

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. O.A.No.123/97

20th
20th
Date of Decision: AUGUST, 1998

B I Abraham

Petitioner/s

Mr. G.S. Walia

Advocate for the
Petitioner/s

V/s.

U.O.I. & ANOR

Respondent/s

Mr. V D Vadhavkar
for Mr. M.I. Sethna

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri

(1) To be referred to the Reporter or not? *Y*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *N*

Rajendra Nath

V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-400001

O.A.No. 123/97

DATED: THIS 20th DAY OF AUGUST, 1998

CORAM: HON. Shri Justice R.G.Vaidyanatha, Vice Chairman

B I Abraham
Retired Appraiser
New Customs House
Ballard Estate
MUMBAI 400038
(By Adv. G S Walia)

..Applicant

v/s.

1. Union of India through
Collector of Customs
New Customs House
Ballard Estate, Mumbai-38

2. Additional Commissioner
of Customs
Personnel & Est. Dept.
New Customs House
Ballard Estate
Mumbai 400038
(By Adv. Mr. V D Vadhavkar,
for Mr. M I Sethna, Sr. Standing
Counsel)

..Respondents

ORDER

(Per: R.G.Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. I have heard the learned counsel appearing on both sides.
2. The applicant has now retired as an Appraiser from the Customs Department. He retired from service on superannuation on 31-05-1992. When he was in service, the applicant was placed under suspension on 14.3.83 due to contemplated departmental proceedings against him. By order dated 16.2.1988 the suspension was revoked. A charge sheet for major penalty was issued against the applicant on 29.7.89 on some charges. For the same charges the applicant was also

prosecuted in the Criminal Court in Criminal Case No. 132/PW/1985. The criminal case is still pending. The applicant was never placed under suspension due to criminal case. The departmental enquiry was never completed in spite of delay of six years. Then applicant filed a O.A. in this Tribunal being O.A. No.60 of 1990 which was disposed of by this Tribunal on 19.10.1994 giving a direction to the Respondents to complete the departmental enquiry within four months. It is also stated that another officer M.R. Hingmire was also involved in the same charges along with the applicant, but no departmental enquiry was held against him and he was given all the service benefits. A notice was issued to the applicant to show cause as to why the suspension period should not be restricted to subsistence allowance already paid to the him. The applicant gave a reply to the show cause notice. The appropriate authority has passed an order dated 25.10.1996 that the period of suspension should be treated on duty, except for pay and allowances and payment of allowances should be restricted to subsistence allowance already drawn by the applicant. It is alleged that by this order which is illegal, the respondents could not have withheld the payment of full pay and allowances for the suspension period when an inquiry was dropped by the competent authority as per the orders of the Tribunal.



3. The applicant was promoted as Appraiser on 29.9.81. He was working as Examiner previously. The applicant was entitled to selection grade from 7.10.1969. Now by an order dated 27.9.95 the applicant is given deemed promotion in selection grade with effect from 7.10.69, but it is given on notional basis though the applicant is entitled to actual monetary benefits from 7.10.69 in the Selection Grade as Examiner. The applicant is also entitled to retirement gratuity, and commuted value of pension which are not paid to him. The only ground taken for non payment is the pendency of criminal case. But the criminal case has been pending for such a long time and there is no prospect of its completion in the near future. Hence withholding of the DCRG and commuted value of pension is bad in law. Hence the applicant has approached this Tribunal with the prayers that he ^{is} entitled for full pay for the period from 14.3.93 to 16.12.98 as also the allowances; for the actual salary and monetary benefits due to promotion to Selection Grade from 7.10.69 and not merely notional benefits as given to him now. He also prays for payment of DCRG and commuted value of pension. The applicant has also prayed for interest @ 18% p.a. on all the amounts that accrued to him.



4. Respondents have filed a reply justifying the action taken by the competent authority in restricting the pay and allowances for the suspension period to subsistence allowance already paid. It is stated that on the same charges for which the disciplinary enquiry was initiated, the applicant was also proceeded in the criminal court. Then the applicant came to be arrested and detained under the CAFEPOSA on two occasions, but the applicant came to be released from detention on technical grounds. The order of suspension was issued in public interest. The applicant was not exonerated in the departmental inquiry but the inquiry came to be dropped due to orders passed by the Tribunal.

As for as ~~the punishment~~ ^{Hingrave} is concerned it is stated that action ^{would} should not be taken against him due to time limit as prescribed in Rule 9 of the Pension Rules.

