

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 161/93

Transfer Application No:

DATE OF DECISION:

2 | 3 | 95

Shri E.K.Phatak

Petitioner

Shri S.Natarajan

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri Suresh Kumar for Sh.M.I.Sethna

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri P.P.Srivastava, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of No the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 161/93

Shri E.K.Phatak

... Applicant

v/s.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.Natarajan
Advocate
for the Applicant

Shri Suresh Kumar
for Shri M.I.Sethna
Advocate
for the Respondents

JUDGEMENT

Dated: 2/3/95

(PER: P.P.Srivastava, Member (A))

The applicant was working as Appraiser Group 'B' Gazetted post in the Customs Department. The applicant was prematurely retired under Rule 48 of the Pension Rules on 24.4.1986. The applicant's case was reconsidered and the order of his premature retirement dated 24.4.1986 was set aside and the applicant was reinstated in service dtd. 17.11.1988 with immediate effect. This order/is placed at Exhibit A-2. In terms of these orders he joined duty with effect from 9.12.1988. The applicant has claimed that the respondents should pay him all the pay and allowances in terms of their letter dated 17.11.1988 from 24.4.1986 to the date of his joining. Instead of paying all the salaries and dues for the intervening period from his retirement to reinstatement, the applicant was asked to give a certificate in terms of F.R. 54(8) that he was not working anywhere during the period between the date of compulsory retirement and the date of reinstatement. The applicant informed the respondents that this certificate is not required to be given as the orders

.. 2/-

of the reinstatement clearly says that the applicant should be paid salary and allowance payable to him in full for the period that has lapsed since he was retired on 24.4.1986 and all the benefits due to him. In view of this clear order of competent authority, the question of giving certificate under F.R. 54(8) does not arise. However, the respondents did not agree to this and he was informed that unless he gives the certificate he cannot be paid. Since the applicant was not being paid he submitted a letter dated 18.10.1991 and declared that :-

" a. There was no income whatsoever during the period from 22.4.1986 to 31.10.1986.

b. During the period from 1.11.1986 to 30.9.1988, I had earned an amount of Rs.45,854/- (Rupees forty five thousand eight hundred and forty eight only) as a consultant on tax matters. This income has reflected in the annual income tax returns.

c. There was no income whatsoever during the period 1.10.1988 to 8.12.1988.

d. None of the earnings was a result of employment."

The applicant has further stated that the respondents have recovered Rs.45,854/- from his pay and allowances and aggrieved by this order the applicant has filed this OA. and has sought the relief that the respondents are not entitled to adjust the private earnings from the pay and allowances admissible to him in terms of order dated 17.11.1988.

2. The main question to be decided in this OA. is whether the provisions of F.R. 54(8) are applicable in the present case or not. The F.R. 54(8) reads as under :-

"Any payment made under this rule to a Govt. servant on his reinstatement shall be subject to adjustment of the amount if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement as the case may be, and

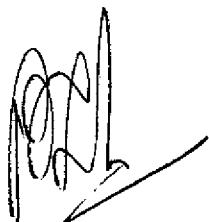


the date of reinstatement where the emoluments admissible under this rule are equal to or less than the amount earned during the employment elsewhere, nothing shall be paid to the government servant."

3. The Learned Counsel for the applicant has brought out that the F.R. 54(8) is applicable only in the case of punishment when a Government servant has been dismissed, removed or compulsorily retired ~~or~~^{and} reinstated as a result of appeal or review. Since the applicant in this case has not been either dismissed or removed or compulsorily retired under disciplinary rules but was pre-maturily retired under F.R. 56-J, the provisions of F.R. 54(8) cannot be applied in this case.

4. The learned counsel for the applicant has further argued that even if for the sake of argument F.R. 54(8) is applicable, the wordings used in F.R.54(8) envisaged deduction of the amount earned during the "employment" elsewhere. Since the applicant has not earned any salary during the period under reference but earned Rs.45,854/- as a Consultant on tax matters and has given a certificate in his letter dated 18.10.1991 and none of the earning was as a result of "employment", the respondents have no authority to deduct from his pay and allowances the above mentioned amount of Rs.45,854/- which is not an earning as a result of "employment". To reinforce his argument, the 1d. counsel for the applicant has brought to my notice the rules for payment of subsistence allowance which is F.R. 53⁽²⁾ wherein it has been provided that:-

" 53(2). No payment under sub-rule(1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation."

