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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A. No. 947 of 1999.

DATE OF ORDER: 22-2-2000.

Between:

Surya Prakash.

.....Applicant

a n d

The Director,
Defence Research & Development
Laboratory, Chandrayangutta,
Hyderabad.

.....Respondent

COUNSEL FOR THE APPLICANT :: Mr.S.Lakshma Reddy

COUNSEL FOR THE RESPONDENT :: Mr.V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: O R D E R :

(PER HON'BLE SRI R.RANGARAJAN, MEMBER (A))

Heard Mr.S.Lakshma Reddy, learned Counsel for
the Applicant and Mr.V.Rajeshwar Rao, learned Standing
Counsel for the Respondents.

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2. The applicant herein joined as a Turner in DRDL, Hyderabad. There was some altercation and the applicant was issued with a Charge Sheet under Rule 7 of CCS(Conduct) Rules, 1964. Initially it was contested that the Director is not the competent disciplinary authority, which was accepted by the High Court of Andhra Pradesh and that was challenged in the Supreme Court. The Supreme Court finally decided that the Director of DRDL is the competent disciplinary authority. Then the applicant was initially removed from service. Then in view of the Supreme Court Judgment, the applicant's case was considered in T.A. No.24 of 1991, (Annexure.I, page 9 to the OA) and the following observations/directions were made in that TA:-

'6. We feel that a serious view would not have been taken in regard to the charge No.1 in the absence of the Charge No.2. So, it is a matter for remitting it to the disciplinary authority. (The applicant preferred an appeal to the Scientific Advisor. But the same stood abated in view of this TA as envisaged under section 19(4) of the Administrative Tribunals Act, 1985). Hence, the order dated 9-6-1978 in regard to the punishment of removal is set-aside. The matter is remanded to the disciplinary authority i.e. the respondent herein for considering afresh in regard to the punishment with reference to the Charge No.1 of the Charge Memo dt. 19-10-1977. As it is a case where there is a time gap of more than 12 years between the date of order of punishment and the date of disposal of this T.A., and as it is mainly in view of the stand taken by the applicant that the respondent ie., the Director,

is not competent to pass the order of punishment of removal/dismissal, which was ultimately negatived by the Supreme Court and as the applicant was paid the subsistence allowance in view of the interim order till the Supreme Court disposed of the matter in 1990, and as the respondent is not responsible for the said delay, we feel that the applicant is not entitled to any subsistence allowance till the date or to any pay till he is going to be reinstated in pursuance of the order that is going to be passed by the respondent by way of punishment which will naturally be less than the removal, in view of our observations in this order. The respondent has to dispose of the matter in regard to the punishment in regard to the Charge No.1 within one month from the date of receipt of this order. If the same is not disposed of within one month from the date of receipt of this order, the applicant will be entitled to salary from the date on which the period of one month referred to herein expires. The period upto the date of suspension counts for increments and seniority. The entire period from the date of suspension till reinstatement also counts for the purpose of calculation of pensionary benefits. The respondent should not recover the subsistence allowance already paid in pursuance of the interim order.'

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3. In the meantime one Sri Man Mohan also filed OA. No.1381 of 1996 on the file of this Bench. As the applicant in that OA also was removed from service, /challenged that removal order. That OA was disposed of by Order dated 2-9-1998, (Annexure.III, page 16 to the OA). In that OA a direction was given to the Disciplinary Authority to pass a detailed order in accordance with the departmental rules in regard to the period of suspension till he was reinstated duly taking note of the order of this Tribunal in TA.No.27 of 1991.

4. With the above directions, the Disciplinary Authority has passed the impugned Order No.DRDL/1216/228/C.CELL, dated 8-3-1999, (Annexure.A-V, page 22 to the OA) as follows:-

"The period upto the date of suspension counts for increments and seniority. The entire period from the date of suspension till reinstatement also counts for the purpose of calculation of pensionary benefits. The respondent should not recover the subsistence allowance/ other payments as per court orders already paid in pursuance of the interim order."

5. This OA is filed to set aside the impugned Order No.DRDL/1216/238/C.Cell, dated 8-3-1999, and for a consequential direction to the respondents for treating the period from the date of suspension to the date of reinstatement by the proceedings of the respondent dated 29-12-1993 as duty in accordance with the rules and in accordance with the Judgment in OA.No.1381 of 1996, dated 2-9-1998.

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6. When we asked the learned Counsel for the Applicant to spell out the meaning for the word 'duty' in the relief column, he submitted that he is not pressing for the back-wages but is interested only in fixation of seniority, grant of promotion and/notional Increments.

7. The main contention of the applicant in this OA is that, Order in TA.No.27 of 1991 is only to the extent of reduction of punishment below that of removal and all other observations made is only a guidance and is not a direction from the Court. Further he added that the applicant was punished with a punishment of Censure and that being a minor penalty, the question of loosing seniority, promotion and notional fixation of increments does not arise. Hence, the impugned Order which prohibits the above three benefits is unwarranted, uncalled for and has to be set aside. He also submits that in accordance with F.R.54(B), the applicant is entitled for all the benefits, such as, seniority, notional fixation of increments and promotion as he was punished with a minor penalty only.

