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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 59/93

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DATE OF DECISION 28.9.93

Shri Anandrao Shanker Rao Thorat Petitioner

Shri R.R. Dalvi Advocate for the Petitioners

Versus

Regional Provident Fund Respondent  
Commissioner Bombay and others

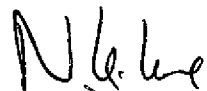
Shri R.K. Shetty. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K. Verma, Member (A)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(N.K. Verma)  
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

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Original Application No. 59/93

Shri Anandrao Shankerao Thorat  
V/s.

... Applicant.

Regional Provident  
Fund Commissioner  
Maharashtra & Goa  
341, Bhavishyanidhi Bhavan  
Bandra (E)  
Bombay.

Central Provident  
Fund Commissioner  
9th floor Mayur Bhavan  
Cannought Circus  
New Delhi.

Secretary to the  
Government of India  
Ministry of Labour  
Mantralaya  
New Delhi.

... Respondents.

CORAM: Hon'ble Shri N.K. Verma, Member (A)

Appearance:

Shri R.R. Dalvi, counsel  
for the applicant.

Shri R.K. Shetty, counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 28.9.93

¶ Per Shri N.K. Verma, Member (A) ¶

In this application the applicant, a peon in one of the Sub-Regional Office, Kolhapur who was imposed penalty of reduction in time scale by two stages for a period of two years with effect from the date he was dismissed from service, has appealed against order issued by Central Provident Fund Commissioner on 4.6.91. In this very order it was also stated that suspension may be revoked and he may be allowed to join service. During the period of said revocation he will earn increment and such reduction will not have the effect of postponing future increment of his pay. Subsequently, on 18.6.92 Regional Provident Fund Commissioner who was the

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appointing authority for the applicant issued as order regarding the treatment of his suspension period, in which it was stated that the period of suspension from 25.1.85 till the date of reinstatement ~~at~~ Kholapur shall not be treated as period <sup>spent</sup> on duty.

2. The applicant has assailed this order as without competence and has prayed for striking down as illegal with the request that the respondent No.2 may be directed to order payment of full pay and allowances for the period of suspension. During the arguments counsel for the applicant very strenuously stated that since the appellate authority has exercised power of imposing punishment of reduction in time scale in two stages only, he was the competent authority to consider the treatment of suspension period which he had not done. Apart from that, he has also pressed the point that under revised CCS (CCA) Rule, reduction in scale of pay is no more a major penalty and as per FR 54(1) the period under suspension in such cases should be treated as has been spent on duty. He also pointed out that even though "Penalties and the Disciplinary Authority" prescribed for the employees of Provident Fund CCA Rule 1971, as corrected upto 1984 did not prescribe reduction in lower grade as minor penalty, it should be covered under the general instructions that where there are no specific rule or sufficient rule, under the regular Central Provident Fund (Staff Control and Classification) Regulations, the general rule prescribed by the Government of India in FR & SR should be invoked. The learned counsel for the respondents strongly rebutted the allegation that the Regional Provident Fund Commissioner exercised the power of reinstatement of the applicant without competence and without following the rules. Since

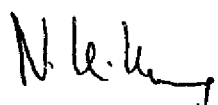
The Regional Provident Fund Commissioner is the appointing and Disciplinary Authority of the applicant, he was well within his right to revoke the suspension and in reinstating the applicant with effect from the date he was dismissed from service. This officer had also exercised the power under FR 54(1) to treat the suspension period as not spent on duty during the period from 25.1.85 till the date of his reinstatement. He also pressed the point that the Regional Provident Fund (Staff Control and Classification) Rule 1971 as amended upto 1984 included the reduction of lower grade under punishment of Major penalty. Hence the applicant cannot get the benefit of CCS(CCA) Rule under which the reduction is treated as minor penalty. He submitted that since there were specific orders regarding Discipline and Control of the employee Provident Fund organisation the question of applicability of general provisions of the Government of India Rules did not apply in this case.

3. I have given careful consideration to arguments on both sides. It is an admitted fact that the applicant was, on appeal given lesser penalty than what was proposed earlier and was not exonerated of the charges. It is not controverted that this reduction of lower grade is a major penalty according to Provident Fund CCA Rule 1971. Hence the question of this penalty being treated as minor one does not arise.

