

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

TRANSFERRED APPLICATION NO.71/86

Mr. Dahyabhai Jivanbhai Chauhan
Naroli
Nagar Haveli

Applicant No.1
(Original Petitioner no.1)

Mr. Nithalbhai Surjibhai Patel
Karamkhel
Pardi Taluka
Dist. Bulsar

Applicant No.2
(Original Petitioner No.2)

V/s

1. Union of India
2. G K Bhattacharya
Collector
Dadra & Nagar Haveli
Silvassa & Daman Union Territory
3. M J Joshi
Enquiry Officer
Deputy Engineer
P.W.D. Sub-Division
Silvassa
Union Territory of Dadra
and Nagar Haveli

Respondents

Coram : Hon'ble Member(A) J G Rajadhyaksha
Hon'ble Member(J) M B Mujumdar

Appearance:

Mr. R.S. Mohite
Advocate
for the applicant

Mr. J.D. Desai
(for Mr. M.I.Sethna)
Advocate
for the Respondents

ORAL JUDGMENT
(PER: M.B. Mujumdar, Member[J])

DATE : 2.3.1988

Writ Petition No.2252 of 1980 filed by the applicants in the High Court of Judicature at Bombay on 6.8.1980 is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985, for decision.

2. Applicant no. 2, M.S. Patel has gone abroad after he was dismissed from service and hence his case was

not pressed before us by Mr. Mohite, the learned Advocate for the applicants.

3. The essential facts for the purpose of this judgment are these: Applicant no. 1 D.J. Chauhan is working as a Forester under the Dadra Nagar Haveli Administration. For some incident that took place on 25.6.1976 charges were framed against him and applicant no. 2 Patel. By ^{his} report dated 24.9.1978 the Inquiry Officer exonerated them of all the charges. However, the Disciplinary Authority i.e., the Collector of Dadra and Nagar Haveli disagreed with these findings and awarded the penalty of removal from service to both the applicants. Their appeal to the Administrator was dismissed on 14.9.1979. Against that order, the applicants had preferred Writ Petition No. 642/80 in the High Court of Judicature at Bombay. It was decided on 15.4.1980 by the Bench comprising of Lentin and Desai, JJ. They took the view that the principles of natural justice were violated by the Disciplinary Authority as well as Appellate Authority because both had not heard the applicants before passing the orders. Hence the order of penalty of removal from service was set aside and the matter was remanded to the Collector, Dadra and Nagar Haveli, for giving his decision in the light of the observations contained in the judgment and in accordance with law.

4. Thereafter, on 16.6.1980, the Collector, Dadra and Nagar Haveli passed an order under rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 directing that the applicants shall be deemed to have been placed under suspension from the date of original order of their removal from service and they would continue to remain under suspension until further orders. He further directed that during the period of suspension the applicant should be paid subsistence allowance according to rules. Within two months of the above order, the applicants filed the ^{present} Writ Petition in the High Court challenging that order on various grounds.

5. After completing the enquiry as directed by the High Court, the Disciplinary Authority - Collector of

Dadra and Nagar Haveli - imposed the penalty of censure upon the applicants. By that time applicant no. 2 Patel was dismissed from service in some other proceeding. Hence by an order dated 7.9.1981 applicant no. 1 Chauhan was directed to be reinstated in service with immediate effect though his suspension period was to be regularised separately. Then a notice dated 30.3.1982 was given to the applicant calling upon him to show cause within 15 days as to why the period of suspension should not be treated as non-duty. Applicant no. 1 replied to that notice through his advocate on 19.4.1982 and also on 20.4.1982. In the second reply he merely referred to an authority. After considering these replies, the Collector of Dadra and Nagar Haveli passed the impugned order on 26.7.1984. The order reads as follows:

Shri D.J. Chauhan, Forester remained negligent and has not recorded the tree said to be cut at their instance, and not taken necessary follow up action, including lodging a report with the concerned authorities. On finalisation of departmental proceeding initiated against Shri Chauhan, the undersigned came to the conclusion to impose penalty of Censure vide order No. ADMN/EST/A/DEP/-13-14/81 dated 7.9.81 referred to in preamble (ii) above.

AND whereas notice dated 30.3.82 was issued to show cause why the period of suspension should not be treated as non duty referred to in preamble (iii) above.

AND whereas the representations have been received and considered as referred to in preamble (iv) and (v) above. Shri D.J. Chauhan, Forester is not fully exonerated and the suspension was not wholly unjustified, the period spent under suspension by Shri D J Chauhan, Forester, is hereby treated as 'NON DUTY'. He should not be paid any additional amount more than the subsistence allowance already paid to him."

In the above order the period of suspension was not specifically mentioned. Hence, by a corrigendum dated

30.8.1984 it was made clear that the period of suspension from 14.6.79 to 9.9.81 should be treated as 'NON DUTY'.

6. We have heard Mr. R.S. Mohite, learned Advocate for applicant no. 1 and Mr. J.D. Desai (for Mr. M I Sethna), learned Advocate for the respondents. The respondents have filed their written statement after the case was transferred to this Tribunal. In view of the developments subsequent to the filing of the case in the High Court, applicant no.1 was required to amend the petition and after the petition was amended the respondents have filed a supplementary written statement.

