

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.129/2003.

Tuesday this the 2nd day of December 2003.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

P.M.Edwin,
Transmission Executive,
All India Radio, Trichur.

Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of Idia represented by its Secretary to government of India, Ministry of Information & Broadcasting, New Delhi.
2. The Prasar Bharathi (Broadcasting Corporation), AIR, represented by its Chief Officer, New Delhi.
3. The Director General, (Broadcasting Corporation of India), All India Radio, New Delhi.
4. The Station Engineer, All India Radio, Calicut.
5. The Station Director/Station Engineer, (Head of Office), AIR, Trichur.
6. Shri M.Radhakrishan, All India Radio, The Station Engineer, Trivandrum.

Respondents

(By Advocate Shri T.C.Krishna, ACGSC R.1-5)
(By Advocate Shri M.R.Hariraj (R-6)

The application having been heard on 2.12.2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, a Transmission Executive of All India Radio, Trichur, aggrieved by the inaction on the part of the respondents to regularise the period of his suspension between 20.1.94 and 7.2.96, the refusal to reimburse him the litigation

expenses and incidental charges incurred in defending a criminal case, non-payment of the pay and allowances as also adhoc bonus for the period during which he was kept under suspension, has filed this application seeking the following reliefs:

- a) Direct the respondents to regularise the period of suspension ie. from 20.1.94 to 7.2.96, as period spent on duty;
- b) Direct the respondents to pay the arrears of salary and allowances for the period from 20.1.94 to 7.2.1996, Adhoc bonus due for the period increments due on 1.4.94, 1.4.95 and all consequential benefits, including arrears of adhoc bonus i.e. from 20.1.94 till date with 12 % interest forthwith;
- c) Direct the respondents to reimburse the legal expenses incurred by the applicant for cases against the unjust suspension, and defending the criminal case and to pay the travelling allowances spent for attending the court proceedings in C.C.C.778/1994 to the applicant forthwith;
- d) Direct the respondents to pay jointly and severally a compensation of Rs.50,000 (Fifty thousand only) for the mental agony caused to the applicant
- e) Award costs of and incidental to this Application, to be recovered from the 6th respondent.
- f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The facts which are necessary for the disposal of the application shorn off details which are not very relevant can be briefly stated as follows:

The applicant joined the All India Radio, Calicut as a Transmission Executive on 2.4.90. According to the applicant the 6th respondent developed a sense of prejudice and bias against him. On 19.1.94 the applicant was arrested by the Police in connection with a criminal case and the applicant was detained in custody and was released on bail on the same day. The applicant was placed under suspension by order dated 20.1.94 of the 6th

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respondent. The applicant challenged the order of suspension by filing O.A.1083/94 before this Bench of the Tribunal. However, the Tribunal dismissed that O.A. The applicant carried the matter before the Hon'ble Supreme Court in SLP (C) No.23060/94. The Hon'ble Supreme Court by its judgement dated 5.2.96 taking note of the fact that the applicant had been under suspension for more than two years and criminal investigation was pending, directed reinstatement of the applicant in service placing no embargo in holding disciplinary enquiry, if any felt necessary. In obedience to the judgement of the Apex Court the applicant was re-instated w.e.f.7.2.96. The applicant on 16.4.96 submitted a representation seeking regularisation of the period of suspension and for payment of arrears of pay and allowances. The representation was disposed of by order dated 17.9.96 informing the applicant that the question of regularising the period of suspension would be considered only after the end of criminal case. In the meanwhile, the applicant was transferred to AIR Trichur from AIR Calicut. Aggrieved by the order of transfer the applicant filed O.A.1676/98 which was dismissed by order dated 7.12.1998. The criminal case which followed the arrest of the applicant ended on his acquittal by order dated 30.10.99 of the Hon'ble First Class Judicial Magistrate-1, Calicut. On acquittal by the Judicial Magistrate of the Ist Class, the applicant on 7.11.99 submitted a representation to the 3rd respondent praying that the period of suspension be regularised as duty and he be given the consequential financial benefits. Finding no response he submitted another representation A-7 for which also, the applicant did not get any reply. Therefore, the applicant approached the Hon'ble High Court of Kerala in O.P.No.11436/01 seeking a direction to the respondents to regularise the period

