

8

NO
Regularisation
of suspension
period

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 402 OF 1989.
~~T.A. No.~~

DATE OF DECISION 12-3-1993.

Chandralal Kevalram Ambwani, Petitioner

Mr. S. Tripathi, Advocate for the Petitioner(s)

Versus

Union of India, Respondent

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

Chandralal Kevalram Ambwani,
Divisional Accountant,
Office of the Executive Engineer,
Irrigation Mechanical Division
No.3, 6th Floor, Block No. 9,
New Sachivalaya Complex,
Gandhinagar.

.... Applicant.

(Advocate: Mr. S. Tripathi)

Versus.

Union of India, (Notice to be
served through the Dy. Accountant
General (A&E) Gujarat,
Multi storeyed Building,
Laldarwaja, Ahmedabad.)

.... Respondent.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 402 OF 1989

Date: 12-3-1993.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. S. Tripathi, learned advocate for
the applicant and Mr. Akil Kureshi, learned advocate
for the respondent.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, ^{is} filed by the
Divisional Accountant, serving in the office of the
Executive Engineer, Irrigation Mechanical Division,
Gandhinagar, seeking the relief to direct the
respondent, Union of India to issue the order
treating the period of suspension with effect from
17th April, 1985 to 23rd November, 1987 as period
spent on duty and grant all consequential benefits
and to direct the respondents to pay interest at
market rate on the withheld salary and allowance and

also to direct the respondents to fix the salary of the applicant on the revised pay scale with effect from 1st January, 1986 and to direct further to the respondents to disburse the salary and allowances as per revised rate with interest on the withheld salary.

3. The case of the applicant as pleaded in the application is that while he was posted as Divisional Accountant in the office of the Executive Engineer, Mahi Canal Construction Division, Cambay, he was implicated in a case under Prevention of Corruption ultimately Act, that he was exonerated of the criminal charge by the learned Special Judge, Ahmedabad in Special Case No. 31/85, decided on 12th May, 1987. The applicant was, thereafter, reinstated in service and was allowed to resume his duties on 24th November, 1987 after the suspension order passed against him was revoked. It is alleged by the applicant that as per the provisions of Fundamental Rules, Rule 54(B) and the provisions as contained in the instruction in para 2 of the Chapter 14 of Vigilance Manual, the authority competent to order reinstatement was to consider and to issue specific order regarding pay and allowance to be paid to the Government servant for the period of suspension ending with reinstatement and also was obliged to decide whether or not to treat the period of suspension as period spent on duty, but the respondent has not passed any order and has also not issued any order regarding pay and allowance

ms

payable to the applicant during the period of suspension and has also not issued order as to how the period of suspension is to be treated. The applicant gave a representation on 5th February, 1988 to the respondents about the same but the representation is also not decided and hence this application.

4. The respondent has filed reply contending that the applicant was acquitted on the charges levelled against him in the criminal trial giving him the benefit of doubt by the Special Court as per judgment referred to by the applicant and in view of the acquittal of the applicant in criminal trial, the applicant was reinstated in service after the suspension order was revoked as per clause (c) of sub rule 5 of rule 10 of C.C.S (C.C.A) Rules, 1965 by letter dated 17th November, 1987. It is contended that the acquittal of the applicant is not^a/clean acquittal in the eyes of criminal law. It is contended that as the departmental proceedings were contemplated, no decision was taken then for regularisation of pay and allowances for the suspension period and also whether suspension period is to be regarded as spent on duty. It is contended that this is to be reviewed after conclusion of the departmental proceedings in accordance with sub rule (6) of F.R. 54(B).

ms

5. The respondents have further contended that that applicant did not furnish his option for the revision of pay as per revised pay rules effective from 1st January, 1986. As per proviso (ii) to rule 6(i) of C.C.S (RP) Rules 1986/^{he}is deemed to have elected the revised scale of pay with effect from 1st January, 1986 as per Rule 6(1) and therefore, he should be deemed to have elected the revised scale of pay with effect from 1st January, 1986 on his return to duty after termination of his suspension. It is contended that accordingly his pay was fixed provisionally in the scale of pay corresponding to the pay in the existing scale payable from the date of his reinstatement pending regularisation of the period of suspension as per the proviso (ii) to rule 6(i) of CCS(RP) Rules, 1986 read with rule 6(iii) and (v) thereof and the pay of the applicant was fixed at Rs. 1750/- per month in the revised pay scale payable from 24th November, 1987 vide letter dated 15th April, 1988. It is contended that as the applicant has now brought to the notice of the respondent that annual increments have not been paid to him, necessary instructions are being issued to the Divisional Officer for drawal of normal annual increments.

res

6. The learned advocate for the applicant submitted that while the applicant was working as Divisional Accountant in the office of the Executive