7. Applicant no. 1 has challenged (i) the suspension order dated 16.6.80; (ii) penalty order dated 7.9.81; and (iii) the order dated 26.7.84 as amended by the order dated 30.8.84. However, Mr. Mohite did not press the challenge to the penalty order dated 7.9.81. Though he challenged the suspension order dated 16.6.80 it is not necessary to decide the legality or validity of that order because we are inclined to set aside the order dated 26.7.84.

8. It may be noted that neither in the order dated 26.7.84 nor in the corrigendum dated 30.8.84 it is mentioned as to under what rule or provision the order was being passed. Even in the show cause notice dated 30.3.1982 the rule under which the action was proposed to be taken was not mentioned. In the supplementary affidavit filed on behalf of the respondents on 10.9.87, the respondents have clarified that the order in question was issued in pursuance of the provisions contained in sub-rule 5 of rule 54(a). There is no such rule as Rule 54(a) in the Fundamental Rules. Rule 54 A is to be found, but it is not applicable to the facts of this case. We are pointing this out in order to show how the supplementary affidavit was negligently prepared. Rule 54 B (2) may apply to the facts of this case. We need not quote that sub-rule here because we can dispose of this application by relying on Government of India's decision dated 31.12.1985 below FR 54.B. This decision is quoted in the list of corrections and

additions to Chaudri's compilation to the Fundamental Rules, Vol. I (9th Edition). The decision reads as under:

"Attention is invited to the Deptt. of P.&Trg.Memo No.43/56/64-AVD, dated 22.10.64 containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. 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. The Staff Side of the Committee of the National Council set up to review the C.C.S.(C.C.A.) Rules, 1965 had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. 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 suspension can be said to be wholly unjustified in terms of F.R.54.B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R.54.B.

2. * * *

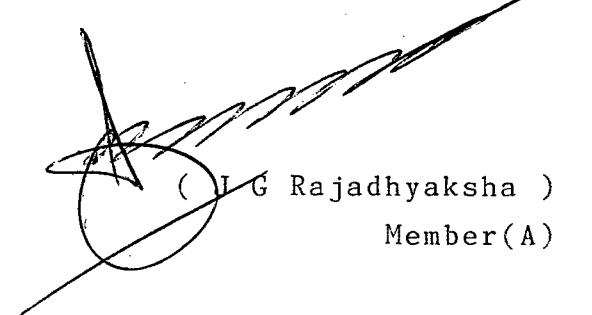
3. These orders will become effective from the date of issue. Past cases already decided need not be reopened."

9. The last sentence in para(1) of the above decision, in our opinion, will apply to the facts of

this case. As a result of the departmental proceedings in this case the applicant no.1 was awarded the penalty of 'Censure', which is a minor penalty. We, therefore, feel that applicant no. 1 should have been paid full pay and allowances for the period of suspension by passing a suitable order. We are aware that by para 3 of the above decision, the orders were to become effective from the date of issue i.e., from 3.12.1985 and past cases already decided were not to be reopened. But in our opinion the principle is very logical and reasonable. There is no reason why a person to whom a very minor penalty is awarded should be deprived of the portion of his pay during the suspension period as well as his period of service during that period. Besides these ~~guidelines~~ ^{direction in para 3 is} for Government departments and in no way binding upon this Tribunal. We are, therefore, of the view that the impugned order dated 26.7.84 as corrected by the corrigendum dated 30.8.84 deserves to be quashed and set aside.

10. In the result we pass the following order:(i) The order dated 26.7.1984 as modified by the order dated 30.8.1984 passed by the Collector of Dadra and Nagar Haveli is hereby quashed and set aside. (ii) We further direct that the period from 14.6.1979 to 9.9.1981, during which applicant no. 1, D.J.Chauhan, was under suspension should be treated to be on duty and he should be paid his full pay and allowances minus the subsistence and other allowances paid to him for that period. He shall also be given all other consequential benefits which are due to him according to rules. (iii) The above directions shall be complied with within two months from the receipt of a copy of this order. (iv) Parties to bear their own costs.


(M B Mujumdar)
Member(J)


(L G Rajadhyaksha)
Member(A)

R.P.No. 15/88 reviewing
the judgment dtd.
2/3/88
S. S.
24/5/88

Dated: 30/5/88:

M. P. No 286/88
(for correcting the
date)
S/

Heard Mr. J. D. Desai. The Respondents
have filed misc. petition No. 285/88
for correcting the date "9/9/1987"
mentioned in the order passed by
us on 2/3/88 as "9/9/1981". After
going through the Judgment, especially
para 5 of the Judgment, we have
no doubt that the date ~~the~~ "9/9/87"
is wrongly mentioned. It should
have been "9/9/1981". As the error
is a typographical one, we correct
it ~~by extracting it in paper~~ ^{in paper} ~~in~~
it ~~written~~ ^{written} our own powers.

We therefore, allow miscellaneous
Petition No. 285/88 and direct that
the date "9/9/87" mentioned in
para 10 of our Judgment delivered
on 2/3/88 should be corrected as
"9/9/1981". The correction should
be made in the original Judgment
and both the parties shall be
informed accordingly.

Judgment dt. 2.3.88
And order dt. 30.5.88
was served on
Applicant on 17.6.88
and to Reg. No. 1 on
dt. 16.6.88.

22/6/88. 22/6

Judgment dt 2.3.88
and order dt 30.5.88
was served on Applicant
No. 2 on 21.6.88.

24/6/88. 24/6