

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 539
T.A. No.

1989

DATE OF DECISION 31.7.90

P. K. Koshy Applicant (s)

M/s. O. V. Radhakrishnan Advocate for the Applicant (s)

Versus

SDO Supdt. SR, Palghat & others Respondent (s)

M. C. Cherian Advocate for the Respondent (s)

CORAM:

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement *Yes*
2. To be referred to the Reporter or not? *no*
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

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

A retired Government employee who was involved in
has *by*
a disciplinary proceedings/approached this Tribunal with
the grievance that the denial of full pay and allowances
during the period of suspension from 11.10.1969 to
21.7.1975 is illegal. Hence, he seeks for a direction to
the respondents to treat the above period of suspension
spent on duty for all purpose and to grant him full
service benefits including pensionary rights.

2. The applicant retired on superannuation on 31.9.1988.
While he was in service as Mail Guard, Annexure A-1
charge sheet was issued to him and he was placed under

Handwritten notes:
X
1/1
1/1

suspension from 11.10.1969 as per Annexure-I. He filed O.P. 4912/69 challenging the order, but by Annexure A-2 this was disposed of. Thereafter he was continued under suspension, disciplinary action was pursued as observed by the High Court in Annexure A-2. The disciplinary proceedings ended in Annexure A-6 order dated 23.9.75. Annexure A-7 order was passed by Senior DOS regularising the period of suspension from 11.10.69 A.N. to 21.7.75 as 'period not spent on duty.' The applicant approached the High Court again by filing O.P. 5387/75 bypassing the statutory appellate remedy. The High Court passed Annexure A-9 judgment on 27th October, 1978 observing as follows:

"At any rate, in view of the availability of alternative remedy, which has not been resorted to, I need not go into the other questions raised in the case. The original Petition is dismissed. No costs."

The applicants appeal dated 20.2.79 was disposed of by order with the punishment only at Annexure A-9 which deals indicating that the applicant's grievance was only against the punishment order and not against suspension which was concluded as per Annexure A-7.

3. But the applicant represented to the respondents for treating the period of his suspension as period spent on duty by implication which was rejected as per the impugned order Annexure A-10 dated 22.9.88. But the respondents considered the request and granted some relief by regularising the period of suspension as qualifying service for the limited purpose of pensionary benefits only and not for any other purpose.

4. Unsatisfied with the relief granted by the respondents, the applicant now approached this Tribunal and filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order and

for the direction as mentioned above.

5. The respondents have filed detailed counter affidavit and opposed the claim.

6. Having heard the matter, we feel that this is a matter involving FR 54-B clause (5) which is extracted below:

"In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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."

7. The learned counsel for the applicant brought to our notice the letter of the ^{Dy. ✓} Director of Railway Board No. E(D&A) 86 RG 6-19 dated 21.3.1985 (Annexure A-11) which was issued as an O.M. clarifying the Railway Board's stand with regard to the scope of the above provision.

In the said letter it has been stated that

"these instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty."

X X X X

"Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B."

X X X X

"These orders will become effective from the date of issue. Past cases already decided need not be reopened."

(emphasis supplied)

8. In the instant case records produced by the applicant discloses that the grievances against the disciplinary proceedings culminated in Annexure A-9 order dated 27.4.1979. He did not agitate the matter/ ^{regarding the A-7 order} by taking any further steps against the above order for getting the matter alive till Annexure A-11 so as to enable him to claim the benefits provided under it.

9. The provisions of FR 54-B(5) would not automatically apply in a case of this nature. The applicant could have alerted the authority by filing representations or petitions as envisaged in the rule. The applicant has not produced any materials except certain belated representations having vague statements. The documents produced by the respondents along with the counter affidavit viz. Annexure R-1(a), R-1(b) and R-1(c) are his representations submitted in this behalf. R-1(a) appears to be the first representation after Annexure A-7. It is dated 30.3.87. It does not specifically mention about his grievance against the denial of pay during the period of suspension. Even thereafter A-9 he did not agitate the matter, raising the issue in appropriate forum. We are of the view that the applicant was not very serious about his ^{grievance.} Thus according to us the question dealing with the ~~xxxxxxxxxxxx~~ regularisation of suspension and the claim of pay for the period of suspension have become final in Septl, 1975 ^{by the A-7 order} and this is a past case already decided and closed. In the light of Annexure A-11 clarification letter the applicant's grievance


is a closed matter and it is not liable to be reopened.

In this view, we are satisfied that the applicant has no case.


10. The learned counsel for the applicant Brought to our notice the decision of the Tribunal in Mohmed Wahid V. Union of India (1989 (9) ATC 364) and Valente Braganza V. Supdt. of Police, Panaji, Goa and others, (1989)10 ATC 256) and submitted that these decisions support the cases of the applicant.

11. We have gone through the decisions. According to us the decisions cited by the learned counsel are not applicable to the facts of this case. The scope of Annexure A-11 did not come up for consideration in these cases and according to us the decisions are not helpful for deciding the issue arising in this case.

12. In the above circumstances, we are of the opinion that there is no merit in the application. It is only to be dismissed. Accordingly, we do so. There will be no order as to costs.


31.7.90

(N. Dharmadan)
Judicial Member


31.7.90

(N.V. Krishnan)
Administrative Member