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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 799/93

DATE OF JUDGMENT: 1.3.94

BETWEEN:

M.Saraswathi Prasad

.. Applicant.

A N D

The Deputy Commissioner of
Income Tax, Vijayawada Range,
Central Revenues Buildings,
Bhandar Road, Vijayawad,
Krishna District.

.. Respondent

APPEARANCE:

COUNSEL FOR THE APPLICANT(s):

.. Mr.G.V.R.S.VaraPrasad

COUNSEL FOR THE RESPONDENTS:

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

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O.A.NO.799/93.

Judgment

Dt. 1.3.94.

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri GVRS Vara Prasad, learned counsel for the applicant and Shri N.R. Devaraj, learned standing counsel for the respondents.

2. The applicant was appointed as Lower Division Clerk in the Income Tax Department on 26.8.1981. When a case was registered against the applicant herein and some others ~~underxxsection~~ for the offence under Section 411 IPC ie., for possession of the stolen property, the applicant was suspended with effect from 29.9.1982 by the order dated 4.10.1982. After the investigation, police filed CC 233/82 on the file of the IV Additional Judicial Magistrate of I Class, Vijayawada against the applicant and some others. The applicant and some of the accused therein were acquitted and A.3 therein was convicted by the judgment dated 2.9.1985. The ~~xx~~ Criminal Appeal No.83/86 preferred by the State against the said order of acquittal was dismissed at the admission stage on 4.2.1986. On 17.3.1986, the applicant was removed from service in exercise of the power under Rule 5 of the CCS (Temporary Service) Rules. The said order of removal was set-aside by the order dated 17.9.1991 in OA 289/90 on the file of this Tribunal. Therein the question as to how the period ^{was left} of suspension from 29.9.1982 to 17.3.1986 was left for consideration of the concerned authority. RP 86/91 against the said order was dismissed on 28.4.1992.

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3. The applicant was reinstated as per the orders dated 22.6.1993 and he joined duty on 30.6.93. In the said order, it was stated that the subsistence allowance paid during the period of suspension should be treated as final payment for the said period. This OA was filed praying for a direction to the respondents to treat the period from 4.10.1982 to 1.9.1985 as on duty and for payment of full pay and allowances for the said period with interest @ 12% p.a.

4. It is manifest that the suspension of the applicant as per the order dated 4.10.1982 is due to the pendency of the criminal case against him (but not due to the pendency or contemplation of a disciplinary proceeding against him. In case of conviction, it is open to the departmental authority to take action under Rule 19 of the CCS (CCA) Rules. But as the applicant was ultimately acquitted, the disciplinary authority ~~should~~ ^{here} could not/ proceeded under Rule 19 of the CCS (CCA) Rules.

5. In ~~xx~~ AIR 1984 SC 380 (Brahma Chandra Gupta, Vs. Union of India), it was held that when the concerned employee was ~~informed~~ never hauled up for departmental inquiry and he was prosecuted and had been ultimately acquitted and on being acquitted, the employee was ~~xx~~ reinstated and was paid full salary for the period commencing from his acquittal, the employee is entitled to full pay even for the period of suspension. In view of the above judgment of the Supreme Court and as it not a case where the applicant

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was suspended pending departmental inquiry and as the suspension was only because of the arrest of the applicant and the subsequent pendency of the criminal case and as the applicant ^{was} ultimately acquitted, it has to be held that the applicant is entitled to full pay and allowances for the period from 4.10.1982 to 1.9.1985 and the said period should be treated as duty.

6. Before concluding, it has to be held that neither F.R. 54(A)(3) which ^{is} relied upon for the applicant nor Rule 10(4) of the CCS (CCA) Rules, is applicable in regard to the facts in this case, for, those rules can be invoked only in a case where the order of removal, dismissal or compulsory retirement was set-aside by the court. In this case, as already observed, the disciplinary authority had not passed any order of removal, dismissal or compulsory retirement. As such, neither FR 54(A)(3) nor Rule 10(4) of CCS (CCA) Rules is ~~not~~ applicable.

7. It has to be further stated that the applicant is not entitled to full salary for the period from 29.9.1982 to 3.10.1982 for, then he was in police custody, and it should be treated as leave without pay.

8. The subsistence allowance that is already paid has to be adjusted towards the amount payable as per this order.

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9. In the result, the respondent are directed to treat the period from 29.9.1982 to 3.10.1982 as leave without pay and ~~not to treat~~ the period from 4.10.1982 to 1.9.1985 as on duty and the applicant has to be paid the full salary and other allowances for the period from 4.10.1982 to 1.9.1985 and the amount which was already paid as subsistence allowance has to be adjusted towards the amount payable as per this order. This is not a case where interest has to be ordered. Time for payment is four months from the date of receipt of this order.

10. The OA is ordered accordingly. No costs.

V.Neeladri Rao
(V.NEELADRI RAO)
VICE CHAIRMAN

DATED: 1st March, 1994.

vsn

Deputy Registrar (Judl.)
Deputy Registrar (Judl.)

Copy to :-

1. The Deputy Commissioner of Income Tax, Vijayawada Range, Central Revenues Buildings, Bhandar road, Vijayawada, Krishna District.
2. One copy to Sri. G.V.R.S.Varaprasad, advocate, CAT, Hyd.
3. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
4. One copy to Library, CAT, Hyd.
5. One spare copy.

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PSC 17/94
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O.A. 799/93

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COMPARED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE M.R.A.S. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARASAN : MEMBER
(ADMN)

Dated: 1/3/1994.

ORDER/JUDGMENT:

M.A./R.A/C.A. No.

in

O.A. No. 799/93

T.A. No. (W.P. No.)

Admitted and Interim Directions
issued.

Allowed.

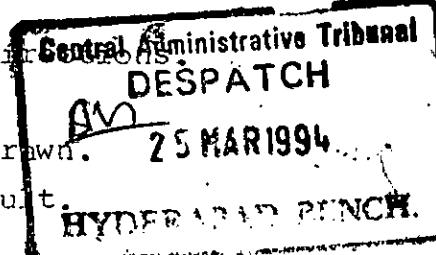
Disposed of with directions
Dismissed.

Dismissed as withdrawn. 25 MAR 1994

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



pvm

3/17/94