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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 300 & 501/2003
Cuttack this the 30th January/2004

IN O.A.No.300/2003 &
IN O.A.No.501/2003

Iswar Chandra Barik

...

Applicants

-VERSUS-


Union of India & Ors.

...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.


(N.D. DAYAL)
MEMBER (ADMN.)


(M.R. MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 300 & 501/2003
Cuttack this the 30th day of Jan./2004

CORAM:

THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)
AND
THE HON'BLR MR. N.D. DAYAL, MEMBER (ADMINISTRATIVE)

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IN O.A.No.300/2003

Iswar Chandra Barik, aged about 58 years,
S/o. Late Banchhanidhi Barik working as
Office Superintendent under the Chief
Commissioner of Income Tax, Orissa, Bhubaneswar
Dist-Khurda

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Applicant

-VERSUS-

1. Union of India represented by Secretary,
Ministry of Finance, Department of Revenue,
Central Secretariat, New Delhi-110001
2. Central Board of Direct Taxes, Department
of Revenue, represented by its Chairman,
New Delhi
3. The Chief Commissioner of Income Tax, Ayakar
Bhawan, Orissa, Bhubaneswar, Dist-Khurda
4. The Commissioner of Income Tax, Rourkela Range,
Rourkela, Dist-Sundargarh
5. The Additional Commissioner of Income Tax
Rourkela Range, Rourkela

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Respondents

IN O.A.No.501/2003

Iswar Chandra Barik, aged about 58 years,
S/o. Late Banchhanidhi Barik, working as
Office Superintendent under the Chief
Commissioner of Income Tax, Orissa, Bhubaneswar,
Dist-Khurda

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Applicant

-VERSUS-

1. Union of India represented by the Chairman
Central Board of Direct Taxes, Department
of Revenue, New Delhi
2. The Chief Commissioner of Income Tax
Ayakar Bhawan, Orissa, Bhubaneswar, Dist-Khurda
3. The Additional Commissioner of Income Tax,
(Administration), Ayakar Bhawan, Orissa,
Bhubaneswar, Dist-Khurda

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By the Advocates (in both the OAs)
for the applicant

M/s. J.M. Pattnaik
S. Misra, P.K.
Rout, A.P. Misra,
K.K. Jagdev

By the Advocates (in both the OAs)
for the Respondents

Mr. A.K. Bose, S.S.C.

O R D E R (ORAL)

MR. M. R. MOHANTY, MEMBER (JUDICIAL): Heard the learned counsel for the parties in both the Original Applications. Since both the cases are inter-related, for the sake of convenience, we dispose of those OAs through this common order.

2. Applicant, by an order dated 11.4.1988 was placed under suspension on account of a disciplinary proceedings initiated against him and ultimately, he was removed from service with effect from 10.3.1993. His appeal against the said order of removal having been unpalatable, he had moved this Tribunal in an earlier round of litigation in O.A. No. 589/93, which was disposed of on 13.9.1999. This Tribunal, while setting aside the impugned order of removal, substituted the punishment to that of stoppage of two of his annual increments without cumulative effect and observed as under :-

"...If the order under suspension prior to the date of impugned order of removal (Annexure-19) was passed then the period of suspension shall be treated as such till that date".

3. In pursuance of the judgment of this Tribunal on 13.9.1999 in O.A. 589/93, the Department passed a consequential order on 4.11.1999 reinstating the

applicant. The applicant represented to the authorities to treat the period of suspension from 11.4.1988 to 10.3.1993 as due under Rule-54(B) and for payment of back wages etc. The said representation of the applicant was turned down with the following words.

" You had represented before the CCIT to treat the period of suspension under section 10(4) of the CCS Conduct Rules from the date of suspension i.e., 11.4.88 to the date of removal from service, i.e., 10.3.93 as duty. In this connection, you had relied on DOPT OM No.1102/15/85-Estt./A dated 3.12.85 under FR 54B. In the order dated 10.09.1999, the Hon'ble CAT, with a direction regarding your reinstatement, in supersession of the order of the Disciplinary Authority dated 10.3.93, has also made a specific observation as under :

"If he was under suspension prior to the date the impugned order of removal (Annexure-19) was passed, then the period of suspension shall be treated as such till that date".

Thus, it may be considered from the above that the earlier order of the disciplinary authority dated 14.12.92 placing you under suspension from 11.4.88 to 10.03.93 was confirmed by the Hon'ble CAT.

Further, the order of the Hon'ble CAT reducing the quantum of penalty together with the above observation regarding treatment of the suspension period must be treated as a composite order of penalty, and therefore, the DOPT OM, which is applicable only for disciplinary proceedings, would not be considered relevant at this stage.

