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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.567 of 2012

Cuttack this the 18th day of May, 2016

Satyananda Nayak...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not? *No*

R.C.MISRA
MEMBER(A)

A.K.PATNAIK
MEMBER(J)

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CUTTACK BENCH, CUTTACK

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CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Satyananda Nayak
Aged about 55 years,
S/o-Late Basudeba Nayak
Working as Draftsman Div.I, & GIS Wing
OGDC, Survey of India,
Bhubaneswar
At present Adimata Colony,
Mancheswar
Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.Rath
B.K.Nayak-3
D.K.Mohanty

-VERSUS-

1. The Survey of General of India
Hathibarkala Estate,
Dehrn Dun-248001,
Uttarakhanda
2. The Additional Surveyor General of India
Eastern Zone,
Survey of India,
15 Wood Street,
Kolkata
3. The Director, OGDC,
Survey of India
Survey Bhawan,
Bhubaneswar-13
4. Union of India represented through
Secretary,
Department of Science & Technology,
New Delhi-I



...Respondents

By the Advocate(s)-Mr.D.K.Mallick

ORDER

R.C.MISRA, MEMBER(A):

The sum and substance of the facts runs thus: Applicant while working as Draftsman in the respondent-department, was placed under suspension under sub-rule(1) of Rule-10 of CCS(CCA) Rules, 1965, vide order dated 15.3.1999(A/1), on account of a criminal case being initiated against him vide Chandrasekharpur P.S. Case No.26 dated 1.3.1999, corresponds to G.R. Case No.653 of 1999 u/S. 498(A)/506/114/34 IPC read with Section 4 of DP Act on the FIR lodged by one Kabita Pradhan claiming to be his wife. This suspension order was subsequently revoked by the concerned authorities vide order dated 11.8.1999(A/2).

2. It is stated that applicant had filed T.S.No.21 of 1999 on 18.1.1999 before the learned Civil Judge (Junior Division), Bhubaneswar seeking a declaration that the defendant (Kabita Pradhan) was not his wife. This suit having been dismissed, applicant preferred an appeal before the learned Adhoc District Judge, First Track Court No.II, Bhubaneswar which formed the subject matter of RFA No.6/3 of 2007. The learned District Judge disposed of the appeal by remitting the matter back to the trial court. Being dissatisfied, applicant moved the Hon'ble High Court in SAO No.10 of 2008 and the Hon'ble High Court,



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vide order dated 3.12.2010 allowed the same by setting aside the order of the learned Adhoc District Judge and directed that the suit of the plaintiff (applicant herein) be decreed with respect to his claim that the defendant (Kabita Pradhan) was not his wife. In the above background, applicant filed CRLMC No.1893 of 2011 before the Hon'ble High Court of Orissa for quashing the order of cognizance dated 16.1.2001 passed in G.R. Case No.653 of 1999 (arising out of Chandrasekharpur P.S. Case No.26/1999) pending in the file of learned JMFC (O), Bhubaneswar. The Hon'ble High Court, vide order dated 23.9.2011 disposed of the aforesaid CRLMC in the following terms.

"Having heard the learned counsel for the petitioner and on perusing the annexure-1, I am of the considered view that if the criminal proceeding is allowed to continue, there is every likelihood that the petitioner no.8, Manas Ranjan Barik might lose his appointment offered by the East Coast railway.

Considering the aforesaid facts as noted herein above, I am of the view that this is an appropriate case where power under section 482 Cr.P.C. ought to be exercised. Therefore, it is directed that the criminal proceeding in G.R.Cse No.653 of 1999 arising out of Chandrasekharpur P.C. Case No.26 of 1999 pending before the learned JMFC(O), Bhubaneswar is hereby quashed.

The CRLMC is allowed".

3. Thereafter, applicant submitted a representation dated 3.10.2011 to res.no. 3 to treat the period of suspension from



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1.3.1999 to 17.8.1999 as duty, to grant him the benefit of financial upgradation under ACP Scheme, besides promotion. Since no action was taken, applicant submitted another representation dated 8.11.2011 to res.no.2 enclosing copies of the orders as passed by the Hon'ble High Court by reiterating his prayer as made in the earlier representation. Since there was no response to his representations, applicant approached this Tribunal in O.A.No.285 of 2012. This Tribunal, without entering into the merit, granted liberty to the applicant to file a representation within 15 days and directed that if such a representation was preferred by the applicant, the respondents should consider the same and pass a reasoned order within sixty days from the date of receipt of the representation and accordingly, disposed of the said O.A. vide order dated 10.4.2012.

