

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 241/98

Date of Decision : 3rd May 2002

Mrs.K.S.Joshi _____ Applicant

Shri D.V.Gangal _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri S.S.Karkera for
Shri P.M.Pradhan _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other no
Benches of the Tribunal ?

(iii) Library yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.241/98

Dated this the 3rd day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Mrs.Kaumudini S.Joshi,
Telecom Office Assistant,
O/o Director, Maintenance,
Western Telecom Region,
R/o.298, Kasba Peth,
Pune.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. Union of India through
the Chief General Manager,
Pune Telecom, Bajirao Road,
Pune.

2. The Director,
Maintenance, Western Telecom
Region, Mahadji Shinde
Telecom Building,
Pune.

3. The Divisional Engineer,
(Admn.), Office of Director
Maintenance, Western Telecom
Railway, Mahadji Shinde
Telecom Building,
Pune.

...Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

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S.M.P.

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the impugned orders dated 20.1.1998 and 4.3.1998 are illegal and void, penalty of withholding of increment for one year without cumulative effect has been undergone by the applicant w.e.f. 26.8.1987 to 26.8.1988, entitled to One time-bound promotion after completion of 16 years of service on June, 1986 or alternatively on 26.8.1988 in the scale of Rs.1400-2600, further entitled to next time-bound promotion after completion of 26 years of service in 1994, to quash and set aside the impugned orders dated 20.1.1998 and 4.3.1998, the intervening period between 7.1.1987 to 10.5.1994 be treated as duty for all purposes including seniority, promotion, full pay and allowances with reinstatement w.e.f. 7.1.1987.

2. The applicant filed OA.NO.780/88 before this Tribunal which was decided on 12.4.1994. The operative part of the said order is as under :-

" The application is partly allowed. Paras 8 and 9 of the order of the Disciplinary Authority dated 7.1.1987 are set aside. Consequently, Respondents are directed to reinstate the applicant in service and allow her to work in her previous position as O.A. or in any equivalent position. The finding of guilt recorded by D.A. is not interfered with but the D.A. is directed

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to send a copy of Inquiry Report to the applicant with an opportunity to her to make a representation as to quantum of penalty. D.A. may pass a fresh order regarding the quantum of penalty keeping in view our observations regarding the need to act fairly while imposing penalty. The period from the date of compulsory retirement till the date of reinstatement may be decided by the D.A. as per Rules at the time of passing the order regarding penalty. No order as to costs."

3. Perusal of the same makes it clear that the order dated 7.1.1987 which is also referred by the applicant in prayer clause of this OA. was the subject matter of the earlier OA. and paras 8 and 9 of the said order were set aside. The finding of the guilt recorded by the disciplinary authority is not interfered with but the disciplinary authority is directed to send a copy of the enquiry officer's report with an opportunity to her to make representation as to the quantum of penalty and disciplinary authority may pass a fresh order regarding the quantum of penalty keeping in view the observations regarding the need to act fairly while imposing penalty.

4. Paras 12 & 13 of the said order in the said OA. ^{is are} extracted below :-

"12. To clinch the matter, let us quote the relevant portion of order vide para 8 Annexure-IV (page 26).

"I am, therefore, of the opinion that very severe penalty should be imposed on the accused official Smt.K.S.Joshi, OA. to set an example to others for upholding office discipline and curbing the tendency of unauthorised and repeated absenteeism amongst Government Servants which makes office work to suffer and proves detrimental to public interest."

(Para 9 imposes the penalty of compulsory retirement)

13. Even in Parmanand, the Hon'ble Supreme Court held that the Tribunal can interfere with the penalty if it is malafide. In our view, the penalty of compulsory retirement imposed on the delinquent was not on the basis of proved charges but was actuated by extraneous considerations and as such was not only disproportionate but outside the parameters of Parmanand. At the same time, we are not inclined ourselves to substitute another penalty but would like to leave the matter to the Departmental authorities. We, therefore, dispose of the matter by passing the following order."

