

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(1)

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 ^{present} 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.K. Singh

CAT/BOM/JUDL(J)/O.A.59/93/

Dt. /1/94

1. Shri A.S.Thorat.,
C/o Shri R.R.Dalvi, Advocate.
177/4900, Happy Home Co-op. Hsg. Society,
Pandhargar, Ghatkopar (E), Bombay-75.
2. Regional P.F. Commissioner,
through Shri R.K.Shetty, Advocate.

Section Officer.

(10)

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.