4. In the above background, applicant submitted a representation dated 17.4.2012 and in compliance with the direction of this Tribunal, respondent-authorities, after considering the grievance of the applicant, turned down his claim vide A/10 dated 6.6.2012, which is impugned and called in question. Hence, in the instant O.A. applicant has sought for the following relief.

- i) To quash the letter under Annexure-A/10.
- ii) To direct the respondents to treat the period of suspension from 1.3.1999 to 17.8.1999 as duty.



- iii) To direct the respondents to give all service benefits, i.e., grant of ACP and promotion.
- iv) To direct the respondents to give the arrear salary deducted from the suspended period with interest and cost.
- iv) To give any other direction/directions, order/orders as the deemed fit and proper.

5. In support of his claim applicant has relied on O.M. dated 8.8.1977 issued by the Government of India, Ministry of Home Affairs.

6. On the other hand, opposing the prayer of the applicant, respondents have filed a detailed counter-reply. In the counter, they have not disputed regarding factual position of the matter. However, the entire gamut of the counter is that applicant had been placed under suspension for his own involvement in an offence for which the Department is in no way responsible. Applicant had not rendered service to the Department during the period he had been placed under suspension. This apart, it has been contended that even if applicant had not been suspended, he could not have discharged his duties during the period of his arrest and detention in judicial custody.

7. As regards applicability of O.M. dated 8.8.1977 issued by the Government of India, Ministry of Home Affairs, it has been submitted that ***in a case where a Government employee is placed under deemed suspension due to his detention in police custody erroneously or without any basis and thereafter released without any prosecution having been***

Q. 5

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launched, the competent authority should apply his mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed. Therefore, it is the submission of the respondents that the competent authority having applied his mind to the facts and circumstances of the case, has declined to treat the period of suspension as duty on the ground that suspension of the applicant was fully justified.

8. To buttress their point of view, respondents have cited the decision of the Hon'ble Apex Court in ***Management of Reserve Bank of India vs. Bhopal Singh Panchal (SC) 1994 SLR 9:1994(1) SLJ 147***, in which it has been observed that ***by mere acquittal an employee is not entitled to get full pay and allowances for the period of absence from duty. An employees' absence from duty on account of his detention is not to be considered as absent on account of circumstances beyond his control. His absence throughout such period is to be treated as a period spent on extraordinary leave.*** It has been laid down that ***the competent authority has to decide whether an employee who was suspended in such circumstances is entitled to his pay and allowance or not, and to what extent, if any, and whether the period is to be treated as on duty or on leave etc.*** Relying on this, it has been pleaded by the respondents that the competent authority

Q. 11

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having come to the conclusion that the suspension of the applicant was fully justified, he did not feel declined to regularize the period of suspension by granting him full pay and allowance.

9. With these submissions, respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

10. Applicant has filed rejoinder to the counter in which he has brought to the notice of the Tribunal that the criminal proceedings against the applicant having been quashed from its inception, in view of O.M. referred to above, he is entitled to get full pay and allowance for the period he had been placed under suspension.

11. Upon perusal of the pleadings of the parties, we have heard the rival submissions. We have also gone through the written notes of submission filed by the respective parties.

12. From the pleadings of the parties, the short point that emerges for consideration is ***whether the criminal proceedings which led to his suspension having been quashed by the Hon'ble High Court in CRLMC N.1893 of 2011, applicant is entitled to full pay and allowance for the period he had undergone suspension.*** In other words, ***whether the conclusion arrived at by the respondent-department that the suspension of the applicant being fully justified applicant is not entitled to full pay and allowance stands to judicial scrutiny.***



13. For the purpose of adjudicating the point in issue, in the first instance, we would like to examine applicability of O.M. dated 8.8.1977 issued by the Government of India, Ministry of Home Affairs, the full text of which is quoted hereunder.

1. One of the items considered by the National Council (JCM) was a proposal of the Staff Side that a Government servant who was deemed to have been placed under suspension on account of his detention on criminal proceedings against him, should be paid full pay and allowances for the period of suspension, if he has been discharged from detention or has been acquitted by a Court.
2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention or on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted, by a court, would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds, but the suspension might be fully justified. The staff Side were, however, informed that if a Government servant was detailed in police custody erroneously or without any basis and thereafter he is released without any prosecution, in such cases, the official would be eligible for full pay and allowances.
3. It has accordingly been decided that *in the case of a Government servant who is deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched*, the competent authority should apply its mind at the time of revocation of the suspension and reinstatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed"

14. In the speaking order dated 6.6.2012(A/10), it reveals that the Additional Surveyor General (res.no.3) held as under.

