of the disciplinary authority to treat the period of suspension of a Government Servant ^{followed} by imposition of only minor penalty as the period otherwise ^{than} on duty in terms

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of F.R. 54-B. It lays down that when a period of suspension is followed by imposition of minor penalty, the suspension can be taken as wholly unjustified in terms of F.R.54-B and the employee concerned, should therefore, be paid full pay and allowance for the period of suspension by passing a suitable order under the said Rule.

2. The facts in this case are not in dispute. The respondents in their counter affidavit have taken a defence that the said circular dated 3.12.1985 takes effect retrospectively and it is clearly specified in that circular that past cases already decided need not be reopened. The stand taken by the respondents is that the decision in the case of the present applicant having been taken prior to the issuance of the circular, his case shall not be covered by the said circular.

3. The applicant did not file a rejoinder affidavit in view of the fact that the facts in this case have been admitted by the respondents. In view of this, the only point which falls squarely for our consideration is whether the ~~OO~~ O.M. Dated 3.12.1985 will have applicability to the case of the present applicant or not.

4. We have heard the learned counsel for the parties ~~and~~ and have gone through the pleadings of the case carefully.

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5. The purport of the instructions contained in the O.A. dated 3.12.1985 is quite clear. If a government servant is placed under suspension, it is presumably for a serious misconduct for which disciplinary action is either contemplated or has been initiated against him. If, however, the disciplinary proceedings ultimately resulted in imposition of minor penalty, the presumption would be that the justification for placing the employee under suspension ^{did} ~~do~~ not exist and thus, the suspension itself, would become ^{ipso} ~~ipso~~ facto wholly unjustified and thus, in terms of F.R. 54-B, the entire period shall have to be treated as on duty for all purposes. The only grey area in this circular is in para- 3 thereof. This para reads as follows;

"These orders will become effective from the date of issue past cases already decided ~~00000~~ (emphasis supplied) need not be reopened."

6. The paragraph quoted above prohibits reopening of the ~~the~~ cases which have already been decided. The ^{germane} question ^{is} whether the decision referred to in this paragraph would relate to the ~~decision~~ of the disciplinary authority/ appellate authority as regards the penalty to be imposed or the decision as ^{to} the manner in which the period of suspension preceding the imposition of penalty would be treated. The respondents would have us take a view that cases in which the decision of the disciplinary authority/ appellate authority regarding the penalty to be

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imposed has been taken prior to issuance of this O.M. would not be covered by the instructions contained therein. We are unable to accept this view. ■ A more rational view to take, which the learned counsel for the applicant urged upon us to accept, is that the decision referred in para 3 of the OM relates to the decision taken by the disciplinary authority/ appellate authority regarding the manner in which the period of suspension is to be treated. It is settled position of law that where a rule is ^{susceptible} susceptible to two alternatives interpretation, one should accept that the interpretation of the Rule which would advance the ^{intention} intention behind the framing of the Rule. In the present case, the clear intention of the rule makers is to give relief to those government employees who have been suspended but in whose case ultimately the only a minor penalty is imposed. If we take the alternative view that all decisions regarding the manner in which the period of suspension followed by imposition of minor penalty is to be treated taken subsequent to the issuance of this O.M. shall be covered by the instructions contained therein will be consistent with the purpose behind the formulation of this rule.

7. We have noted that the applicant was kept under suspension for a more than three and half years. Also the charge memo was served one and half years after the suspension was revoked. The disciplinary action resulted only on imposition of minor penalty of censure. We have also noted that the respondents in their counter affidavit have averred that the applicant was

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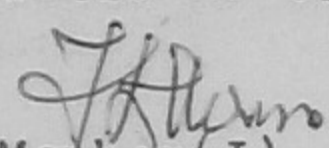
suspended on suspicion that he was in some way responsible for a fraudulent transaction. However, it is equally correct that nothing came out in the inquiry regarding his direct involvement in such fraudulent transaction, and therefore, only penalty of censure was imposed. Had the disciplinary authority which had imposed the penalty of censure ~~on~~ on 21.4.1984 had taken a decision within a reasonable time there of as ^{regards} the manner in which the period of suspension is to be treated, such decision, undoubtedly, could not have been reopened and brought within the purview of the instructions contained in the O.M. ~~dated~~ dated 3.12.1985. Since the disciplinary authority itself delayed taking a decision and took the decision as to how ~~to~~ to treat the period of suspension only on 10.3.1988, and such decision was confirmed by the appellate authority on 1.7.1988, they cannot now be allowed to take the advantage, if any, of the provisions in para 3 of the said OM and deprive the applicant of the benefit of the instructions contained therein.

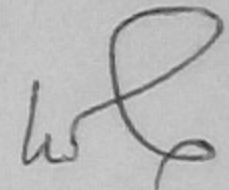
8. So far as the question of the applicant's promotion to the selection grade is concerned, there is nothing in the averments to establish any right of the applicant to be considered for such promotion. This relief also does not flow from the other relief i.e. treating the period of suspension as on duty. This relief cannot, therefore, be considered.

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9. In the result, this application is partly allowed. The entire period of suspension of the applicant shall be taken as wholly unjustified for the purpose of the provisions contained in F.R. 54-B and he shall be entitled to be given all benefits flowing there from including the arrears of salary, increments and consequential fixation of pay etc. Let this direction be complied with within a period of 3 months from the date of communication of this order. The applicant having ~~be~~ already retired from service may also be entitled to certain enhancement in the retiral benefits as ^a consequence of re~~fi~~xation of pay. If so, the benefits thereof shall be granted to the applicant within a period of 6 months from the date of communication of this order. No order as to costs.


Member(J)


Member(A)

(n.u.)