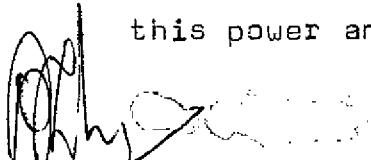


Thus the usage of the word "employment" in F.R.54(8) is a specific provision and cannot be taken in general term to mean any earning which has been so stipulated while paying subsistence allowance during suspension under F.R. 53(2) and therefore earning through employment which is distinct from earning as a Consultant ~~at the most~~ can be called the earning through profession.

5. Lastly, the learned counsel for the applicant has argued that even if for the sake of argument it is accepted that Rs.45,854/- is the earning, then it will have to be worked out on month to month basis. Since the applicant has brought out that he has no income between the period from 22.4.1986 to 31.10.1986 and 1.10.1988 to 8.12.1988, he is entitled to full payment for this period and the amount of Rs.45,854/- can be adjusted only against the period from 1.11.1986 to 30.9.1988 during which period the said amount was earned by the applicant. The learned counsel for the applicant has also argued that there is an in-built provision in Rule F.R. 56 under Section (jj)(i) which reads as under :-

"(jj)(i) If on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by the grant of leave of the kind due and admissible, including extraordinary leave, or by treating it as dies non depending upon the facts and circumstances of the case."

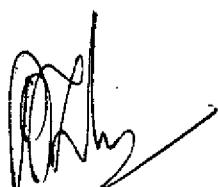
The learned counsel for the applicant has argued that the power of the competent authority is provided under this rule for treating the period from the date of premature retirement to his date of reinstatement and in the case of the applicant the competent authority has exercised this power and has ordered payment of all the dues for



the period and the case of the applicant would not fall under F.R. 54(8).

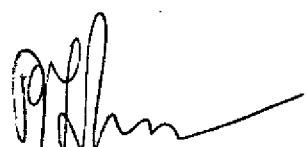
6. The learned counsel for the respondents has argued that the representation of the applicant has been considered by the respondents and since basically when a person is reinstated, he is to be treated as on duty for all purposes and therefore cannot be permitted double payment. The basic premise is that a person cannot earn through any other employment when he is in Govt. service and he cannot be allowed to retain the earnings which he had earned during the intervening period from his date of premature retirement to the date of his reinstatement and it should be adjusted from his pay and allowances in terms of F.R.54-A.

7. I have considered the arguments of both the counsel as well as perused the record of the case. I am of the opinion that the case of the applicant is governed under F.R. 56 and his pay and allowances is to be determined in terms of Para F.R. 56 (jj)(i) and the competent authority can pass an order concerning the period between premature retirement and his reinstatement depending on the facts and circumstances of the case. In this case, the competent authority has passed the order that the applicant should be paid the salary and allowances payable to him in full for the period that ~~has~~ lapsed since he was retired on 24.4.1986 and all the benefits due to him. However, the payment is required to be governed in terms of F.R.54 para 8. On a close reading of F.R. 54(8), it is clear that the word used there is "employment" and it does not include earning from any other mode. According to the applicant, he was not employed anywhere during the period from



22.4.1986 to 31.10.1986 and 1.10.1988 to 8.12.1988 and therefore he is entitled to full wages and allowances during this period. However, since the applicant has earned Rs.45,854/- between 1.11.1986 to 30.9.1988, the same amount is required to be adjusted from the salary which is payable to him for this period and if the earning from other sources, i.e. Rs.45,854/- in this case is more than pay and allowances for the period 1.11.1986 to 30.9.1988, then the applicant would not be entitled to any payment for this period. I, therefore, order as under :-

1. The applicant should be paid full salary and allowances for the period from 22.4.1986 to 31.10.1986 and 1.10.1988 to 8.12.1988.
2. He should be paid if any amount is due for the period 1.11.1986 to 30.9.1988 after deducting Rs.45,854/- from the salary and allowances for this period.
3. The OA. is disposed of with the above directions.



(P.P. SRIVASTAVA)

MEMBER (A)

mrj.