- i) Shri Satyananda Nayak was arrested and kept in judicial custody beyond 48 hours (01.03.1999 to 24.3.1999 or after) in a criminal proceedings u/s. 498(A)/5/34/IPC/7/DP Act no way connected with department.
- ii) Shri Satyananda Nayak was arrested and prosecuted.
- iii) Shri Satyananda Nayak received subsistence allowance during the period of his suspension, i.e., 1st March, 1999 to 17th August, 1999.
- iv) Shri Satyananda Nayak obviously did not render any service to the Government during the whole period of his suspension from 1st March, 1999 to 17th August, 1999..
- iv) Shri Satyananda Nayak was suspended for the reasons of his own involvement in an offence for which the department is in no way responsible.
- v) Even if Shri Satyananda Nayak had not been suspended, he would not have attended office during the period of his arrest and judicial custody (01.03.1999 to 24.3.1999 or any date afterwards)..
- vi) The suspension of Shri Satyananda Nayak was mandatory under Rule-10(2) of CCS(CCA) Rules, 1965.
- vii) It is observed that Hon'ble Supreme Court and Hon'ble High Courts have held that mere acquittal from criminal cases where department was in no way involved does not automatically confer the right to claim the period of suspension as duty and right for full pay and allowances with interest and consequentially all service benefits.



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15. Having held so, the Additional Surveyor General came to a conclusion that as per provision of FR 54-B the period of suspension from 1st March, 1999 to 17th August, 1999 shall not be treated as a period spent on duty and accordingly, rejected the claim of the applicant.

16. No doubt res. no. 2 has considered the facts and circumstances of the case. But, those considerations appear to be of one side of the coin, because, res.no.2 has left out of consideration the other facts that the whole basis which led to arrest and detention of the applicant in judicial custody and had formed the subject matter of G.R. Case No.356 of 1999 pending in the file of JMFC(O), Bhubaneswar had already been quashed by the Hon'ble High Court in CRLMC No.1893 of 2011. Therefore, the entire foundation on which the criminal proceedings had been built up and consequently, suspension of the applicant had been called for, stood extinguished, let alone his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched. Judged from this angle, the effect of quashing G.R. Case No.356 of 1999 pending in the file of JMFC(O), Bhubaneswar by the Hon'ble High Court in CRLMC No.1893 of 2011 was an essential and indispensable element to be considered by res.no.2 while considering the matter and issuing speaking order dated 6.6.2012(A/10). Therefore, the speaking order dated 6.6.2012(A/10) cannot be said to be a decision



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taken by res.no.2 with due application of mind. Even, though res.no.2 in the concluding part of the speaking order, relying on the provision of FR-54-B has rejected the claim of the applicant, but his view point in this context is latent and inconspicuous. However, we have gone through the provisions of FR-54 B. As it appears, by adhering to sub-rule 3 thereof, the competent authorities have rejected the claim of the applicant. For the sake of clarity, sub-rule3 of FR-54 B is quoted hereunder.

"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 allowance to which he would have been entitled, had he not been suspended"

17. However, in the instant case, the conclusion arrived at by the authorities concerned that applicant's suspension was fully justified appears to be based on no credible evidence. In addition to this, the conclusion so arrived ^{at} is bereft of consideration that the indictment which had led to arrest and detention of the applicant in judicial custody and had formed the subject matter of G.R. Case No.356 of 1999 pending in the file of JMFC(O), Bhubaneswar has already been quashed by the Hon'ble High Court in CRLMC No.1893 of 2011. Therefore, applicant's case is not covered by the decision of the Hon'ble Supreme Court in Management of Reserve Bank of India vs. Bhopal Singh Panchal (SC) 1994 SLR 9:1994(1) SLJ 147, as relied on by the respondents in support of their stand point.



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Since, the entire criminal case as referred to above has been quashed by the Hon'ble High Court, it was incumbent upon the authorities to take a decision having regard to this. It is also not the case of the respondents that with the simultaneous progress of criminal case, they had initiated a disciplinary proceedings against the applicant. Since the criminal proceedings have been quashed, applicant ought to have been held innocent as on the date when he had been arrested and sent to judicial custody. In such a situation, the decision taken by the Government of India vide O.M. dated 8.8.1977, cited supra, comes to play and thus casts a duty on the respondent-authorities to take a decision regarding the treatment of period of suspension.

18. For the reasons discussed above, we quash the impugned order dated 6.6.2012(A/10) and remit the matter back to the Additional Surveyor General (res.no.2) for reconsideration in the light of what has been discussed above and to pass appropriate orders within a period of ninety days from the date of receipt of this order.

19. With the observation and direction as aforesaid, the O.A. is disposed of. No costs.

(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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