

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 426 of 92 1992

DATE OF DECISION 01-05-1992

K.N. Somasekharan Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Sub Divisional Officer, Respondent (s)
(Telegraphs), Thodupuzha and another

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

N. Dharmadan, M(J)

This application has been filed challenging
two orders Annexure-I and Annexure-II appears to have
been passed by the Sub Divisional Officer, Telegraphs,
Thodupuzha pursuant to the directions of the Tribunal
in OA 476/90. Annexure-VI is the judgment in OA 476/90.
We extract below the operative portion of the judgment.

"Accordingly, we set aside Annexure-I order and
remand the matter to the Sub Divisional Officer,
Thodupuzha for a proper disposal of the claim of
the applicant for back wages during the period
between 2-9-80 and 27-7-87 in accordance with law
applicable in the case..."

Received
on 26/5/92
127
26/5

2. The applicant was engaged by the department as Mazdoor but his service was terminated from 2-9-80 presumably on the expiry of the term of appointment. He filed an Original Petition before the High Court of Kerala which was transferred to this Tribunal under sec. 29 of the Administrative Tribunals Act and was re-numbered as TAK 38/87. It was allowed. The termination order of the applicant was quashed. Thereafter, since his claims for back wages was not properly considered he was forced to file a second application viz. OAK 336/86, and this was allowed by Annexure-III judgment dated 30-3-90, with the specific observations:

"On the facts and circumstances of this case we are of the view that the applicant should be deemed to have been reinstated in service with effect from the date on which his services were terminated by the Annexure-IV. As far as the salary for the period during which he was out of service, we make it clear that the applicant shall submit a detailed representation producing evidence to establish that he was not gainfully engaged elsewhere during the period when he was out of service. If such a representation is submitted by the applicant within a period of ten days from today the respondents shall consider the claim and pass appropriate orders in accordance with law within a period of three months from the date of receipt of such representation.."

3. The directions contain two parts. The first part pertains to re-instatement of the applicant with freedom to the departmental authorities to proceed against the applicant if so advised. The second part deals with the consequential benefits which flows from the earlier directions of re-instatement. In regard to the second

5/

.....

direction and payment of back wages to the applicant from 1-9-82 to 27-5-87, we felt a doubt regarding his avocation during the period he was out of service. Hence we directed the applicant to file a representation and establish that he was not gainfully engaged during the period for which back wages are claimed. We further directed that if the applicant files such a representation referred to above, it shall be disposed of after conducting necessary enquiry.

4. Pursuant to the first part of the direction, the respondents did not pass any other suspending the applicant in connection with the enquiry proceedings. But when the applicant filed a representation-Annexure-IV, pursuant to the second part of the direction, the Sub Divisional Officer conducted an enquiry and passed Annexure-V order stating that the enquiry revealed that the applicant was gainfully engaged from 2-9-82 to 27-7-87, ~~when~~⁶ he was out of service. Hence the respondents rejected the claim for back wages. Against the said order of rejection, the applicant filed OA 476/90. After hearing the parties we allowed the application and quashed the order by Annexure-VI judgment. The relevant portion is extracted above.

5. It is in pursuance of Annexure-VI judgment that the Sub Divisional Officer passed the order at Annexure-I. The applicant filed objection to Annexure-I, which was disposed of by Annexure-II final order.

12

....

6. The applicant filed CCP 55/91 in OA 476/90 when he received Annexure-I and II orders. ^{When} ~~the~~ CCP came up for consideration we felt that the orders cannot be sustained. It is under these circumstances, the applicant filed this Original Application challenging Annexure-I and II orders.

7. The respondents filed reply statement stating that they have ample power under FR 54-B read with Rule 10(4) and 10(5) of the CCS(CCA) Rules to pass the impugned orders and they are legal and valid to be upheld. We are of the view that the respondents have not understood the scope of the directions in Annexure-VI judgment. If they had realised the real position they would not have invoked the provisions of FR 54-B and Rule 10(4) and 10(5) of the CCS(CCA) Rules for they would not apply to this case. We may read FR 54-B and Rules 10(4) and 10(5) of CCS(CCA) Rules:

FUNDAMENTAL RULES

"FR.54-B(1) When a Govt. servant 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 allowance to be paid to the Govt. servant for the period of suspension ending with reinstatement or the date of his retirement (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..."

CCS(CCA) Rules 1965

10(4): Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consider-

ration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Govt. servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case

10(5):(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Govt. servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Govt. servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.."

FR 54-B does not apply to this case. Rule 10(4) and 10(5)

of CCS(CCA) Rules are very clear that deemed suspension

can arise only in cases in which penalty of dismissal,

removal or compulsory retirement from service had been

declared as void and a decision to hold further enquiry

after the Court or the Tribunal passes order quashing the

penalty order and remands the case for further action.

Admittedly, the SDO did not pass any such order of deemed

suspension and pursuant to the first part of the direction

and this is also not a case of dismissal or removal from service.
in Annexure-VI judgment. The provisions of Rule 10(4) and

10(5) would apply only in cases of referred to above. This

10.

...../

preposition is supported by the decision of the Supreme Court in Mohinder Singh V. Union of India, 1991 Suppl. SCC 127. The relevant portion reads as follows:

"There are three requirements for the application of Rule 10(4); (1) the Govt. servant is dismissed, removed or compulsorily retired as a measure of penalty (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a Court of law. (iii) The disciplinary authority, decides to hold a further enquiry against the Govt. servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the Govt. servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.."

The impugned orders have been passed by the Sub Divisional Officer in connection with the second portion of the direction contained in Annexure-IV judgment. That direction is very limited. It pertains only to the enquiry by SDO in regard to the income derived by the applicant during the period when he was out of service from 2-9-80 to 27-7-87. This is clear if we read the judgment at Annexures III and VI together. The officer accordingly conducted the enquiry and came to a conclusion that applicant's claim for back wages cannot be sustained as it was not bonafide. During this period he was running a tea shop and earned income. Hence, Annexure-I order was passed ^{thing placing 2} ~~keeping~~ reliance on FR 54-B read with Rule 10(4) and 10(5) of CCS(CCA) Rules. ^{we are of the view that these 2} ~~These~~ provisions ~~do~~ not apply ^{to} to cases where direction is confined only with regard to an enquiry about gainful engagement when the applicant was not in service, and for payment of back wages. The officer has gone wrong in invoking those provisions ^{and} while disposing of Annexure-IV representation.

8. In the circumstances, we are of the view that both Annexure-I and II are unsustainable and liable to be quashed. Accordingly, we quash them and direct the respondents to pay back wages due to the applicant for the period from 2-9-80 to 27-7-87 within a period of 4 months from the date of the judgment. The applicant is also entitled to get consequential benefits in terms of first part of the directions contained in Annexure-III ~~and~~ ⁴ by which we directed the reinstatement of the applicant from the date on which his services were terminated by Annexure-IV in OAK336/88 viz. 2.9.80.


1.5.92
(N. Dharmadan)
Member (Judicial)


1.5.92
(N.V. Krishnan)
Member (Administrative)

1-5-92

ganga.