Engineer, Mahi Canal construction Division at Cambay, a trap was laid by the Inspector Anti-corruption Bureau, Nadiad and it was alleged that currency notes worth Rs. 500/- were recovered from the open drawer of the table of the applicant on 23rd January, 1985. Thereafter, the applicant was placed under suspension on 17th April, 1985 vide order Annexure A-1 dated 17th April, 1985 by the Sr. Dy. Accountant General(A&E) Gujarat, Ahmedabad in exercise of the power conferred by sub rule (i) of Rule 10 of the C.C.S(CCA) Rules 1965. The Criminal Special Case was initiated before the Special Court Ahmedabad being Special Case No. 31/85 under the provisions of Prevention of Corruption Act in which the applicant was acquitted vide judgment in Special case No. 31/85, Annexure A-2. It is submitted by the learned advocate for the applicant that the respondents revoked the suspension order on 16th November, 1987 vide Annexure A-3 in exercise of the powers conferred under clause (c) of sub rule 5 of Rule 10 of CCS (CCA) Rules, 1965, and the applicant resumed his duty on 24th November, 1987. The learned advocate for the applicant submitted that as per the provision in Fundamental Rules - Rule 54(B), the officer competent to order reinstatement of the Government servant has to pass appropriate order regarding the pay and allowances that would be paid to the official during the period of suspension and he is also required to pass the order as to how the

M

period of suspension would be treated. He submitted that the applicant also made representation to that effect to the respondents on 5th February, 1988 vide Annexure A-4, but no action was taken by the respondents. The learned advocate for the applicant submitted that inspite of repeated request to the respondents to treat the period of suspension as spent on duty in view of the fact that the applicant was acquitted in the criminal case, the respondent has not passed any order so far. He submitted that in view of the provision of F.R. and the decided cases, it is obligatory on the part of the respondents to treat the period of suspension with effect from 17th April, 1985 to 23rd November, 1987 as spent on duty and the respondents should have passed the order of full pay and allowance to the applicant for the period of suspension and also should have granted all consequential benefits during the period of suspension as period spent on duty.

7. The learned advocate for the applicant submitted that the respondent has directed the applicant to be paid the fixed salary as a provisional measure pending regular fixation of pay and allowances as admissible to the applicant with effect from 1.1.1986. He submitted ^{that} notwithstanding the fact that the pay is revised with effect from ^{that} 1.1.1986 and the applicant was reinstated vide order

ms

dated 17th November, 1987 and resumed his duty on 24th November, 1987, he was forced to receive salary in the old scale till 12th April, 1988 and the respondents issued the order fixing the basic salary of the applicant at Rs. 1750/- as a provisional measure pending regularisation of the period of suspension vide Annexure A-5. It is submitted by the learned advocate for the applicant that it is not known on what principle the respondent directed the applicant to be paid the basic pay of Rs. 1750/-. He submitted that the respondent has not decided as to how the period of suspension is to be regularised. He relied on the decision in M.V. Narasimha Rao V/s. The Collector, West Godavari District, Eluru and others., 1967(1) SLR page 791 in which Rule 54 of F.R. is considered by the High Court of Andhra Pradesh and it was held ^{that} according to Rule 54, when a suspended Government servant is reinstated, the competent authority shall consider and make specific order on two points; (1) pay and allowances, and (2) whether, the period of suspension shall be treated as a period spent on duty. It was held that when the suspended Government servant is reinstated after dropping departmental proceedings and if the order of reinstatement is silent about pay and allowances, it is implied that order of suspension was not justified and as such the Government servant was entitled to full pay and allowances and suspension period should

be treated as one spent on duty. The learned advocate for the applicant also relied on the decision in Shri B.H. Marwaha V/s. Union of India & Ors., reported and in 1973(2) SLR page 315/ invited our attention to para 12 of this judgment. In this case, Fundamental Rule, Rule 54 is considered. It is held that before taking a decision under F.R. 54, it is the duty of the competent authority to give an opportunity to the Government servant of being heard. The learned advocate for the applicant submitted that in the instant case the respondents while reinstating the applicant did not pass any order as to how the period of suspension is treated and hence according to him, to the applicant and the full benefit should be given / the period of suspension should be treated as a period on duty. There is also another decision, B.C. Gupta V/s. Union of India, (1984) 2 SCC page 433. In this case before the Hon'ble Supreme Court, the appellant a permanent UDC was suspended in 1962 pursuant to criminal prosecution / launched against him and during the suspension period he was paid subsistence allowance. The trial court convicted him as a result of which he was dismissed from service, but on appeal his conviction was set aside and he was acquitted. Consequently, he was reinstated in service. In order to decide payments for suspension period, the concerned authority divided the period of suspension into two periods - first being from the date of suspension to

ms

the date of acquittal and the second being from the date of acquittal to the date of his reinstatement in service. With regard to the latter part, the concerned authority directed the payment of full salary after giving credit for the suspension allowance that was drawn by him. For the first period, the concerned authority was of the view that the appellant could not be said to be fully exonerated and therefore, directed payment of three-fourth of his salary. The appellant claimed full salary for the first period also and prayed for a decree of Rs. 3595.07 only. The appeal was allowed. It was held that the full amount of salary should have been paid to the appellant on his reinstatement for the entire period. There is also a decision in Corporation of the City of Nagpur V/s. Ramchandra G. Modak & Ors., AIR 1984 SC page 626. The Hon'ble Supreme Court has held in this decision as under:

