

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 26th May OF 1995.

ORIGINAL APPLICATION No. 1639 OF 1994.

Hari Prasad Gupta, S/o Late Shri Ram Lal Gupta,
R/o Mohalla Betia Hata (South), P.O. Sheopuri,
New Colony, Gorakhpur, employed as sorting Asstt.
R.M.S.'G' Division, Gorakhpur.

..... Applicant.

Versus

1. Union of India through Secretary,
Ministry of Communication, Government of India,
New Delhi..
2. Director Postal Services,
Gorakhpur Region, Gorakhpur.
3. Senior Supdt. R.M.S.'G' Division,
Gorakhpur.

..... Respondents.

CORAM: Hon'ble Mr. T.L. Verma, Member (J).

Hon'ble Mr. K. Muthukumar, MEMBER (A).

O. R D E R (RESERVED)

By Hon'ble Mr. T.L. Verma, MEMBER (J).

1. This application has been
filed for quashing the order dated 22.2.1988, 9.3.1990
and 27.10.1993 and for issuing a direction to the
respondents to treat the applicant's period of suspension
from 14.8.1981 to 13.9.1985, as period spent on duty
for all purposes including pay and allowances with
interest.

2. The applicant was appointed as Sorting Assistant in R.M.S Wing of the Departmental Posts and Telegraph in December 1963 and on his qualifying in the Accounts Examination in the year 1972. He was posted as Accountant, Head Record Office R.M.S 'G' Division, Gorakhpur, in the year 1974. He was put under suspension on 14.8.1981 in contemplation of disciplinary proceedings. While working as Accountant Head Records Office R.M.S Gorakhpur on 14.8.1981, he remained under suspension from 14.8.1981 to ³¹~~30~~.8.1987.

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3. The Charge Memo alongwith Article of Charges and Statement of imputation was served on 5.8.1982. Thereafter, three more chargesheets were served on him. In all the chargesheets allegations of over payment of leave salary to group 'D' Employees of the Division was made against the applicant. In the first chargesheet penalty of rejection to the minimum of the time scale of pay for three years was imposed. The Appellate Authority, however, modified the penalty of rejection to the minimum scale of one year only. In the second chargesheet, punishment of removal from service was passed. On appeal, the penalty of removal from service was moderated to ^{censure}~~removal~~ only. In the third chargesheet, the applicant was exonerated of all the charges and in the 4th, penalty of rejection of pay by five stages for three years was imposed. The period of suspension was revoked on 31.3.1987. The applicant was given notice by a letter dated 25.1.1988 to show cause as to why the period of suspension be not treated as non duty and his pay and allowances restricted

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to what he had drawn as subsistence allowance during the aforesaid period. The Competent Authority on a consideration of the show cause filed by the applicant ordered that period of suspension from 14.8.1981 to 31.3.1987 be treated as duty for pension only and pay and allowances restricted to the subsistence allowance drawn by him and the period from 1.4.1987 to 31.8.1987 be treated as duty and the official will be entitled for full pay and allowances for the period. In appeal, the Director Postal Services has passed the following the orders:-

"The period of suspension from 14.8.1981 to 13.9.1985 shall be treated as duty for the purpose of pension only and the pay and allowances for the said period shall be restricted to the subsistence allowance already paid to the appellant (ii) the period from 14.9.1985 to 31.8.1987 shall be treated as duty for all purpose and the appellant shall be entitled for full pay and allowances for the said period."

4. According to the applicant, the entire period of suspension should have been treated as on duty and he should have been paid full pay and allowances because the penalty of removal from service reduced to Censure only. The applicant, who appeared in person stated that the delay in disposal of the departmental proceedings against him ^{occurred} mainly because of the laches on the part of the Disciplinary Authority, in as much as , he took about one year in issuing the memo of charges from the date of order of suspension and more than one year in issuing the order of punishment from the date of receipt of Inquiry Report ignoring the provision contained in note I and II Rule 17 of

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P & T Manual Volume III which allows only six months time for completing the preliminary investigation and inquiry. Since, this was not done, it was stated that the Disciplinary Authority ought to have obtained permission of his superior authority to continue the suspension of the applicant. It was further stated that according to the G.I.C.S (Department of Personnel) O.M. No. 39/43/70-Esst.(A) 8.1.1971, final order in the disciplinary proceedings should have been passed within a period of three months from the date of the submission of the Inquiry Report. The only question that needs consideration is whether this Tribunal can interfere with the orders passed by the Disciplinary and Appellate Authority with regard to the question in issue.

5. We have heard the applicant in person and perused the record. The relevant provision pertaining to the regularisation of the period of suspension in case of a Government employee who is reinstated as a result of appeal contained in FR 54, 54(A) and 54(B). According to FR 54 when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order:-

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- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

Sub para 2 of the Rule however, provides that where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

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In the instant case the applicant has not been absolved of the charge framed against him by the appellate authority. All that has been done ~~is that~~ by the appellate authority is that the punishment of removal from service has been converted into one of censure. This being so, the applicant is not entitled to the benefit of provision of sub para 2 of FR 54.

The relevant clauses of FR 54 (B) are as follows;

"(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:....."

"(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) & (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

"(8) The payment of allowances under sub-rule (2), sub-rule(3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible. "

"(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than allowances admissible under Rule 53." (emphasis supplied).

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6. From the provisions of the FR as quoted above it is clear that automatic payment on full salary and allowances during the suspension period on revocation of the order of suspension is not contemplated. The provision suggests that it is competent for the concerned authority to deny payment of full salary and allowances for the period of suspension on a consideration of the

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totality of circumstances including the fact that the punishment of the applicant has remained. The disciplinary authority before passing the order under the provisions of FR 54 (B) served a notice on the applicant to show cause as to why the period of suspension be not treated as non-duty and his pay and allowances restricted to what he drew as subsistence allowance during the said period. After receiving the show cause notice by detailed and the reasoned order, the impugned order restricting payment of subsistence allowance for the period of

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suspension from 14.8.81 to 13.9.85 was passed. The order passed by the disciplinary authority has been upheld in appeal by the Director Postal Services Gorakhpur region and the Reviewing Authority Member(P) Postal Services Board. The competent authority having been given the discretion to pay the proportionate pay and allowances and treat the period as on duty for any specified purposes or only to pay the proportionate pay and allowances the Courts have no scope, to, but in in exercise of judicial review unless of course it is shown that the procedure laid down for determining and regularising the period of suspension on reinstatement of the Government employees ^{to the detriment of an employee} have not been complied with. We have carefully gone through the application and we find that there is not even a wis-per regarding infraction of the procedure laid down in that behalf. We are therefore, satisfied that the orders passed and by the disciplinary authority ^{and} upheld by the Appellate and the Reviewing authority does not warrant interference by this Tribunal. This application is therefore dismissed in limine.


Member-A


Member-J

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