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of suspension and to make available to him the consequential benefits. Finding that the Hon'ble High Court did not have jurisdiction in the matter, the Petitioner was permitted to withdraw the O.P. and so the O.P. was withdrawn by order dated 11.12.02. Therefore, the applicant has filed this O.A. seeking the aforesaid reliefs. It is alleged in the application that the applicant has meted out hostile and malafide treatment at the hands of the 6th respondent, that the delay on the part of the respondents in not regularising the period of suspension and not making payments to him in accordance with the rules is culpable and not justified, that the applicant should have been granted the reimbursement of the legal charges as also the travelling expenses incurred by him in defending the criminal case that,, on account of harassment and mental agony suffered by the applicant, the respondents are liable to compensate him by payment of Rs.50,000/- and that, in the facts and circumstances of the case this Tribunal should intervene and render justice to the applicant.

3. The respondents 1 to 5 have filed a reply statement in which they contend that there was no culpable delay on their part in issuing the orders regarding regularisation of the period of suspension in terms of the provisions contained in FR 54(b) that though the applicant on his acquittal by the judicial First Class Magistrate No.I, Calicut, submitted a representation, but he did not make available a copy of the judgement acquitting him, that the first time the respondents came across the judgement was when a copy of the O.A. alongwith a copy of the judgement was received that immediately thereafter, the matter was processed and the orders regularising the period of suspension as duty for

all purposes were issued, that the consequential financial benefits such as difference of pay and allowances as also adhoc bonus were made available to the applicant in two instalments on 31.3.2003 and 6.6.2003, that as per rules the applicant is not entitled either to the litigation charges or the expenses incurred incidental thereto, that the applicant did not defend the criminal case as an employee of the Government of India to attract the provisions under Article 320-3(d) of the Constitution and that since what is due to the applicant had already been paid to him, and as there was no culpable delay, there is no grievance of the applicant which survives, contend the respondents.

4. The 6th respondent has in his reply statement in detail refuted all the allegations of malafides and contended that it was the applicant who has shown malafides and ill-treatment towards him and he had been the sufferer. He also contended that he has not caused any mental agony to the applicant nor has been responsible for any delay in issuing orders regularising the period of suspension and in making payment to the applicant. The 6th respondent further contended that, as a matter of fact he had recommended to the Director General, All India Radio, for the revocation of suspension of the applicant and transfer in lieu of suspension.

5. We have gone through the pleadings, all the material on record and have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri T.C.Krishna, learned ACGSC for R.1-5 and Shri M.R.Hariraj, learned counsel for R-6.

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6. Now that the period of suspension has already been regularised as duty for all purposes and the arrears of pay and allowances as also adhoc bonus have already been paid to the applicant on 31.3.2003 and 6.6.2003 as admitted by the counsel for the applicant, the controversy in this case had been narrowed down considerably. What remains is the claim of the applicant for interest for the delayed payment of arrears of pay and allowances as also adhoc bonus, for reimbursement of the legal charges travelling expenses incurred and also the claim for compensation.

7. We will take up these claims one by one.

Learned counsel of the applicant argued that since the applicant was honourably acquitted by the Hon'ble Judicial First Class Magistrate I, Calicut vide its judgement dated 30.10.99, the respondents should have immediately issued orders regulating the period of suspension in accordance with the provisions of FR 54(B) and made payment to the applicant. He submitted that despite the fact that the two representations were made the respondents did not give any reply to the applicant and even after filing of the O.P.11436/01 before the the Hon'ble High Court of Kerala enclosing a copy of the judgement of the First Class Judicial Magistrate, no payment was made to him. This action on the part of the respondents being grossly culpable, the learned counsel argued that the respondents are liable to pay to the applicant interest on the delayed payment of arrears of pay and allowances and other amounts due to the applicant. Shri TC Krishna, learned counsel for R.1-5 on the other hand argued that although the applicant was acquitted by the judicial Magistrate First Class in C.C.C.778/1994 in the year 1999, a copy of the

judgement not having been made available to the respondents, they could not consider the question and issue orders regarding regularisation of the period of suspension according to the provisions of FR54(b), that when the copy of the judgement was received by the respondents along with a copy of this O.A., the matter was immediately processed and due payments were made to him in March and June 2003 and therefore, there is absolutely no culpability on the part of the respondents. Learned counsel argued that if there has been any delay in processing the matter it was made only by the applicant by not making available to the respondents a copy of the judgement of the Judicial First Class Magistrate, Calicut.