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However merely because the accused is acquitted the power of the authority concerned to continue the departmental inquiry is not taken away nor its discretion in any way fattered."

ms

The learned advocate for the applicant submitted that no disciplinary inquiry was initiated till the acquittal, no charge sheet under disciplinary rules was either given before the acquittal, but charge-sheet was given on 16th December, 1988 only after the acquittal was given on 12th May, 1987. He submitted that if the respondents after one year and six months issues charge sheet, that is not the ground even not to pay the full salary of the period of suspension. The learned advocate for the applicant also invited our attention to the decision given by this Tribunal in the case of H.P. Prajapati V/s. Union of India & Ors., decided on 3rd February, 1993 in which after following the decision in B.C.Gupta V/s. Union of India & Ors., (supra) and also the decision of the Full Bench of Central Administrative Tribunal in S.Samson Martin V/s. Union of India & Ors., (1990) 12 ATC page 643, the respondents in that case were directed to pay the difference of also to salary and pay other consequential benefits to the applicant from the date of suspension till the date of reinstatement, including arrears according to revised pay scale as the applicant in that case was acquitted in criminal proceedings. The learned advocate for the applicant has therefore, submitted that in this case also the applicant should be given treating full benefits / the period of suspension as a period spent on duty and all consequential benefits

23

also should be given and the respondents should be directed to fix the salary of the applicant on the revised pay scale with effect from 1.1.1986.

8. The learned advocate for the respondents submitted that F.R. 54(i) is to be read as sub rule F.R. 54(6). He submitted that it is only after completion of disciplinary proceedings and final order that order under sub rule (i) of F.R.54 is to be passed regarding the pay and allowances including reading the period of suspension. He also submitted that / F.R. 54 (B) (5) & (6) the respondents are not bound to automatically treat the period of suspension of at this stage the applicant/as the period on duty because the respondents are entitled to proceed with the disciplinary proceedings even after the acquittal of the applicant in criminal case. In the alternative, he submitted that the respondents at the most can be directed to pass the order as to how the suspension period is to be considered. He also submitted that so far the question of revised pay scale effective from 1.1.1986 is concerned, the same can not be granted because it is an independent relief.

We have heard learned advocates.

9. / In view of the decisions which are referred above to by us/and in view of the fact that the applicant is acquitted in the criminal case and that the respondents have revoked the suspension order with immediate effect vide Annexure A-3 and as no

charge sheet was given even before the acquittal and even after the acquittal till 16th December, 1988, there is no reason for the respondents not to give the full benefit for the period of suspension. Moreover while reinstating the applicant, no order is passed as to how the period of suspension is to be treated and if no such order is passed the entire benefit for the period of suspension should be given to the applicant.


Applying the ratio of the various decision referred to above we do not agree with the submission of the learned advocate for the respondents that it is only after the completion of the disciplinary proceedings which are started after the acquittal of the applicant in a criminal case and that after the final order in that disciplinary proceedings that the order under sub rule (i) of F.R.54 is to be passed. We also do not agree with him that the applicant is not entitled to relief para 7(B). We hold that the respondents are bound to pay the applicant as per the revised pay scale effective from 1.1.1986 and to disburse the salary and allowances as per revised rate. We hold that the respondents should treat the period of suspension of the applicant as a period spent on duty ^{and entitled to full pay allowance} less the subsistence allowance paid during that period and to grant all consequential benefits. However, we do not

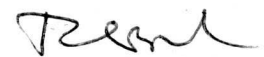
ms

allow any interest on that amount as claimed by the applicant. Hence we pass the following order.

ORDER

The application is allowed. The respondents are directed to pay to the applicant the difference of salary and all other consequential benefits from the date of suspension till the date of reinstatement treating the period of suspension with effect from 17th April, 1985 to 23rd November, 1987 as period spent on duty and to grant all consequential benefits including arrears according to revised pay scales within four months from the date of receipt of the copy of this order. This order will not preclude the respondent from proceeding with the disciplinary proceedings against the applicant according to rules. No order as to costs.


(V. Radhakrishnan)
Member (A)


(R.C. Bhatt)
Member (J)

vtc.