5. After hearing both the counsel, the following points arise for consideration:

- (i) Whether the applicant is entitled to full salary for the suspension period from 14.3.83 to 16.12.88.?
- (ii) Whether the applicant is entitled to full monetary benefits for the promotion to senior scale with effect from 7.10.69.?
- (iii) Whether the applicant is entitled to payment of gratuity.?
- (iv) Whether the applicant is entitled to payment of commuted value of pension.?

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(v) Whether applicant is entitled to interest
for all the amounts mentioned in points

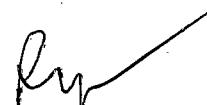
(i) to (iv) ?

(vi) What order ?

POINT No.(i):

6. No doubt the order of suspension was issued due to contemplated disciplinary inquiry but the applicant came to be ordered and detained under Preventive Detention under the CAFEPOSA from August 1983 to December 1983 (vide second affidavit of Mr. Gurbans Singh at page 44 of the paper book). Then it is further stated in the affidavit of Mr. Gurbans Singh, Deputy Commissioner of Customs, Bombay, at page 45 of the paper book, that the applicant was again taken into custody and kept in preventive detention for a second spell from 14.2.1984 to 5.4.1984. On both the occasions the applicant came to be released on technical grounds.

7. Learned counsel for the respondents contended that when a person is in custody for 48 hours or more then he is deemed to be under suspension as provided under Rule 10(2) of CCS(CCA) Rule, 1965. The submission of the applicant is that no such order is passed by the competent authority that applicant must be kept under deemed suspension as provided in Rule 10(2) of the CCS(CCA) Rules. It is true no such formal order is passed. Rule itself provides that the Government Employee should be



deemed to have been placed under suspension if he is detained in custody for a period exceeding 48 hours.

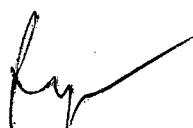
8. In my view in the peculiar facts and circumstances of the case, there is no necessity for issuing any formal order of deemed suspension under Rule 10(2) of the CCS(CCA) Rules. Admittedly the applicant was under suspension in the departmental inquiry case from 14.3.83, while on suspension, he was arrested and detained under Preventive Detention, on the first occasion from August 1983 to December 1983 which means that in five months after the order of suspension in the departmental enquiry case, the applicant is taken to custody and he is kept under detention for four months. Since the applicant was already under suspension there was no necessity for issuing any formal order of deemed suspension under Rule 10(2) of the CCS Rules. The law itself states that he is under suspension. Detention of the applicant is not disputed, since there is already an order of suspension in the departmental enquiry case the competent authority might not have issued a formal order of deemed suspension. Under these circumstances we can safely hold that the applicant was under suspension not only due to departmental inquiry, but also under deemed suspension in view of his detention under COFEPOSA on two different spells, on first spell for four months and on the second spell again for about two months.

9. The rule position governing the grant of pay and allowances for the suspension period of an

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official when reinstated is to be found in F.R.54 (b) That rule gives power to the competent authority to decide whether the official on reinstatement is entitled to pay and allowances for the suspension period and if so how much. The rule further says that ~~the~~ payment can be made only if the ~~charge~~ ^{authority} comes to the conclusion that the suspension was wholly unjustified. In the present case when we find that the Criminal case and disciplinary case were on identical grounds making serious allegations of misconduct against the applicant and it is alleged in the second affidavit of Gurbans Sing dt.25.2.98 that it is a case of loss of revenue to the Government to the extent of Rs.80 lakhs (page 45 of paper book) the fact that the applicant has been arrested and detained for nearly 6 to 7 months under the ~~CFEPOSA~~, it shows that the matter was so serious that the authorities had to take the help of law of Preventive Detention and hence it cannot be stated that the ~~suspension~~ was unjustified.

10. In this case the competent authority has issued a show cause notice to the applicant as required by the law and the applicant gave his ^{Authority} reply. The ~~Competent~~ has referred to some authorities including the Supreme Court and Full Bench and came to the conclusion that the suspension was fully justified having regard to the serious and grave charges against the applicant.



