

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

28/10/15

OA.NO.419/2001

Dated this the 31st day of December 2001

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastri, Member (A)

Rajeev Kumar,
Deputy Commissioner of Income Tax
Group 'A',
C/o CCIT, Mumbai,
3rd Floor, Ayakar Bhawan,
Marine Lines, Mumbai.

...Applicant

Applicant in person

vs.

Union of India through
Chief Commissioner of
Income Tax (Admn.),
3rd Floor, Ayakar Bhawan,
Marine Lines, M.K.Road,
Mumbai.

...Respondents

By Advocate Shri V.G.Rege

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the
Administrative Tribunals Act, 1985 seeking the reliefs as under :-

"8 (a) direct the respondent to sanction increments in full during deemed suspension period which have become due to the applicant and recalculate the subsistence allowance accordingly and to pay arrears thereof.

(b) to direct the respondents to recalculate the subsistence allowance including interest on the balance amount due @ 18% simple interest for the due period to the date of recalculation.

(c). to direct the respondents to grant full pay to the petitioner and interest thereof @ 18% on arrears from 2.4.98 to the present as the continuation of deemed suspension beyond 2.4.98 to till date is illegal keeping in mind the decision of Allahabad High Court (Full Bench decision) in Chandrashekhar Saxena vs. Director of Education (Basic) reported in 1997, All.L.J. 963.

(d) pass such order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Perusal of relief mentioned at para 8 (a) and (b), claim of the applicant relates to sanction of increments but para 8 (c) relates to validity of the continuation of the deemed suspension beyond 2.4.1998 as he has claimed full pay. Thus, the applicant has claimed two reliefs, one is regarding sanction of increment during suspension period and the other is suspension beyond 2.4.1998 being illegal entitled to full pay. In view of Rule 10 of CAT (Procedure) Rules, 1987, the applicant is entitled to claim more than one relief in respect of one cause of action but he is not entitled to claim more than one reliefs based on more than one causes of action. The applicant is informed accordingly and facing the situation, the applicant informed the Tribunal that he is pressing the relief regarding increments and seeks liberty to agitate the relief regarding continuation of suspension beyond 2.4.1998 being illegal by a separate OA. We permit the applicant to raise the said plea in a separate OA. in accordance with law.

3. The applicant who belongs to Indian Revenue Service (Income Tax) was posted as Assistant Commissioner of Income Tax (Inv.), Circle 27 (1) in Piramal Chambers, Mumbai in March, 1998. He was implicated in a case of bribery, which according to the applicant was false one and he was placed under suspension vide order dated 15.5.1998. Thereafter, he was not sanctioned the increments. Hence, this OA. for the above said reliefs.

4. The claim of the applicant is being resisted by the respondents on an averment that the applicant is not entitled to draw increments during suspension period in view of F.R.26, 53.

5. The learned counsel for the applicant relied on F.R. 26 and F.R. 53 which reads as under :-

"F.R.26. The following provisions prescribe the conditions on which service counts for increments in a time-scale :-

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.

(b) (i) Service in another post, other than a post carrying less pay referred to in clause (a) of Rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post on which the Government servant holds a lien, as well as in the time-scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India;

Provided that the President may, in any case, in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under clause (i) or (ii).

(c) -----.

(d) -----.

(e) -----.

F.R. 53. (1) A Government servant under suspension or deemed to have been placed under suspension by an order of appointing authority shall be entitled to the following payments namely :-

(i) ----- in the case of any other Government Servant --- a subsistence allowance ----- leave salary.

Provided that -----."

6. The learned counsel for the respondents argued that in view of F.R.26(a) a person is entitled to draw increments in a time scale for all duty in a post. He further argued that for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.

7. F.R.26 (b)(i) which is a deeming clause states what periods can be counted for all duty in a post. According to him, only the periods which are mentioned in F.R.26 (b)(i) can be added to duty and none-else. Perusal of the same makes it clear that the list is exhaustive one and not inclusive one.

8. The applicant relied on F.R.24 which is as under :-

"F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."

On the basis of this, he argued that an increment shall ordinarily be drawn as a matter of course unless it is withheld. There is no pleading of the respondents that the increment of the applicant has been withheld. As such he is entitled to draw the increments.

9. The learned counsel for the respondents relying on F.R. 53 read with F.R.54 argued that the applicant is entitled to subsistence allowance at the amount equal to leave salary which is a measure for payment of subsistence allowance and as the applicant's suspension continues, till his suspension continues,

the respondents are not in a position in view of F.R.54 to examine the question whether the applicant is to be treated on duty or not. According to him, reading of F.R.26, 53, 54 together leads us to the conclusion that a Government servant who continues in suspension, his suspension being not revoked, the period of suspension cannot be treated to be a period on duty.

10. The applicant relied on an order of Principal Bench in OA.NO.1583/99 Mahesh Chandra Nagar vs. Chief Commissioner of Income Tax (Admin) & Ors. decided on 13.11.2000 and argued that he is entitled to increments even during the suspension period. The said order is based on a judgement reported in 1993 (23) ATC 543, U.Ganga Raju vs. DRM, SC Railway, Vijayawada. Therefore, we have to examine ~~that~~ whether the said proposition of law laid down by Hyderabad Bench is to be followed or not.

11. The applicant relied on 1993(1) S.L.R. 620 C.B. Bhatnagar vs. Food Corporation of India & Ors. decided by Punjab & Haryana High Court - para 5 of the judgement and argued that during suspension period he is entitled to increments which is as under :-

" 5. The only defence taken on behalf of the respondents is that a person is not granted increments when he is on earned leave or half-pay leave. If the rules so provide, an employee may not be entitled to the grant of increments during the period he is on earned leave or half pay leave. However, an employee is not on leave during the period of suspension. Consequently, the fact that employee is not entitled to increment during the period of leave is no ground for the refusal to grant increment during the period of suspension."

The provisions under F.R.26, F.R.53, & 54 were not subject of consideration and were not considered. Similarly, in case of Ratan Lal vs. State of Punjab & Ors. 1995(1) SLJ 800, there was no occasion to consider the said provisions as such the said authority cannot help the applicant.

12. — In case of U.Ganga Raju vs. Divisional Railway Manager, S.C.Railway, Vijayawada & Ors. reported in (1993) 23 ATC 543, F.R.54-B (3)(6) were not the subject of consideration before the Bench. In case of C.B.Bhatnagar vs. Food Corporation of India & Ors., provisions contained under Fundamental Rules were not at all subject of consideration. In case of 1971 S.L.R.523 - Mritunjai Singh vs. State of U.P. & Ors. decided by the Hon'ble High Court of Allahabad, provisions contained under F.R.54 was not subject of consideration.

13. We are unable to concur with the proposition of law laid down in case of U.Ganga Raju decided by Hyderabad Bench, C.B. Bhatnagar & Ratan Lal (supra). In such situation, the judicial discipline requires that the matter be placed before the Chairman for consideration for constitution of a Larger Bench to decide the question :-

" Whether a person who is under suspension is entitled to draw increments during his suspension period?"

14. The Registry to take further steps in the matter.

CAT/ MUM/JUDL/O.A. 419/01/671-672
copy to

dated 16/11/02

- 1 Sh. Rajeev Kumar, applicant in person, 9/231 Revenue apartment
New MIG Colony, Khernagar, Bandra (E)
MUMBAI
- 2 Sh. V.G. Rege, adv, for the respondents.

S.O.

Certified True Copy
Date

Section Officer
Central Admn, Tribunal
Bombay Bench

Despatched on.....16/11/02

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DESPATCHER

Dr. N. Deshpande
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