

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.No.52/97 in OA.NO. 142/97

19th this the day of September 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Amarnath Batabyal ... Applicant

V/S.

Union of India & Ors. ... Respondents

AND

Shri Dinesh K.Afzalpurkar,
Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai - 400 032. ... Contemner

Tribunal's Order

Through this C.F. the applicant has brought out that the respondent administration is not paying the applicant pension regularly and have passed an order dated 26.3.1997 cancelling the previous pension order dated 15.11.1996. Since the status quo was ordered by the Tribunal in its order dated 11.2.1997, the respondent administration by passing the order dated 26.3.1997 has flouted the orders passed by the Tribunal. While disposing of the OA., we have ordered that the applicant should be paid the pension regularly without any deductions which has been contemplated by till the finalisation of disciplinary case the respondents in their letter dated 18.3.1997. The learned counsel for the respondents assures that the applicant is being paid the pension and there was no attempt to deprive the applicant of pension. The applicant is required to be ^{paid} the provisional pension in view of the fact that disciplinary proceedings

against the applicant have again been started in terms of the liberty granted by the Tribunal in their judgement dated 9.2.1996. Since the disciplinary proceedings are in process, the applicant be given the provisional pension and since the stay was granted only on proceedings further with the disciplinary enquiry, the orders dated 18.3.1997 were passed.

2. The learned counsel for the respondents has further assured that the applicant is being paid pensionary benefits regularly and there is no deliberate attempt on the part of the respondents to stop the payment of monthly pension. Since we have already directed that the applicant should be paid the pension which was being paid to him before initiating the proceedings vide the administration's letter dated 15.11.1996 which were again initiated vide administration's letter dated 15.11.1996, the administration should ensure that the applicant is regularly paid the pension which he was getting before 15.11.1996 till the finalisation of this case.

3. The revised pension order dated 18.3.1997 which is at Exhibit-'C' of C.P.No.52/97 is held in abeyance till the finalisation of the case. In view of the assurance of the learned counsel for the respondents that the applicant would be paid the pension regularly and there is no deliberate attempt on the part of the administration in flouting the orders of the Tribunal, we have decided not to pursue the contempt proceedings further in C.P.No. 52/97 and the same is discharged.

(P.P. SRIVASTAVA)
MEMBER (A)

(B.S. HEGDE)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 142/97

Transfer Application No.

Date of Decision 19.9.92

A. Batabhyal

Petitioner/s

Shri K.K.Singhvi & Ors.

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri P.M.Pradhan & Sh.V.S.Masurkar


Advocate for
the Respondents


CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

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

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 142/97

19th this the day of September 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Amarnath Batabhyal
R/at 42, Buena Vista,
J.Bhosle Marg,
Mumbai-400 021.

By Advocate Shri K.K.Singhvi
along with Shri M.S.Ramamurthy,
Shri Sanjay Singhvi and Shri
Ramesh Ramamurthy.

... Applicant

V/S.

1. Union of India through
the Secretary, Ministry
of Personnel, Administrative
Reforms, etc. Department of
Personnel & Training,
Central Secretariat,
North Block, New Delhi.
2. The State of Maharashtra
through its Chief Secretary,
Mantralaya, Bombay - 400 032.

By Advocate Shri P.M.Pradhan
along with Shri V.S.Masurkar,
C.G.S.C.

... Respondents

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant belongs to Indian Administrative Service. The applicant was issued a charge-sheet and after departmental enquiry an order of compulsory retirement was issued against him by Respondent No. 1 on 19.4.1989.