5. Thereafter, the respondents have issued the notice to the applicant, considering the same proceeded to decide the matter vide impugned order dated 20.1.1998. Vide order dated 20.1.1998 the respondents ordered that the next increment of the applicant may be withheld for a period of one year without cumulative effect and the period of absence from the date of compulsory retirement to the date of reinstatement, i.e. 9.1.1987 to 10.5.1994 is treated as non-duty for all purposes, such as Pay, increment, Leave, Pension etc. However, this will not constitute break in service in counting the past period to the date of compulsory retirement. No pay and allowances are payable retaining pension received during the said absence. Thereafter, the applicant preferred an appeal and the respondents passed the impugned order dated 4.3.1998 confirming the decision of the disciplinary authority dated 20.1.1998. The operative part of the said order is as under :-

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" Since the appellant has not fully exonerated on merits, the decision of disciplinary authority to treat absence as non-duty is quite correct and the appeal in this regard is rejected. The decision of the disciplinary authority is upheld. However, in view of FR 54A II, it is ordered that the proportionate Pay & Allowances payable in this case are restricted to the amount of monthly pension she received during the said absence. Other pensionary benefits, i.e gratuity, commutation etc. if any should be refunded to Government as the official already reinstated in the Government service (with counting of her past service to compulsory retirement)."

6. The applicant has challenged the said orders alleging that they are passed by mis-interpreting the orders passed by the Tribunal, applying wrong provisions of law, the applicant's case is governed by FR-54-A (3) whereas the respondents have decided the case of the applicant by applying provisions of FR-54-A (2). The respondents have erred in applying Rule 102 of the P & T Manual, Vol.3, which is entirely inapplicable in the facts and circumstances of the present case. The applicant is subjected to double jeopardy in as much as the respondents are imposing punishment of withholding of increment for one year and at the same time treating the period from 7.1.1987 to 10.5.1994 as non-duty for all purposes. The applicant is entitled to count the intervening period as duty for all purposes, with full pay and allowances for the said period as per provisions of FR-54.A (3).

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7. The claim of the applicant is resisted by the respondents on the ground that the order passed by them was as a result of direction of the Tribunal in OA.NO.780/89 vide order dated 12.4.1994. Action was taken by the respondents for treating the period from 7.1.1987 to 10.5.1994 as non-duty under the provisions of FR-54.A(2). The appellate authority has passed the speaking order.

8. In order to comply with the said order of the Tribunal, the respondents have issued show cause notice to the applicant asking her to submit her defence and the applicant submitted the reply in detail. The disciplinary authority after taking into consideration of the defence submitted by the applicant reduced the punishment from compulsory retirement to with-holding of increment for one year without cumulative effect. As per the direction of the Tribunal, period from the date of compulsory retirement upto her reinstatement was examined in detail as per the provisions of rules and treated the said period as non-duty for all purposes and no pay and allowances are payable by retaining pension received during the said period. The action taken by the respondents is in accordance with the rules which is just and proper.

9. The appeal preferred on 2.2.1998 was considered by the appellate authority and after examining the same under FR.54.A (2) and the proportionate pay and allowances have already been decided and limited to the amount of pension received during the period of compulsory retirement till her reinstatement in

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service, ordered the applicant to deposit gratuity, commutation of pension in view of reinstatement in service. The punishment imposed on the applicant on 10.1.1998 cannot be given effect from 7.1.1987 as sought by the applicant as the applicant was not fully exonerated from the charges, the Tribunal directed the respondents for reinstatement in service and to impose the punishment. Therefore, the question of treating the punishment order dated 21.1.1998 effective on 7.1.1998 is not tenable. With-holding of increment from future date, i.e. from the date of issue of the order is as per Rule 10 of P&T Manual Vol.III and in accordance with the paragraph No.10 of the order of Tribunal. The applicant cannot be treated as deemed to have been on duty w.e.f. 7.1.1987 till she was actually reinstated on 10.5.1994. The period was dealt with under provisions of FR.54.A. The decision of Government of India dated 17.5.1961 under FR.54.B is not applicable in the facts and circumstances of the case. Hence, prayed for dismissal of the OA. along with costs.

