

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 530 of 2001.

Dated this Friday, the 7th day of June, 2002.

Shri V. G. Pradhan, _____ Applicant.

Shri P. A. Prabhakaran, _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. G. Rege, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri Justice Birendra Dikshit,
Vice-Chairman.

Hon'ble Smt. Shanta Shastry, Member (A):

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ? ✓

Shanta S.
(Smt. Shanta Shastry)
MEMBER (A).

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.No.530/2001.

Dated this Friday the 7th Day of June, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (Administrative).

Shri V.G. Pradhan,
Sharda Sadan,
Fattelalli Road, Opp. Municipal School,
Dombivli (E), Dist. Thane-421 201. Applicant
(By Advocate Shri P.A. Prabhakaran).

Versus

1. Union of India, through
the Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi-110001.
3. The Chief Commissioner of
Income Tax, Mumbai,
3rd Floor, Aayakar Bhavan,
M.K. Road, Mumbai-400020.
4. The Commissioner of Income-Tax,
City-I, Mumbai,
3rd Floor, Aayakar Bhavan,
M.K. Road, Mumbai-400020. Respondents

(By Advocate Shri V.G. Rege).

ORDER (Oral)

{ Per : Smt. Shanta Shastry, Member (A) }

The grievance of the applicant in this O.A. is to
quash and set aside the impugned orders dated 29.3.2000
and 16.8.2000 and to direct the respondents to treat the

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period of suspension of the applicant as on duty and not as dies-non and to grant pay @ 95% in terms of sub-rule(5), (8) and (9) of FR 54-B.

2. While the applicant working as Income Tax Officer in Mumbai, inspection of his work revealed several shortcomings with regard to the assessment orders passed by him. After receiving his explanation and presenting the case he was placed under suspension with effect from 19.4.1984. A charge-sheet was issued to him and thereafter a regular inquiry was held and finally the disciplinary authority passed order on 28.1.1987 imposing the penalty of removal from service on the applicant. The applicant had challenged the same before the Tribunal in C.A.No.26/88 which was allowed by order dated 8.8.1991 on the ground that the copy of inquiry report had not been served to the officer. The respondents in turn filed Appeal No.3474/1993 in the Supreme Court, that appeal was partly allowed and the order imposing major penalty of removal from service was converted into deemed compulsory retirement by the Supreme Court by order dated 19.7.1993.

3. While implementing the orders of the Supreme Court the post retirement benefits due to the applicant were computed treating the period of suspension as dies-non. The applicant had represented against the same

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allowance was passed on 29.3.2000. Being aggrieved by the aforesaid order the applicant has approached this Tribunal.

4. The applicant filed M.P. for amending the O.A. to delete the multiple reliefs claimed by him and restricted his claim only to the treatment of the period of suspension in the impugned order dated 29.3.2000.

5. Vide the impugned order dated 29.3.2000, the applicant's period of suspension from 19.4.1984 till the date of compulsory retirement was treated as period not spent on duty for any purpose. Also it was decided that he would not be entitled to any revision of subsistence allowance already granted to him in accordance with revised pay scales introduced with effect from 1.1.1986.

6. The contention of the applicant is that his case has not been examined properly, the period of suspension ought not to have been treated as dies-non. The applicant is being discriminated as in a similar case of one Shri J.C. Hinduja, Income-Tax Officer who was also compulsorily retired on 15.12.1985. In his case the period of suspension was treated as period spent on duty for the purpose of increment and pension. The facts being similar the applicant urges that in his case also the period of suspension should have been treated as duty

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on 21.3.1994 which was rejected and communicated to him on 14.7.1994. The applicant once again approached this Tribunal seeking appropriate directions in respect of consequential effect to be given regarding the treatment of period of suspension for the purpose of pay and allowances regarding crossing of Efficiency Bar in the year 1983 and the benefits of 4th Pay Commission with effect from 1.1.1986. This was by way of O.A.1147/94 on which orders were passed by this Tribunal on 11.8.1999. The Tribunal directed that the competent authority should apply his mind to the facts and circumstances of the case and pass appropriate orders with regard to the treatment of the period of suspension between 19.4.1984 to 28.1.1987, as well as pay that should be allowed to him during this period and also consider that the applicant would be entitled for any benefit of the revised pay scale from 1.1.1986 on the basis of recommendations of 4th Pay Commission. The directions were also given to convene a review DPC regarding crossing of Efficiency Bar of the applicant on 25.8.1983. The applicant had claimed multiple reliefs in the O.A. The respondents passed separate orders regarding treatment of suspension period as well as crossing of Efficiency Bar. The order of Efficiency Bar was passed on 16.8.2000, which has also been impugned in the present O.A. The order regarding treating the suspension period as well as revision of pay with effect from 1.1.1986 and enhancement of subsistence

for the purpose of pension atleast and he should also have been paid 95% of pay for the suspension period. The applicant has drawn our attention to FR 54(b) sub-rule 5 and sub-rule 7 in this connection. The sub-rule 5 and 7 reads as follows:-

"(5) 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) In a case falling under sub-rule(5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant".

The applicant has also relied on the judgments in the case of R.P. Kapur Vs. Union of India and others reported in 1999 SCC(L&S) 1440, Dharam Singh Vs. Union of India

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and others reported in (1994)27 ATC 277, Maqsood Maqbool Hasan Niyazi Vs. Chief Commissioner of Income Tax (Administration) Bombay and Others reported in 1994(1) SLJ CAT, 276, O.P. Gupta Vs. Union of India and others reported in 1988(1) SLJ 121 and State of Karnataka and others Vs. R.S. Naik, reported in 1984 LAB I.C. 813.