This is a major penalty, therefore, the suspension period has to be regulated in accordance with FR 54(1) by the reinstating authority. However, the reinstating authority, the Regional Provident Fund Commissioner has not been specific as to how the period of suspension will be

treated. He should have clarified that in case the period of suspension will not be treated as spent on duty, the manner in which this period has to be regulated.

4. The Central Provident Commissioner as an appellate authority did not exonerate the applicant of the charges. He only toned down the severity of the punishment and ordered reinstatement. As such, the suspension was revoked. Since the period under suspension had not been ordered to be treated as spent on duty, the only course available to the applicant was a request for conversion of the period of suspension into leave of any kind due and admissible under the FR Rules 54(5). The application is, therefore, disposed of with the directions that the applicant will apply for conversion of the period under suspension to any kind of leave due or admissible. Outstanding payment due to him will also be paid to him within two months of receipt of this order. There will be no order as to costs.

  
(N.K. Verma)  
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

(8)

Review Petition No. 119/93  
IN

OA.NO. 59/93


Shri Anandrao Shankerao Thorat ... Applicant  
V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Shri N.K.Verma, Member (A)

Tribunal's Order by Circulation  
(PER: N.K.Verma, Member (A))

Dated: 28.1.1994

This is a Review Petition filed by the applicant in which two important points and errors in the judgement passed by this Bench in OA. has been brought for review. The applicant reiterates that the Central Provident Fund Commissioner, New Delhi in his capacity as the appellate authority is the real reinstating authority as it was he who had ordered that the applicant should be "allowed to join service". In view of this, the appellate authority and not the disciplinary authority becomes the reinstating authority under sub-clause (a) of clause (1) of F.R. 54.  It was in view of that the applicant's counsel stressed that the appellate authority is the reinstating authority and it was incumbent on him to decide how the suspension period should be treated. The applicant has quoted a judgement of this Tribunal in OA.No. 704/87 decided on 25.2.1993 in which a Division Bench had decided that the powers of revoking an order of suspension cannot be exercised in isolation of the power contained in sub-rule (1) of F.R.54-B. The judgement also said that "the authority passing the order of revocation is not expected to become inactive after doing so. The decision to revoke an order of suspension necessarily involves the decision to pass a specific order either under clause (a) or clause (b) of sub-rule (1) of Rule 54-B. The

N.K. Verma



Bench said that even if the exercise of the powers may not be simultaneous, the time lag between the two acts must not be unreasonable. Surely not three years as in the instant case. We, therefore, come to the conclusion that the power under sub-rule (1) of Rule 54-B could not be exercised against the applicant." Accordingly, the application was allowed.

2. The points made herein by the applicant were also made during the submissions made at the time of hearing. The appellate authority in this <sup>present</sup> case had ordered in his appellate order that the penalty of dismissal should be modified to reduction in the time scale by two stages for a period of two years w.e.f. he was dismissed from service. In the concluding sentence of the order a direction was given that "his suspension may be revoked and allowed to join service". This direction of revoking the suspension was therefore not a reinstatement order passed by the appellate authority but only a direction to the disciplinary authority who was competent enough to reinstate the applicant and decide about the period of suspension. The judgement given by this Bench on 28.9.1993 has clearly dealt upon this very issue with a direction to the applicant to make a proper request to the disciplinary authority for converting the period of suspension into leave of any kind due and admissible under Rule F.R. 54(5). This order was made in view of the fact that the judgement in the OA.No. 704/87 was distinguishable from the one in the present OA. In the case of Mahanagar Telephone Nigam the applicant had been exonerated of the charges and it was the appellate authority who had reviewed the disciplinary case under Rule 29 of the CCS(CCA) Rules set aside the order of removal and passed an order reverting the applicant in rank.

N/A

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The suspension order was revoked on 16.3.1984 much earlier to the fact of exoneration on 31.12.1984. The view taken by the Bench in that case was that the revocation of the suspension order should have been coupled with the order related to the treatment of the period the applicant had been under suspension. In the instant case, the applicant was punished with dismissal which had been modified to that of reduction in the time scale by two stages for a period of two years which cannot be said that it was an exoneration of the charges. In view of this, the relevance of that judgement is not at all found supportable in the present case. There is no substance in the review application and it is therefore rejected.

  
(N.K. VERMA)  
MEMBER (A)

mrj.