11. The learned counsel for the applicant contended that when the departmental enquiry culminated in exoneration of the applicant then the suspension was not justified. In particular he invited my attention to a Circular of the Government of India dated 3.12.1985. We can find this Circular at item No.8 in Swamy's Compilation of CCS(CCA) Rules (1993 ed. at page 252) This circular states that even in the case of a major penalty charge sheet if inquiry results in a minor penalty then it is ^a the case of suspension being wholly unjustified and hence the official should be paid full pay and allowances. Relying on the circular the learned counsel for the applicant vehemently contended that even in the case of minor penalty the official is entitled to full pay and allowances for the suspension period and hence it cannot be denied to the applicant particularly when the departmental enquiry came to an end without inflicting either major or minor penalty.

At the first flush I was carried away by this argument since the argument looked very attractive and forceful, but on deeper scrutiny I came to the conclusion that the argument is not acceptable. The reason behind this rule that in case of minor penalty full pay should be paid is that, in the case of minor penalty suspension cannot be invoked and therefore ^{it} it is a case of minor penalty suspension becomes unjustified and consequently the official is entitled to full salary.



Suspension can be invoked only when it is a serious case which may result in penalty of dismissal from service or removal from service. But if the case ends in a minor penalty it means it was not a serious case at all and therefore the authorities were not right in passing the order of suspension and thereby suspension becomes unjustified and consequently the official is entitled to full payment.

12. Now let us see what has happened to the applicant in the present case. There was a major penalty charge sheet for serious allegations of misconduct against the applicant. It is not a case where the inquiry was held and the applicant was exonerated. It is a case where due to delay the applicant approached this Tribunal and the Tribunal gave the direction that the inquiry should be completed within four months. Due to circumstances beyond the control of the department the inquiry could not be completed within time. The respondents moved this Tribunal for extension of time but in vain. They filed a Review Petition which came to be rejected. Under these circumstances and in view of expiry of time given by the Tribunal, the departmental enquiry had to be abandoned or closed which resulted in deemed exoneration of the applicant. How can it be said that in view of all this the suspension was unjustified.

13. As already stated when applicant was arrested and detained for preventive detention on two occasions for different spells of time ranging two to three

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months. If he must be held to be under deemed suspension for the reasons already mentioned, then the suspension was fully justified and according to the Rules. Even otherwise having regard to the gravity of the charges against the applicant and the criminal case which is still pending, it is for the competent authority to decide whether suspension was justified or not. ^{or} For administrative matters this Tribunal is not sitting in appeal over the administrative orders passed by the competent authority. We are only exercising judicial review and the scope of judicial review is very limited. We have to only see whether the competent authority has applied his mind and whether any errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. If once these two points are established this Tribunal cannot interfere with the order even though the Tribunal may be inclined to take a different view on facts.

14. Learned counsel for ^{respondent} applicant has invited my attention to some authorities. In 1997(1) SC SLJ, (KRISHNAKANT RAGHUNATH BIEHAVNEKAR Vs. STATE OF MAHARASHTRA) it is observed that even an officer under suspension after reinstatement due to acquittal in a criminal case is not entitled to get back wages as a matter of course. That was a case where the official came to be acquitted by the Criminal Court. Then the question was whether he is entitled to full pay for the suspension period.



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The Supreme Court observed as follows:

".. in our considered view, the grant of consequential benefits with all back wages etc., cannot be as a matter of course. We think that it would be detrimental to the maintenance of discipline if a person is suspended on valid considerations is given full back wages as a matter of course, on his acquittal."

Then the Supreme Court observed that the authority should examine whether the [final] acquittal was on the ground of benefit of doubt and consider other circumstances before deciding this question.

15. In the present case it is not even a case of exoneration or acquittal in the departmental enquiry. It is a case of enquiry being abandoned or stopped or dropped because of the expiry of time limit given by the Tribunal. Even if the delinquent had been exonerated the question still would be whether the exoneration was on merits, or whether it is due to benefit of doubt or based on evidence and still the authority has to decide to grant or refuse full salary for the suspension period.

In (1994) 27 ATC 434, (DEPOT MANAGER, A.P. STATE ROAD TRANSPORT CORPORATION, HANUMA KONDA V/s. V. VENKATESWARULU & ANOR), the Supreme Court has observed on an acquittal in a criminal case, the suspended employee is not automatically entitled to full salary for the period of suspension, as right to salary has to be determined by the competent



authority as per rules. The Rules are quoted in the reported judgment which are para-materia to F.R.S.R. 54(b) with which were are now concerned in this case. Though the High Court in that case has held that once there is an acquittal by a criminal court the officer was entitled to full pay for the suspension period as of right and as a matter of course. This view of the High Court was not approved by the Supreme Court. The Supreme Court observed that it is for the competent authority to decide the question as per rules.