Compulsory retirement was challenged by the applicant before this Tribunal in OA.NO.545/89. This order of compulsory retirement was set aside by the judgement and order of the Tribunal dated 25.1.1991 mainly on the ground that the applicant had not been served with a copy of the enquiry report before the order of compulsory retirement came to be passed. The Tribunal also granted liberty to the respondents to complete enquiry from the stage of giving a copy of the enquiry report to the applicant. Thereafter, the applicant was reinstated in service and simultaneously placed under suspension and the disciplinary proceedings were continued from the stage of giving enquiry report. After considering applicant's representation on enquiry report, the respondents passed compulsory retirement against the applicant by its order dated 24.2.1994. This order of the compulsory retirement was also challenged by the applicant in OA.NO.593/94. Both these OAs. were heard together and by an order dated 9.2.1996 this Tribunal quashed and set aside the order of compulsory retirement. The Tribunal, however, granted liberty to the respondents to initiate action afresh from the stage of supplying copy of Central Vigilance Commission's report.


2. In the meantime, the applicant had reached the age of superannuation on 30.9.1995. The respondent administration challenged the order of the Tribunal dated 9.2.1996 but the same was dismissed by the Hon'ble Supreme Court.



3. The applicant was issued a fresh order dated 15.11.1996 continuing the proceedings against the applicant. This order is placed at Exhibit-'C' of this OA. The applicant has filed the present OA, praying that the order dated 15.11.1996 purporting to ^{re-}start the enquiry against the applicant be quashed and set aside.

4. The applicant has brought out in the OA, that since the applicant has superannuated on 30.9.1995 and has ceased to be a Member of All India Services from that date, therefore the applicant is no more governed by the AIS (Discipline and Appeal) Rules, 1969. The applicant has further brought out that unless the applicant is reinstated in service and made the Member of the IAS, the Discipline and Appeal Rules under All India Services (Discipline and Appeal) Rules, 1969 cannot be made applicable in the case of the applicant. The applicant has also brought out that the Tribunal had granted liberty to the respondents to start enquiry afresh and no such enquiry can be instituted against a person who has been superannuated unless the misconduct alleged has taken place within a period of four years of such proceedings.

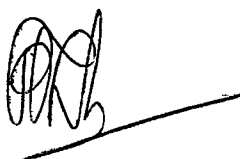
5. The main thrust of the ^{argument of} learned counsel for the applicant is that since the applicant is retired, the disciplinary proceedings cannot be continued against the applicant as he is no longer Member of the Indian Administrative Service. The learned counsel for the applicant has also argued that the liberty granted by



the Tribunal in their judgement dated 9.2.1996 does not create any new rights for taking disciplinary proceedings which is not there under the law. Since the applicant has retired, therefore, the enquiry which was being conducted against the applicant when he was Member of the IAS cannot be continued as the All India Services (Discipline and Appeal) Rules, 1969 are no longer applicable to the applicant.

6. Learned counsel for the respondents on the other hand has argued that the enquiry against the applicant is being continued under Rule 6 (1)(a) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. The learned counsel for the respondents has argued that this rule specifically and squarely covers the case of the applicant and the order dated 15.11.1996 has been issued under the provisions of Rule 6 (1)(a) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. Rule 6 of All India Services Manual reads as under :-

"6. Recovery from pension-(1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a department or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:



Provided that no such order shall be passed without consulting the Union Public Service Commission;

Provided further that —

- (a) Such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service;
- (b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment:
 - (i) shall not be instituted save with the sanction of the Central Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;
- (c) such judicial proceeding, if not instituted while the petitioner was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation — For the purpose of this rule :-

- (a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and



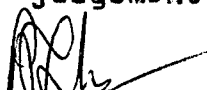
(b) a judicial proceeding shall be deemed to be instituted —

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

to be decided

7. The issue involved ^{to be decided} in the present OA. is if the case is to be governed by Para 6 (1) (a). According to this para, if departmental proceedings were instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service. In the case of the applicant, the proceedings were initiated before his superannuation while the applicant was in service. The applicant had retired on 30.9.1995. The judgement of the Tribunal ^{dtd. 9.2.1996} by which the liberty has been granted ~~to initiate action~~ afresh from the stage of supplying the copy of the CVC report etc., will therefore be covered by the provisions of Para 6 (1)(a) as these proceedings, in our opinion, would be ⁱⁿ continuation of the old proceedings which were initiated against the applicant while he was in service. We, therefore, do not accept the argument of the learned counsel for the applicant that the action against the applicant cannot be taken under the liberty granted by the Tribunal in the judgement dated 9.2.1996 as it is not covered by any rules.

