

In the Central Administrative Tribunal
Calcutta Bench

OA No.42/97

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Mr.N. Prusty, Member(J)

Ardhendu Sekhar Khanra, S/o Late J.N. Khanra, aged about 50 years, Ex-Scientist 'B', National Chemical Laboratory, Pune at present residing at C/o Kamalendu Sekhar Khanra, Vill Khalore, Kalibari West, P.O. Bagnan

..Applicant

-Vs-

- 1) The DG, Council of Scientific and Industrial Research (CSIR), Rafi Marg, New Delhi - 1 representing UOI
- 2) Director, National Chemical Laboratory, Pashan, Pune-411 008

...Respondents

For the applicant : In person

For the respondents : Ms U. Bhattacharjee, Counsel

Date of Order :

15/2/03

ORDER

Mr.S.Biswas, Member(A)

Heard. The applicant appeared personally. Also heard the learned counsel for the respondent Mrs U. Bhattacharjee. Both submitted written briefs.

2. The applicant has sought a limited relief in this OA by way of a direction upon the respondents for payment of salary and other consequential benefits for the period from 27-1-82 to 20-8-90 - on the ground that Hon'ble CAT, Mumbai Bench in the judgement dated 3-1-90 in OA 520/87 had quashed the appellate order dated 12-3-83 passed ⁱⁿ a major penalty proceeding resting with the memo dated 25-1-82 against the applicant which culminated in the removal of applicant vide order dated 16/17-8-82 of the disciplinary authority. But a liberty was also given to the respondent (appellate authority) in the said order dated 3-1-90 in OA 520/87 to "hear and dispose of the appeal of the applicant dated 27-9-82 after affording a personal hearing to the applicant and on merits and by passing a reasoned order in

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confirmity with Rule 27(2) of Central Civil Services (CCA) Rules, 1965 within 4 months from the date of receipt of a copy of this order". As per said direction of Tribunal dated 3-1-90 in OA 520/87, the appellate authority reheard the appeal dated 27-9-82 and another appeal dated 10-5-90 passed the order in appeal dated 20-8-90 after affording personal hearing twice on 14-5-90 and 13-7-90 - and confirmed the order of penalty of removal from service. In this OA, the applicant has made out a case that during the interregnum till upto 20-8-90 - the punishment order in effect was not in operation. Therefore, the salary and other benefits were liable to be paid to him upto 20-8-90 - as if no order of punishment of removal was also not in operation to deny all these.

3. In order to determine the merits of this limited claim it is necessary to have a hindsight of the case which has undergone several rounds of litigations.

4. The applicant joined in National Chemical Laboratory, Pune under CSIR, as a Junior Scientific Assistant on 30-6-71 when he was working as Scientist 'B' a major penalty charge sheet vide memo dated 25-1-82 for alleged contravention of Rule 3(I)(ii) of CCS(CCA) Rules, 1964 was served on the applicant. On 27-1-82 he was also placed under suspension. As the applicant denied the charges, an E.O. was appointed and the applicant took help of a Defence Counsel. The E.O. submitted the report after completing the inquiry on 2-8-82 holding all the three charges as established. The Disciplinary Authority agreed with the findings of the E.O. and imposed a penalty of removal of the applicant from service vide order dated 17-8-82 (which has not been impugned in the present OA).

5. The applicant had preferred an appeal dated 2-7-82, but it was rejected by the appellate authority by his order dated 12-3-83. The applicant had preferred a review petition dated 25-8-86. He had also filed regular Civil Suit No.2525/87 in the Court of Civil Judge, Sr. Division at Pune challenging the

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order of removal. The Learned Judge on hearing the case held that the said petition was not maintainable. It was accordingly dismissed on 14-2-86. Thereafter the applicant had filed a writ petition No.1607/87 in the High Court of Judicature at Mumbai on 17-7-87. But Hon'ble High Court allowed it to be withdrawn as the petition for the reliefs claimed lay with the Tribunal. And then the applicant filed the OA 520/87 on 11-8-87. This OA was disposed of on 3-1-90 inter alia with the direction to hear the appeal dated 2-9-82 after affording personal hearing to the applicant and also on merits and after passing a speaking and reasoned order. The earlier appellate order dated 12-3-83 was set aside.

6. The applicant had filed another appeal in detail on 10-5-90. The appellate authority after affording two opportunities for personal hearing (respectively on 14-5-90 and 13-7-90) disposed of the appeal by passing a detailed and self-contained speaking order as per direction of the Tribunal dated 3-1-90. The speaking order was passed on 20-8-90.

7. In 1991 the applicant filed a fresh OA 106/91 before Mumbai Bench of CAT against the said speaking order dated 20-8-90. The Tribunal dismissed this OA 106/91 on 9-10-94 - with the order dated "the facts of the case is fully covered by the aforesaid Supreme Court judgement because the applicant has not attributed any malafide on the post of the respondents, while imposing the penalty nor has he stated that the enquiry has not been conducted in accordance with the rules. In the circumstances, we are of the view, that the application is unsustainable which is devoid of merits". In other words, there was no mention about the impugned interregnum and payability of salary etc. in this OA as no order was passed on this point.

8. In 1995, the applicant filed one M.P. which was referred in the SLP/96CC4906/96 (from Judgement and Order dated 7-11-95) and it was disposed of on 23-9-96 with the following order:

" There is a delay of 156 days in the filing of the SLP for which no satisfactory explanation has

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been offered. The application for condonation of delay is therefore dismissed. Even otherwise we see no merit in the SLP and the same is dismissed accordingly on the ground of delay as well as on merits.

9. Evidently, the applicant has filed this OA before us after the case in all respects reached a finality. He has belatedly claimed salary for the period from 27-1-82 to 20-8-90 i.e. to say from the date of his suspension till the date of the confirmation of the penalty by the appellate authority. However this OA has been filed only in 1997 without seeking condonation of limitation. None of these orders have been impugned in any manner in this OA, though in our view the order of confirmation as well as judicial pronouncements including Hon'ble Supreme Courts' order dated 23-9-96 do not leave any scope or shred of doubt that any enforceable lacunae in the disciplinary case was harboured or pointed out. The order of removal as passed by the disciplinary authority on 17-8-82 was not in question. Only the appellate order dated 12-3-83 was set aside by the order dated 3-1-90 in OA 520/87, but as discussed *ibid*, it was only with a view to afford personal hearing to the applicant. The order of removal dated 17-8-82 was neither set aside nor the same was impugned at any stage later. In all the judicial pronouncements which the case has gone through, never it was in doubt that the removal order was legally correct. Hence, no benefit accrues from the order dated 3-1-90 in OA 520/87 which was only passed with reference to the appellate order. The order of removal was not touched in any manner. Under Section 11 of CCS(CCA) Rules 1965, the position has been clarified further "an order of suspension made or deemed to have been made shall continue to remain in force until it is revoked by the competent authority. An order of suspension ceases to exist automatically from the date from which

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the Government Servant is dismissed, removed or compulsorily retired, as a result of departmental and/or Court proceedings".

Neither the order of removal/or suspension was revoked in this case.

10. In view of the foregoing, we find no merits in the OA, which is accordingly dismissed. No costs.

Member (J)

S. B. C. S.
Member (A)