

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.498/94

Friday, this the 20th day of January, 1995.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

Y Daniel Tharakan, SC No.11107,  
Heavy Vehicle Driver,  
Vikram Sarabhai Space Centre,  
Thiruvananthapuram.

....Applicant

By Advocate Shri G Sasidharan Chempazhanthiyil.

vs.

1. Union of India represented by its  
Secretary, Department of Space,  
New Delhi.
2. The Controller, Vikram Sarabhai Space Centre,  
ISRO PO, Thiruvananthapuram.
3. Head, PGA, Vikram Sarabhai Space Centre,  
Thiruvananthapuram.

....Respondents

By Advocate Shri CN Radhakrishnan.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was a Heavy Vehicle Driver in the Vikram Sarabhai Space Centre. He was removed from service on grounds of unauthorised absence. The penalty was reduced on appeal to reduction to the lower grade of Light Vehicle Driver for a period of one year. The facts of the case were noticed by the Tribunal in OA 1610/91:-

"The order passed by the disciplinary authority  
on 16.9.81 removing applicant from service after

enquiry...He filed OP 7192/85 against the penalty, but it was dismissed holding that the CAT is the proper forum. Accordingly OAK 78/87 was filed. It was allowed...with the following observations:

"6...We...direct the respondents to start de novo proceedings from the stage of submission of written defence on the charge sheet. The applicant should be deemed to be reinstated in service from the date of his removal and placed under suspension from that date..."

A further enquiry was conducted...and applicant was again removed from service with effect from 24.1.90...The appellate authority...passed...order by which the penalty of removal was modified converting it into reduction to a lower grade with a direction to reinstate him with effect from 16.9.81...the period of suspension...from 16.9.81 (when he is deemed to have been placed under suspension) till the date of resumption of duty in the post of LVD...shall not be treated as period spent on duty for any purpose. However, this shall not amount to a break in service...Applicant was, accordingly, reinstated on 2.7.90. He filed...representation...claiming that the period may be treated as duty for all purposes. It was rejected by...order dated 11.10.90."

Subsequently, in pursuance of the directions in OA 1610/91, the claim of applicant for the benefits of FR 54(5) was considered, resulting in the impugned order AXI.

2. During the hearing, learned counsel for applicant stated that he was pressing only prayer (4), namely, to direct 2nd respondent to treat the period of non-employment from 16.9.81 to 1.7.90 as duty for purposes of pension. Applicant bases his prayer on,

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(a) the fact that appellate orders were not communicated to him;

(b) respondents having agreed to treat the period of unauthorised absence as leave of any kind due and admissible to him, under FR 54(5), treating nearly ten years as not duty and curtailment of his pension to a substantial extent is unjustified; and

(c) the disciplinary proceedings were protracted due to the respondent.

3. Respondents in the impugned order AXI dated 16.9.93 state that the applicant was unauthorisedly absent from 15.8.80, that his whereabouts were not known, that efforts to contact him at known addresses proved futile. In their reply, they state that notices sent by Registered Post could not be served as applicant was not present at any of his known addresses, that applicant was obliged to keep his employer informed of his whereabouts. They further state that there was no delay in finalising the disciplinary proceedings as seen from the calendar of events from 27.2.89 to 24.1.90 mentioned in the reply statement, that the representations of the applicant were considered and the applicant was heard on 1.7.93 before the impugned order AXI was passed. They also state that according to FR 54, the period of suspension shall not be treated as duty unless the charged employee is fully exonerated and that in this case, the applicant was found guilty and punished with a major penalty. Therefore, they argue, the period of suspension cannot be treated as duty.

4. FR 54(3) declares that if a Government servant who had

been removed is fully exonerated, the period of suspension preceding such removal shall be treated as a period spent on duty for all purposes. FR 54(5) states that where a Government servant is not fully exonerated, the period of suspension preceding such removal 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.

5. The applicant has violated the rules under which he is obliged to report his whereabouts while proceeding on leave. The Form for application for leave under FR & SR 14 of the Leave Rules specifically provides for furnishing the address during leave period. Applicant has only himself to thank if he did not get the appellate orders or did not get them in time. The disciplinary authority is not expected to do detective work and locate the applicant to communicate his orders to him. Even communications by Registered Post to his last known address could not reach him. We find that barring the four months spent in filing an SLP before the Supreme Court and getting orders thereon, the disciplinary authority has not delayed the proceedings of enquiry. As stated by respondents, the enquiry related to an eight year old matter and the records had to be traced out and the witnesses had to be assembled again. We cannot agree that the applicant has been adversely affected by any delay on the part of respondents. It is not in dispute that the applicant has been found guilty of the charges. During the hearing, learned counsel for applicant also agreed that the power conferred by FR 54(5) to treat the period of suspension as period spent on duty for any specified purpose is discretionary. The competent authority has directed that the period of suspension shall not be treated as period spent on duty. Considering the facts of

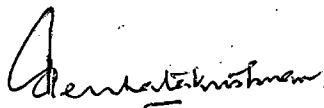
contd.

the case, this cannot be said to be arbitrary or unreasonable.

The Tribunal cannot substitute itself for the competent authority under FR 54(5) and pass orders. We see no grounds for interfering with the impugned orders.

6. The application is accordingly dismissed. No costs.

Dated the 20th January, 1995.



PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)  
VICE CHAIRMAN