

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR

O.A. No. 281/2001

Date of Order: 16.9.2002

Sohan Lal son of Shri Mul Dass Caste Sad Compulsory Retirement  
Motor Driver Military Engineer Service, Bikaner Resident of  
Behind M.M. Ground Bikaner (Rajasthan).

...APPLICANT.

V E R S U S

1. Union of India, Through Secretary Ministry of Defence,  
Government of India, South Block, New Delhi.

2. The Commander-IN-Chief Engineer, Military Headquarter,  
New Delhi.

3. Major General Chief Engineer Command, Engineer Branch  
Chandi Mandir- 134107.

4. Garrison Engineer Military Engineering Service, (MES)  
Bikaner, 334001.

...Respondents.

Mr. Bharat Singh, counsel for the applicant.

Mr. S.K. Vyas, counsel for the respondents.

CORAM:

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

( Per Mr. J.K. Kaushik, Judicial Member )

Mr. Sohan Lal has filed this Original Application under  
Section 19 of the Administrative Tribunals Act, 1985, and has  
prayed for the following reliefs :-

1. That Hon'ble Tribunal may direct to respondents to pay all the retirement benefits including Pensionary benefits and commutation of the Pension Leave Encashment DCRG in full without any deduction and reduction in with effect from that of compulsory retirement from 3.2.2000.

2. That respondent may be directed to treat suspension period from 8.7.93 to 3.2.2000 as spent on duty with all consequent benefits.

3. That Order No Tele Mil 6060 Order 308093/SL/55/E/B dated 28.5.2001 issued for GE, MES, Bikaner may be quash being as it has been unlawfully issue without giving any notice or Show Cause Notice and without any opportunity representation.

Any other relief as may be considered just and proper may be given to the applicant."

2. The brief facts of the case are that the applicant was working on the post of Civilian Motor Vehicle Driver in MES. He was placed under suspension on 08.07.1993 and was allowed subsistence allowance which was fixed at an amount equal to leave salary on half pay with appropriate dearness allowance. He represented against the same but his suspension was not revoked.

3. The further case of the applicant is that he was issued with Memorandum of Charges dated 27.08.1993 alleging four charges

mentioned in order dated 3 February, 2000 (Annexure A/4). Detailed inquiry was conducted and he was supplied with a copy of inquiry report wherein two charges have been held to be proved. He submitted a representation against the findings of the Inquiry Officer. It has further submitted that applicant was imposed a penalty of compulsory retirement vide letter dated 03.02.2000. Further the period of suspension has been treated as not spent on duty. The Original Application has been filed on multiple grounds mentioned in the Original Application and we shall deal with the grounds pressed by the learned counsel for the applicant during the arguments.

4. The Original Application was heard on 23.11.2001 on admission. The learned counsel for the applicant stated that he did not want to press relief No. 1 and 3 and he pressed the Original Application only for relief No. 2. Thereafter the Show Cause Notices were issued and the respondents were directed to file the reply. The respondents have filed ~~countered~~ the reply to the Original Application and have controverted the contentions and grounds raised in the Original Application. It has been submitted that an authority who can impose the minor penalty can very well institute the proceedings for major penalty and the Garrison Engineer, Bikaner is competent authority to impose minor penalty on the applicant. The order of treating the period of suspension as not spent on duty has been issued under Fundamental Rules 54 (5). The action of the respondents is legal

and the applicant is not entitled to any relief. The applicant has also filed a rejoinder to the reply and have generally refuted the contentions of the respondents narrated in the reply to the Original Application.

5. We have heard the learned counsel for the parties and have carefully perused the records of this case.

6. As is borne out from the proceedings of this case, the learned counsel for the applicant has confined his arguments only in respect of the relief No. 2 i.e. "That respondent may be directed to treat suspension period from 8.7.93 to 3.2.2000 as spent on duty with all consequent benefits." The learned counsel for the applicant has submitted that the impugned order i.e. Annexure A/1 as well as Annexure A/2 wherein the period of suspension has been ordered to be treated as period not spent on duty, is not sustainable in law for the reason that the very suspension order was without jurisdiction in as much as the Garrison Engineer, Bikaner, who issued the said order, was not the appointing authority of the applicant and thus not competent to suspend the applicant. Thus the very order of the suspension was void, without jurisdiction and therefore a non est order in the eye of law and the same cannot be legalised by passing a legal order as per the verdict of Apex Court in Baradakanta Mishra vs. High Court of Orissa and Another (AIR 1976 SC 1899).

He has further submitted that once the very order of the

suspension was void ab initio and the same is not required to be challenged and set aside by a court of law and one can directly claim the relief even without getting such order set aside. He has cited in his support a Constitution Bench judgement of the Hon'ble Supreme Court in The State of Madhya Pradesh vs. Syed Qamarali (1967 SLR SC 228) wherein their Lordships has held as under :-

"We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

7. On the other hand, the learned counsel for the respondents has submitted that the suspension order was passed by the competent authority i.e. the Garrison Engineer, Bikaner. He has submitted that the contention raised on behalf of the applicant that it is only the appointing authority who is competent authority to issue suspension order, is wrong. In fact as per the Rule 10 (1) of the CCS (CCA) Rules, the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government

servant under suspension. In the present case, as has been mentioned in the reply, the Garrison Engineer, Bikaner was competent to impose the minor penalty on the applicant and to act as Disciplinary Authority, was thus competent to suspend the applicant. The factum that the Garrison Engineer, Bikaner was not competent to act as Disciplinary Authority and impose minor penalty, has not been controverted on behalf of the applicant during the arguments as well as in the rejoinder to reply. Thus we are of the considered opinion that the suspension order was issued by Competent Authority and had no infirmity, illegality or arbitrariness. The contention of the applicant is not sustainable and the judgements referred to above by the learned counsel for the applicant have no application to the controversy involved in this case.

8. Now the next argument of the learned counsel for the applicant is that the suspension period has been treated as not spent on duty. Before treating the suspension period as not spent on duty, the applicant was not given any Show Cause Notice and due to non-treatment of the period as spent on duty, he has suffered lot of financial loss in as much as he did not get his due retiral benefits. It has also been argued that the period of suspension in case of the applicant ought to have been treated as spent on duty for all purposes. On the other had, the learned counsel for the respondents has drawn our attention to Rule 54 (4 & 5) of Fundamental Rules, part I. The contents of the same

are extracted as under : -

"(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), 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.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceeding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:



Provided that, if the Government servant so desires, such authority may direct that the period of absence from

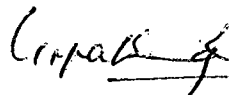
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duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant."

It has been submitted that as per the aforesaid provisions once the disciplinary proceedings have culminated into imposition of major penalty of compulsory retirement, therefore, suspension cannot be treated as on duty until any other order is passed to treat the period otherwise and in this case no such order has been passed, rather specific order has been passed to treat the period as not spent on duty. The Rule 54 (5) of FRSR does not envisage the requirement of issuance of any show cause notice prior to treating the period of suspension as not spent on duty, rather there is a mandate of the rules that invariably in such cases, the period of suspension is required to be treated as not spent on duty until there is any specific order directing otherwise. We are persuaded with the arguments of the learned counsel for the respondents and are of the firm view that there is no illegality or infirmity in the action of the respondents. In this view of the matter, the Original Application has no force and deserves to be dismissed.

10. In view of the foregoing discussion, the Original Application fails and the same is hereby dismissed. However, there shall be no order as to costs.

  
  
( J.K. KAUSHIK )  
Judicial Member

  
( GOPAL SINGH )  
Adm. Member

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Kumawat