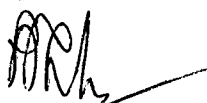


8. The learned counsel for the applicant has also brought out that even if the enquiry is to be held under Rule 6, it can only be held for grave misconduct or for the actions which have caused pecuniary loss to the Government by misconduct during his service. In the present case, there is no pecuniary loss to the Government as the applicant has not been charged with any pecuniary loss and, therefore, on the face of it, the impugned order dated 15.11.1996 cannot survive. Learned counsel for the applicant has also argued that the grave misconduct is required to be understood in terms if it ^{has} caused pecuniary loss.

9. Learned counsel for the respondents on this issue has argued that these issues are required to be determined by the disciplinary authority and the applicant can take this plea before the disciplinary authority and it is not for the Tribunal to determine this aspect at this stage.

10. After hearing the arguments of both the parties on this issue, we are of the opinion that we are not required to give any findings on this aspect. The applicant can take all these pleas before the disciplinary authority in his defence.

11. Learned counsel for the applicant has also pleaded that the respondents are stopped from taking any action against the applicant in view of their averment before the Hon'ble Supreme Court in the SLP No.12487 - 88 of 1996 filed against the order of this Tribunal. The plea taken in the Hon'ble Supreme Court is brought out



in para 4 (g) of the OA. The specific pleadings brought out by the applicant reads as under :-

" (g) The Respondent No. 1 challenged the order of this Hon'ble Tribunal reinstating the Applicant, before the Hon'ble Supreme Court of India by SLP (Civil) No. 12487 - 88 of 1996. The Respondent also sought a stay on the implementation of this order of this Hon'ble Tribunal. In the said stay application, in para 3, it was stated as follows :

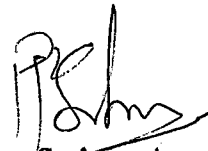
"It is further submitted that the Respondent Shri Batabyal if not compulsory retired from service as a disciplinary measure, would have retired from service with effect from 30th September, 1995 on superannuation in normal course. If no stay is granted by the Hon'ble Court in the matter and consequently the Petitioners are required to implement the judgement dated 9th February, 1996 of the Central Administrative Tribunal, Bombay Bench, then the penalty of Compulsory Retirement would become infructuous and it would not be possible to proceed against him in the disciplinary case as the limitation of four years under AIS (DCRB) Rules, 1958 will come into operation."


Learned counsel for the respondents on this issue has argued that since the SLP has been dismissed by the Hon'ble Supreme Court, the pleas which were taken before the Hon'ble Supreme Court cannot **stop** the respondents from taking action in terms of the judgement of the Tribunal.

12. After hearing both the counsels on this issue, we are of the opinion, that there is no force in the argument of the learned counsel for the applicant that respondents are stopped from taking action against the applicant after it is stated in the SLP that "it would not be possible to proceed against him in the disciplinary case as the limitation of four years under AIS (DCRB) Rules, 1958 will come into operation."

13. In the result, we do not see any merit in the O.A. and the O.A. is dismissed. It is necessary to note here that whatever is mentioned here should not in any way affect the decision of the Disciplinary Authority who is obliged to apply his mind on the issue independently on the basis of the materials on record.

14. It is also ordered, that no recovery should be made from the applicant's pension and the applicant should be paid the pension which he was drawing before the initiation of disciplinary proceedings by the respondents by their letter dated 15.11.1996 regularly till the finalisation of disciplinary proceedings. In the facts and circumstances of the case, the disciplinary proceedings should be completed expeditiously preferably within a period of three months from the date of communication of this order. No order as to costs.


(P.P. Srivastava)
Member(A)


(B.S. Hegde)
MEMBER(J)

mrj.