16. In the impugned order the authority refers to Full Bench decision of this Tribunal in the case of RAM KUMAR YADAV & ANOR v/s. UNION OF INDIA & ORS. (1991-94 F.B. JUDGMENTS (CAT) VOL. III 438). The Full Bench has also observed that on acquittal the officer is not entitled to full pay during the suspension period as of right. It is for the competent authority to decide under F.R.S.R. 54(b) whether he should get full pay and allowances or not.

17. As already stated the present case is not a case in which the applicant has been acquitted in the criminal case or being exonerated in the departmental inquiry. The inquiry was just dropped due to time limit given by the Tribunal and hence the suspension came to be revoked. On merits of the O.A. I find that the suspension was fully justified having regard to the gravity of the charges. After going through the material on record and particularly



having regard to the gravity of the charges and the detension of the applicant under the law of Preventive Detention on two occasions and in view of the pending case against him the competent authority was fully justified in rejecting the claim of the applicant for full pay and allowances for the suspension period. The order of the competent authority does not suffer from any illegality or infirmity. Point (i) is answered accordingly.

POINT No. (ii):

18. According to the applicant he was entitled to selection grade in 1969 and he is now given a selection grade in 1995, but with only notional benefit and not actual monetary benefits. The Learned counsel for the applicant therefore contended that applicant should get actual monetary benefits from 1969 till to-day. Amongst other things the learned counsel for Respondents contended that this claim is barred by limitation besides being barred by principles of laches and delays. If the applicant was entitled to selection grade in 1969 and if he did not get the selection grade he should have approached the court at that time. He did not take any legal steps for 26 years. The respondents themselves have given the selection grade benefit by order dated 27.9.95. If the applicant was aggrieved by this order dated 27.9.95 he should have approached the Tribunal within a period of one year as provided in S. 21 of A.T. Act. The period of limitation is



is one year from the date of cause of action. Since in the impugned order dated 27.9.95 applicant was given a notional benefit of selection grade from 7.10.69, the applicant should have challenged the same by approaching this Court within one year. That means the application should have been filed on or before 27.9.96. But this application is filed in this Tribunal in January, 1997. Even on this ground the claim is barred by limitation.

19. There is no sufficient pleading and material on record as to why the applicant's selection grade was held up for 26 years. There is some reference to Sealed Cover, but it certainly does not pertain to the inquiry mentioned mentioned for discussion at Point (i). That enquiry came to be initiated in 1983-84, but we are concerned with the selection grade promotion in 1969. There is no material on record to show as to whether any disciplinary inquiry was pending in 1969 and at that time the Sealed Cover Procedure was adopted. Then there is no material to show as to what happened to that inquiry and when it was concluded. The pleadings are silent on this point. In my view if the applicant did not get the selection grade in 1969 after waiting for reasonable period he should have made a proper representation to the authorities and then approach a competent court for getting appropriate reliefs. This Tribunal was constituted in 1985, even then the applicant could have approached this Tribunal.



Now the applicant wants to get some relief from 1969 1996 i.e., about 16 years prior to the coming into existence of this Tribunal.

20. Hence taking any view of the matter I hold that the claim for actual monetary benefit from 7.10.1969 is hopelessly barred by limitation, delays and laches. There is not even an application for condonation of delay much less for reasons mentioned in this O.A. for this inordinate delay. Hence the claim is liable to be rejected on the ground of limitation, delay and laches. Point (i) answered accordingly.

POINT No. (iii):

21. A Government official is entitled to gratuity at the time of retirement. The contention of the respondents is that the gratuity cannot be released when criminal case is pending against the applicant. Rule 69(1)(c) of the CCS (Pension) Rules 1972 provides that no gratuity shall be paid to a Government servant until the conclusion of the departmental or judicial proceedings.

It is admitted that the criminal case is still pending against the applicant. Therefore, technically respondents may be right to say that the applicant will not be entitled to gratuity till the completion of the criminal case. Learned counsel for applicant submitted that the criminal case has been pending for more ^{than} a decade and there is no immediate prospect of its completion and therefore the

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applicant cannot be denied the gratuity amount. The criminal case is of 1985. Now 13 years are over. Charges are not yet framed and trial has not yet begun. How long the applicant can wait for completion of the criminal case to get the gratuity amount. The learned counsel for the applicant invited my attention to two authorities on this point.

