

Regularisation

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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 501/90

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DATE OF DECISION 1.1.1992

B.B. Sakarwala Petitioner

Mr. J.J. Yagnik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.B. Naik Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.B. Gorthi

: Member (A)

The Hon'ble Mr. R.C. Bhatt

: Member (J)

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?

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B.B. Sakarwala,
Upper Division Clerk,
B-10, Mahavit Flats,
Nr. Sujata Flats,
Shahibaug,
Ahmedabad.
(Advocate Mr J.J. Yagnik)

..... Applicant

Versus

1. Union of India
Through:
Secretary,
Ministry of Commerce,
New Delhi
2. The Joint Chief Controller
of Imports and Exports,
New CGO Building,
Bombay-20
(Advocate: Mr. R.R. Tripathi
for Mr. Naik)

..... Respondents

J U D G M E N T
O.A. 501 of 90

Date: 1.1.1992

Per : Hon'ble Mr. R.C. Bhatt : Member (J)

1. This application under Section 19 of the Administrative Tribunals Act 1985 is filed by the applicant working as an Upper Division Clerk with the respondent No. 2 seeking the relief that the respondents be directed to regularise the suspension period of the petitioner by treating him as on duty, during the suspension period, for all practical purposes forthwith and to confer upon him all consequential benefits accordingly such as fixation of salary, arrears of salary increments, etc. to which the petitioner would have been entitled to otherwise.

2. The case of the applicant as pleaded in his application is that he has been working with the respondents since 17 years, that he was suspended by order dated

..2...

10th August 1987 vide Annex. A-1 by respondent No. 2 on the ground that a criminal offence was under investigation, inquiry and trial. This order was passed under Rule 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The criminal case No. 562 of 1987 was filed before the Court of the Chief Metropolitan Magistrate, Ahmedabad. The applicant then made application under Section 239 of Code of Criminal Procedure which was allowed on 11th August 1989 by the Learned Chief Metropolitan Magistrate, Ahmedabad discharging applicant from the said criminal case. It appears that during this period the applicant had filed O.A.626/88 before this Tribunal and this Tribunal passed an order on 2nd May 1990 directing the respondents to decide the representation of the petitioner within four weeks about the facts of the discharge of the applicant in the criminal case and ^{to} make appropriate order for the revocation of suspension. The petitioner made representation on 27th August 1989 to the respondent No. 2 vide Annexure A-2 for the revocation of the suspension of the applicant and for treating him as on duty for all practical purposes during the period of suspension and to regularise the suspension period accordingly because the very basis for the said suspension ^{had} ^{ed} disappear and did not exist. The Criminal Revision Application No. 204 of 1989 was preferred by the State of Gujarat against the order of the Chief Metropolitan Magistrate, Ahmedabad discharging the applicant from Criminal Case No. 562 of 1987 but same was also dismissed on 16th March 1990. Thereafter the applicant further made representation through proper channel to the respondent No. 2 authority on 3rd April 1990 that the suspension order should be revoked by the authorities

and the reminder was also sent on 28th April 1990 to revoke the suspension and to regularise the suspension period by treating the applicant on duty during the suspension period, the copy of which is produced at Annexure A-3. The applicant in view of the order dated 2nd May 1990 of this Tribunal in O.A. No. 628/88 made representations on 7th May 1990 produced at Annexure A-4 for revocation of the suspension order immediately and to treat the suspension period as period on duty for all purposes. It is the case of the applicant that in response to the representations Annexure A-4 of the applicant dated 7th May 1990, the respondents passed an order dated 7th September 1990 revoking the suspension of the order and he was directed to report to duty. Vide order Annexure A-5.

3. The grievance of the applicant is that though the respondents have passed an order revoking the suspension order, the respondents have not passed appropriate order with regard to the regularisation of the suspension period treating him as on duty during that period and hence this application.

4. The respondents have not filed any reply to this application and therefore the averments made in the application should be deemed to have remained uncontroverted by respondents.

5. The learned advocate Mr. J.J. Yagnik submitted that the applicant has been discharged by the criminal court and the said order of discharge has been confirmed by the Appellate Court, hence nothing remained against the applicant. The respondents no doubt revoked the suspension order thereafter but have failed to pass ^{the} order of regularisation of the suspension period and treating the

(7)

said period of suspension as period spent on duty inspite of the representations made by applicant such submitted that there was no reason for the respondents not to regularise suspension period of the applicant by treating him as on duty during the suspension period and to confer upon the applicant all consequential benefit. Mr. Tripathi was not able to point out as to why^{re} the respondents did not regularise the suspension period of the applicant. As observed above, no reply is filed by the respondents and there is nothing on the record to show as to why the respondents did not regularise suspension period treating applicant on duty. There was not fault on the ^{part} ~~period~~ of the applicant in remaining absent during suspension period. Ultimately the criminal case against the applicant was dismissed and the revision was also dismissed therefore in eye of law no suspension order remained which was passed on account of pendency of the criminal case. We have heard the learned advocates and we agree with the submission of the learned advocate for the applicant that in view of the facts stated in the application and documents produced on record and not controverted by respondents, the application requires to be allowed. Hence we pass following order.

O R D E R

6. The respondents are ~~order~~ directed to regularise the suspension period of the applicant by treating him as on duty during suspension period and to give him consequential benefits admissible under the Rules. The application is allowed to the above extent. We pass no order as to costs having regard to the fact of the case. Application is disposed of.

R.C. Bhatt
(R.C. Bhatt)
Member (J)


(A.B. Gorthi)
Member (A)

(6)

Date	Office Report.	ORDER
(12) 25.8.92	Resp. Submitted Notice issued AA slip is announced Reply not filed 22.9.92 50	Present: Mr. J.J. Yajnik, Adv/Apt. Mr. N.S. Shevde, Adv/Res. Heard. Issue notice to the respondents. Returnable on 24th September, 1992. (R.C. Bhatt) Member (J) vtc. (N.V. Krishnan) Vice Chairman
24-9-92		Shri J.J. Yajnik for the applicant. Shri N.S. Shevde for respondents. For paucity of time call on 19-11-1992. (R.C. Bhatt) Member (J) (N.V. Krishnan) Vice Chairman Shri J.J. Yajnik for the applicant. *AS.
9-11-92 25		Shri J.J. Yajnik for the applicant. Shri Akil Kureshi for the respondents. Applicant's counsel seeks permission to withdraw this Contempt Application. Permission is granted. Issue Notice to the respondents, discharged. <u>case closed</u> (R.C. BHATT) MEMBER (J) (N.V. KRISHNAN) VICE CHAIRMAN *SS