8. Although when the respondents were received the representations A6 and A7, they could have called upon the applicant to produce a copy of the judgement acquitting him in fairness, primarily it was the duty of the applicant to furnish a copy of the judgement and base his claim for regularising the period of suspension on that basis. The applicant failed to do that. The respondents were under a legal obligation to consider the claim of the applicant, only when a claim was made in accordance with the rules by producing a copy of the judgement. Even today, the applicant has not done it. True, the respondents could have, on receipt of the copy of the O.P. filed before the Hon'ble High Court, taken up for consideration the issue of regularising the period of suspension on the basis of the judgement of the Judicial First Class Magistrate, acquitting the applicant. The legal obligation on the part of the respondents

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to do so would arise only when a claim is made by producing the documents. Immediately after filing the O.A. along with a copy of the judgement, the respondents have taken up the issue and processed and without undue delay they have considered and issued appropriate orders and have also made available to the applicant the entire amount due to him in two instalments on 31.3.03 and 6.6.03.

9. Under these circumstances, we do not find any culpability on the part of the respondents or any intention to delay the payment. Hence, we are not satisfied that the applicant is entitled to claim interest.

10. Coming to the claim of the applicant for reimbursement of the litigation charges incurred by him to be filed C.C.C.778/94, we find that the applicant did not defend his case on behalf of the Government and he has done it in individual capacity and therefore, he is not entitled to the reimbursement of the litigation expenses in the light of the provisions contained under Article 320 and especially, when the applicant has not been able to show any rule or instruction which enables him to make such a claim.

11. The Government of India, Ministry of Finance OM.No.5(13)IV.59/1 dated 28.2.1959 as modified by O.M.dated 22.7.1960 as also O.M.dated 29.7.1960 and U.O.No.4623(E) IV/B 60 dated 30.12.1960 also do not improve the case of the applicant because what is stated in these instructions is that, the travelling expenses would not be included in the litigation expenses under Article 320 (b) and that if the litigation

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expenses is reimbursable, journey undertaken would be reckoned for the purpose of claiming TA. Since the involvement of the applicant in the criminal case was not on behalf of the government and he was not obliged to defend the Criminal case as a Government employee but only in individual capacity, we are of the considered view that the applicant is not entitled to the reimbursement of the litigation expenses or the travelling expenses. The claim in that regard is not based on any rule or instructions and cannot be sustained.

12. Coming to the claim of the applicant for compensation of Rs.50,000/- we do not find any basis as to how the applicant has claimed this amount and how he quantified at Rs.50,000/-. True, the applicant was acquitted in a criminal case and orders regarding regularisation of the period of suspension and payment could have been made earlier than 2003. But we have already found that the main factor which contributed to the delay was the inaction on the part of the applicant in furnishing the copy of the judgement. Further, merely because the payment was delayed and the period of suspension was not regularised, we are not convinced that the applicant has been subjected to any mental agony. The allegation against the 6th respondent has not been established and therefore, we do not find any substance in the allegation of malafide on the part of the 6th respondent. We are of the considered view that, the applicant is not entitled to recover any compensation from any of the respondents.

13. In the conspectus of facts and circumstances and on the basis of further developments taken place after filing the O.A., we do not find that any of the applicant's grievance subsists now

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after the period of suspension has been regularised and payment made to the applicant. Therefore, to that extent the application has become infructuous. Accordingly the application is dismissed without any order as to costs.

Dated the 2nd December, 2003.

H.P.DAS

ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

rv.