7. According to the applicant the facts in case of R.P. Kapur (Supra) and the facts in the applicant's case are identical except for the element of reduction of penalty. In this case the applicant was a railway servant, he was compulsorily retired during the suspension period and issue was regarding the emoluments that were to be taken into consideration for purpose of pension. It was held that action of the railway authority to consider the average emoluments drawn by the appellant therein prior to his suspension was not correct. In that case there was also an express direction by the President for counting of suspension period for computing the qualifying service for pension. In the case of Dharam Singh, it was held that if the suspension period were treated as dies-non then it would result in refund of subsistence allowance by the applicant to the Government and therefore, impugned order was quashed to that effect. The applicant is, therefore, contending that while declaring suspension period as dies-non he would not be entitled to any subsistence

allowance or revised subsistence allowance and, therefore, the order needs to be changed. So far as the case of Maqsood Maqbool Hasan Niyazi is concerned the inquiry report had been quashed and set aside alongwith penalty and, therefore, the suspension order also was quashed and set aside including order passed under FR 54(b) (5). The applicant's case is different in that his suspension was never revoked nor was he reinstated. The applicant has further relied on O.P. Gupta's case, wherein FR 54 was discussed in the applicant's case, FR 54 is not applicable.

8. The respondents have filed their reply and submitted that they have complied with the directions issued by the Tribunal in O.A.No.1147/94 by passing a detailed order on the treatment of the suspension period. The applicant was never reinsisted and, therefore, actually his case cannot be dealt with under FR 54(b) and it is in compliance of the directions given by the Tribunal, that the Commissioner of Income Tax had passed an order under 54 of the Fundamental Rules and had found that the applicant had no case for the suspension period to be treated as on duty. In this order the respondents have also considered the point urged by the learned counsel for applicant about the different treatment being given to Shri J.C. Hinduja, Income Tax Officer and to the applicant. According to the respondents, Shri J.C.

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Hinduja's case was slightly on a different footing as in his case he had gone in appeal against the order of compulsory retirement, also there were other grounds like financial hardship which were taken into consideration while treating his suspension period as duty for the purpose of pension which cannot be compared with that of the applicant.

9. The respondents also relied on the judgment in the case of Shri Namdeo Kadpate Vs. Union of India. The Full Bench of this Tribunal in that case held that where there is no order of reinstatement issued by any authority in favour of the applicant there can be no question of holding the applicant to be deemed to have been reinstated even after the order of penalty of removal from service was set aside by the Appellate Authority. The respondents have further referred to the judgment in Shri J.M. Sharma V/s. State of Haryana in regard to whether compulsory retirement is to be treated as punishment or otherwise and it was held on facts that compulsory retirement passed on conclusion of an inquiry would certainly be by way of punishment. According to the respondents after having carefully and elaborately examining the case, the respondents had rightly treated the period of suspension of the applicant as not spent on duty.

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10. We have heard the learned counsel for applicant at great length so also the learned counsel for respondents. We have carefully perused the impugned order passed by the respondents. This Tribunal had directed to examine the applicant's case in terms of FR 54 (b). It is seen that Commissioner of Income Tax who passed the impugned order dated 29.3.2000 held that since the applicant was never reinstated the FR 54(b) would not be applicable in his case. However, taking the ratio of these rules the case was examined. We are in agreement with the respondents that since the applicant was never reinstated and the applicant was given the major penalty the period of suspension could not have been treated as spent on duty. Though earlier the applicant's suspension period was ordered to be treated as dies-non in the order dated 29.3.2000, the period has been treated as 'not spent on duty' and it has been clearly stated that the applicant shall be entitled to only the subsistence allowance @ 75% of pay which he was in receipt for major period under the suspension being maximum permissible under the rules and the same need not be refunded. However, he was not granted any pay and allowances over and above the subsistence allowance already received by him as it was held that the applicant was not exonerated either in full or part. The learned counsel for the applicant argued that the discretion was available to the competent authority to treat the suspension period as

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spent on duty atleast for the purpose of pension as was done in the case of J.C. Hinduja. It is seen that the respondents have considered even sub-rule 5 of the revised pay rules and found that since the applicant's punishment was actually converted into one of compulsory retirement which is also a major penalty, there being no change in classification of penalty imposed there would be no question of granting 95% of pay during the suspension period. Sub rule 7 was also discussed and it was decided that unless the competent authority specifically directs the suspension period to be treated as "spent on duty" for any specific purpose, the said period cannot be treated as a period spent on duty. In J.C. Hinduja's case there was an express direction by the President. The competent authority in this case did not think it to be a deserving case for treating the period of suspension as period spent on duty for the purpose of pension. We are in full agreement with the order passed by the respondents. In fact the learned counsel for the applicant could not show us any violation of statute by the respondents while examining the case of the applicant. The only major ground taken by the applicant is that Shri J.C. Hinduja was allowed his suspension period to be treated as duty for the purpose of pension. This cannot be a ground for a judicial review of the order passed by the respondents, even the judgments referred to by the learned counsel for the

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applicant cannot help him as facts are different in the applicant's case. In Shri Kapur's case there was an expressed direction by the President to treat the period as duty for the purpose of pension. In the present case it has already been pointed that even though earlier the period as treated as dies-non, in the impugned order dated 29.3.2000, it has been clearly treated as period not spent on duty and also the applicant was allowed to retain the subsistence allowance paid to him. In our considered view, therefore, the applicant has no case and the O.A. is dismissed, we do not order any cost.

Shanta Shastry
(Smt. Shanta Shastry)
Member (A)

B. Dikshit
(Birendra Dikshit)
Vice Chairman.

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