In view of the above, your representation for treatment of suspension period as duty is rejected".

4. Being aggrieved by the aforesaid order passed by the Respondents, the applicant has preferred the O.A. No.300/2003 under Section 19 of the A.T.Act, 1985 for the redressal of his grievance. Since his

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position in the seniority list has been lowered down (for the reason of treating the period from 11.4.1988 to 10.3.1993 under suspension) he has also filed another Original Application bearing No.501/93; wherein the Respondents have filed a counter contesting the prayer of the applicant.

5. We have heard Shri J.M.Pattnaik, learned counsel for the applicant and also Shri A.K.Bose, learned Senior Standing Counsel appearing on behalf of the Respondents in both the cases, and perused the materials placed on record.

6. This Tribunal in the earlier round of litigation, while setting aside the punishment of removal of the applicant from service, substituted the punishment to that of stoppage of two increments of the applicant without any cumulative effect. Stoppage of annual increment has been prescribed to be a minor punishment under Rule-11(IV) of CCS(CCA) Rules, 1965, but suspension has not been prescribed as a punishment available to be imposed on a Govt. of India employee under Rule-11 of CCS(CCA) Rules. Therefore, apparently, this Tribunal ^{not} was not competent to order for treating the period of suspension as such. The circumstances, where a dismissal or removal order is set aside by a competent Court of Law, the Department has been instructed, under FR 54 A, to deal with the matter. Where the departmental authorities set aside the dismissal or removal order, the situation has been taken care of by the Rules under FR 54 B. It is in this background, it would be worthwhile to quote

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hereunder the provisions of FR 54-A and 54-B.

"1. Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowance in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause(2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule(7) of Rule-54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, 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 :

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal, or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule(5) of Rule-54.

3. If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances

for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

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

5. Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

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FR 54-B.

1. When a Government who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his ~~reinstatement~~ (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

2. Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already

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paid.

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:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

4. In a case falling under sub-rule(3) the period of suspension shall be treated as a period spent on duty for all purposes.

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) and (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.

6. Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule(1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule(1) who shall make an order according to the provisions of sub-rule(3) or sub-rule(5), as the case may be.

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7. In a case falling under su-rule(5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE - The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

8. The payment of allowance 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 the subsistence allowance and other allowances admissible under Rule-53"

7. It appears that had the Tribunal not observed to treat the period of suspension as such, then the course of action available under FR 54 A was to be followed and the departmental authorities were under obligation to pass necessary consequential orders as to how the period of suspension was to be treated. Similarly, had the removal order been set aside by the departmental authorities then onus was heavy on the Respondents to pass necessary consequential orders under FR 54 B. It has been brought to our notice by

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the learned counsel for the applicant that under an executive instructions of the Government issued vide O.M.No.11012/15/85-Estt.A. dated 3.12.1985 by the Department of Personnel & Training laying down the guidelines as to how the situation should be handled where instead of imposing major penalty minor penalty is imposed. The relevant portion of the said Office Memorandum dated 3.12.1985 is -extracted below :-

" Period of suspension to be treated as duty if minor penalty only is imposed -

Reference is invited to O.M.No.43/56/64-AVD, dated 22.10.1964 (not printed), containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that 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(CCA) 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 Side. Accordingly, where departmental proceedings end with imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B 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.

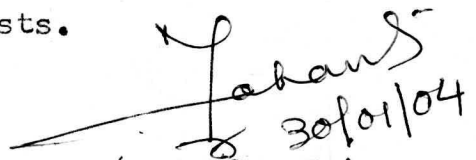
2. These orders will become effective from the date of issue. Past cases already decided need not be reopened.

(G.I. Dept. of Per. & Trg. O.M.No.11012/15/85-Estt.(A) dated the 3rd December, 1985)"

8. Since the powers have been vested statutorily on the authorities/respondents to take a decision as to how the period of suspension should be treated in the event of substitution of a ~~manor~~ penalty in place of a ~~major~~ penalty, we hereby direct the Respondents to take a decision in the matter, by keeping in mind the statutory provisions available under F.R. 54 A and FR 54 F as extracted above and while doing so they should also keep in mind the executive instructions of the Government of India (extracted above); notwithstanding the observation of this Tribunal (made in the earlier round of litigation) to treat the period of suspension as such. Once the Respondents take a decision about the period of suspension, we are sure, there shall remain no conflict or grievance with the applicant pertaining to payment of differential wages for the period of suspension and/or pertaining to his seniority.

9. With the aforesaid observation and direction, this O.A. is disposed of. No costs.


(N.D. DAYAL)
MEMBER (ADMN.)


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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