10. The learned counsel for the applicant argued that in view of the order passed in OA 780/88 decided on 12.4.1994. The respondents have passed the order dated 20.1.1998 which was challenged in appeal and the appellate order was passed on 4.3.1998. As such the order which is passed on 4.3.1998 is to substitute the order dated 7.1.1987, the reason being the said order being contrary to law was set aside by the Tribunal. As such the penalty imposed vide order dated 4.3.1998 shall be

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effective on 7.1.1987 and expires on 6.1.1988. . He has relied on 1992 (21) ATC 63, I.C. Sharma V/s Union of India and others. The said order of the Tribunal is based on earlier decision of AIR 1960 N.N.Chakravarti Vs. State of Assam & Ors. We have perused the decision of N.N.Chakravarti and we are of the considered view that only the point decided is meaning of the word 'substitute' with reference to a reference under Industrial Dispute Act 1947. In the present case, meaning of the word 'substitute' is not a point in dispute. We are not in agreement with the learned counsel for the applicant that the penalty which the respondents have passed, which was not found in accordance with law, therefore the penalty imposed vide order dated ^{20.1.1984} 4.3.1998 is deemed to have been substituted for an order dated 7.1.1987.

11. The case of I.C. Sharma referred above is not a case where penalty was ordered to be modified by the respondents, on the other hand, the facts of the case are that the employee was exonerated on 1.3.1969, the President issued show cause notice on 30.7.1970 for Review of the order and imposed the penalty on 18.2.1974 for reduction of pay for one year with cumulative effect was a subject matter for consideration. Therefore the law laid down in the said case is that penalty relates to the date on which the employee was exonerated has no relevance in the present case. The applicant was never exonerated, on the other hand, the Tribunal ordered to modify the penalty as such the said case does not assist the applicant. Further, the Rule 102 of P&T Manual Vol.III was not the subject of consideration.

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12. The other ground for which the said case is not applicable to the present case is that FR 54, 54.A and 54.B were not subject matter for consideration before the Tribunal which deals with the situation which arose in the present case. As such the said decision does not apply to the present case.

13. The respondents have considered the case of the applicant under FR.54.A (2) while in our considered opinion FR.54.A(3) is applicable which is reproduced below :-

"If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

14. The order passed by the Appellate Authority dated 2.3.1998, the operative portion of which is extracted below :-

"Since, the applicant has not fully exonerated on merits, the decision of disciplinary authority to treat absence as non-duty is quite correct and the appeal in this regard is rejected. The decision of the disciplinary authority is upheld. However, in view of FR 54 A II, it is ordered that the proportionate Pay & Allowances payable in this case are restricted to the amount of monthly pension she received during the said absence. Other pensionary benefits i.e. gratuity, commutation etc. if any should be refunded to Government as the official already reinstated in the Government service (with counting of her past service to compulsory retirement)."

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15. F.R.54.A (2) is not applicable to the present case for the reason that the Compulsory retirement of the applicant was not set aside by the Court solely on the ground of non compliance with the requirement of clause (1) or (2) of Article 311 of the Constitution and where he is not exonerated on merits. In the present case, F.R. 54.A (3) does apply. The respondents have erred in treating the period of absence till reinstatement as non duty. They have further erred in coming to the conclusion that proportionate pay and allowances payable is restricted to the amount of monthly pension received during the said absence. The applicant is entitled to be paid full pay and allowances of the period to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended as the case may be. The payment is subject to F.R.54.A (4) and (5).

16. In the result, the order dated 4.3.1998 last para which is reproduced in para 14 of this order is quashed and set aside, rest is confirmed.

17. In the result the OA is partly allowed. The order dated 4.3.1998 last para which is reproduced in para 14 of this order is quashed and set aside, rest is confirmed. The needful action for complying the same be completed within a period of three months from the date of receipt of the copy of the order. No order as to costs.

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(SMT.SHANTA SHAstry)

MEMBER (A)

P.L.JAIN

(S.L.JAIN)

MEMBER (J)

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Order/Judgement despatched
to Applicant/Respondent (s)

on 3/5/02

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