In an unreported judgment dated 19.7.1993 in O.A. 486/93 (D. CHANDRASEKARAN Vs. UNION OF INDIA & ORS) a Single Member of this Tribunal held that if there is a delay in the disposal of the criminal case then portion of the gratuity amount should be released to the applicant subject to certain conditions. In that case direction was given for payment of 50 per cent of the gratuity subject to applicant executing an indemnity bond with two surties.

In another unreported judgment dated 27.9.94 in O.A.No. 743/88 (P.R.DAS Vs. UNION OF INDIA & ORS.) a Division Bench of this Tribunal on similar grounds came to the conclusion that if there is undue delay in the disposal of the criminal case then part of the gratuity amount should be released. In that case also half the gratuity amount was released subject to applicant executing a bond with one surity.

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22. The learned counsel for respondents did not bring to my notice any decision of the Tribunal, High Court or Supreme Court taking a contrary view on this point.

23. Since the criminal case is pending for 13 years and there is no prospect of its immediate conclusion I feel that in the circumstances of the case 50 per cent of the gratuity amount should be released in favour of the applicant subject to execution of an Indemnity Bond with one surity. Point (iii) is answered accordingly.

POINT No. (iv):

24. This claim pertains to payment of commuted value of pension. Here learned counsel for the respondents has placed reliance on rule 69(l)(b) of the CCS(Pension) Rules, 1972 where it is mentioned about payment of provisional pension only. It is therefore argued that if the pension itself is not fixed, but only provisional pension is fixed/given the question of paying commuted value of pension does not arise.

25. In the Rule there is no prohibition for payment of commuted value of pension to a retiring government official when either departmental inquiry or judicial proceeding is still pending. Rule 69 only says that pension cannot be paid but only provisional pension can be paid. The submission of the respondents counsel is that when provisional pension is fixed and not regular pension the question of payment of commuted value of pension does not arise.

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26. As already stated there is no bar in the Rule for payment of commuted value of pension in a case of this type. As far as provisional pension is concerned we may refer to Central Civil Service (Commutation of Pension) Rules, 1981, which is Appendix I in Swamy's Pension Compilation 1993 Ed. ^{Parim} (page 311). Rule 9 in this Commuted Rules clearly provides that even in the case of provisional pension an official is entitled to value of commuted pension. Therefore, the fact that only provisional pension is fixed will not come in the way of the applicant commuting his pension and getting the commutation value of pension as per Rule 9. Therefore, I hold that the applicant is entitled for commuted value of pension.

POINT (v):

27. We have seen that applicant is not entitled to full salary for the suspension period and therefore question of granting interest does not arise. As far as the actual salary in the selection grade, the applicant is not entitled to get actual benefits and therefore the question of interest does not arise. As far as DCRG is concerned the respondents have rightly withheld the now is gratuity as per rules and ~~not~~ the granting of DCRG on the basis of judicial decision, the applicant is not entitled to get interest over that amount. Similarly in the case of commuted value of pension it is to be paid as per the orders of the Tribunal and it is not the case of withholding the amount unauthorisedly and hence granting of interest does not arise. For above reasons the applicant is not entitled to any interest in this case.

Point (v) answered accordingly.

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28. In the result the application is partly allowed as follows :

- i) The claim of the applicant for full salary for the suspension period is rejected;
- ii) Applicant's claim for actual salary in the Selection Grade from 1969 till the date of 27.09.1995 is rejected;
- iii) As far as prayer for gratuity is concerned the respondents are directed to release and pay 50 per cent of the gratuity amount to the applicant on his executing an Indemnity Bond with one surety undertaking to repay the amount to the Government if case any adverse order is passed by the Government for withholding pension and gratuity under the Pension Rules.
- iv) The applicant is entitled to commuted value of pension on the basis of provisional pension as per Rule 9 CCS (Commutation of Pension) Rules 1981.



v) The respondents are directed to comply with the above directions within three months from receipt of a copy of this order failing which the Respondents are liable to pay interest @ 9% per annum on the released gratuity amount and commuted value of pension from to-day till the date of payment.

vi) In the circumstances of the case no order as to costs.

R.G.Vaidyanatha 20.8.98
(R.G.Vaidyanatha)
Vice Chairman

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