8. He also relied on the Judgment of this Tribunal in OA.No.1381 of 1996 and submits that it has been clearly stated in Para 5 of the said Judgment that the observations made in TA.No.27 of 1991 is only to be treated as observations for guidance to the respondents. On that score only the respondent in that OA was directed to dispose of his

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case in regard to the punishment and other consequences. When that is so, the respondent cannot rely on the observations made in TA.No.27 of 1991 to deny him the benefits as referred to above. If those benefits relying on the judgment in TA.No.27 of 1991 is denied, it is a violation of the judgment in OA.No.1381 of 1996. As such the impugned Order dated 8-3-1999 has to be set aside.

9. Before we go into the merits of this case, it is necessary to have a close perusal of the Order in TA.No.27 of 1991. The order clearly states that the applicant in that TA is not entitled to any subsistence allowance till that date or to any pay till he is going to be reinstated in pursuance of the order that is going to be passed by the respondent by way of punishment which will naturally be less than the removal in view of the observations made in that Order. This clearly shows that the applicant is not entitled for backwages. Ofcourse, the applicant himself has accepted that he is not demanding backwages. It is further stated very clearly in that Judgment in TA.No.27 of 1991 that 'the period upto the date of suspension counts for increments and seniority. The entire period from the date of suspension till reinstatement also counts for the purpose of calculation of pensionary benefits. The respondent should not recover the subsistence allowance already paid in pursuance of the Interim Order'. The above quoted portion of the Judgment clearly indicates that the applicant is not entitled for increments, seniority upto the date of suspension. /from the date of suspension till reinstatement counts only for pensionary benefits and does not count for increments and seniority.

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10. If such a categorical direction is given in TA.No.27 of 1991, it is not understood how-far the respondent can disobey that Order to grant him the relief as prayed for in this OA. No doubt in the Judgment in OA.No.1381 of 1996, this Tribunal has remitted back the case to the respondent to clearly state as to how the period of absence is going to be treated. The applicant submits that by that Order the respondents are given full liberty to decide this issue not relying on the earlier Judgment in TA.No.27 of 1991. The respondents without looking into the facts of the case, squarely relied on the Judgment in T.A.No.27 of 1991 and repeated the observations made in that Judgment in TA.No.27 of 1991 while deciding the issue in accordance with the Judgment in OA.No.1381 of 1996. The Judgment in OA.No.1381 of 1996 clearly states that the observations made in TA.No.27 of 1991 cannot be treated as a direction and hence following the observations made in TA.No.27 of 1991 while issuing the impugned Order dated 8-3-1999 is an uncalled for exercise and has to be set aside.

11. The Order in OA.No.1381 of 1996 is not an order to over-rule the directions/observations made in T.A.No. 27 of 1991. Normally, a Court or Tribunal is not permitted to interfere with the Orders to be passed by the Disciplinary Authority. Treatment of the period of absence has to be decided not by the Court or Tribunal but by the Disciplinary Authority. In that view a direction was given to the



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respondent in OA.No.1381 of 1996 to decide the period of absence suitably in accordance with the law and it is also stated in that Order in OA.No.1381 of 1996 to keep in mind the Order in TA.No.27 of 1991 while disposing of that case. That clearly indicates that the Judgment in OA.No.1381 of 1996 only gave the liberty to the respondent, to decide the issue in accordance with the law keeping due note of the observations/directions passed in TA.No.27 of 1991. That in Judgment in OA.No.1381 of 1996/ no way over-rules the observations/directions made in TA.No.27 of 1991. Hence, the applicant cannot submit that the impugned Order passed dated 8-3-1999 is against the Judgment in OA.No.1381 of 1996. This contention has to be rejected.

12. Further each disciplinary case has to be looked into on the basis of the material available in that case. No two cases can be combined. Disciplinary cases vary due to the circumstances and other materials contained in the Charge Sheet etc.,. Hence, the Judgment in OA.No.1381 of 1996 has to be construed as a direction given to the respondent to decide the issue in accordance with the law taking into account various other factors. Hence, in our opinion, the applicant cannot rely on the Judgment in OA. No.1381 of 1996 to set aside the impugned Order dated 8-3-1999.

13. The applicant relies on the Administrative Instructions issued by the Government of India to state that ~~the~~ period of suspension is to be treated as duty, if a minor penalty is imposed.





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14. As in this case the applicant was Censured, the Administrative Instructions squarely hold good and hence the relief asked for should be granted.

15. The learned Standing Counsel for the Respondents relying on FR.54(A) submits that, when a Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of Sub-Rule (2) or (3) subject to the directions, if any, of the Court. The learned Counsel for the Respondents submits that there was no further enquiry in this connection. The case was remitted back to the respondents in view of the Judgment in TA.No.27 of 1991. The Final Order was passed Censuring the applicant herein. No enquiry was conducted. Hence, the Order passed is in accordance with FR.54(A) and that the punishment of removal was replaced by Censure. Further the FR.54(A) is to be implemented if there are no other Court directions in this connection. In the present case there are Court directions in TA.No.27 of 1991 and those Court directions were followed fully. Hence, the rule position has been adhered to fully.

16. It has been already observed that the Order in TA.No.27 of 1991 clearly indicates how to treat the period of suspension and the entire period from the date of suspension till reinstatement and it also indicates in regard to increments and seniority. The earlier direction

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in TA.No.27 of 1991 cannot be treated as an observation. From the nature of the observations made therein, it has to be held that those are the directions if the punishment of removal is replaced by a lower punishment than that of a removal. Hence, it has to be held that the Order passed dated 8-3-1999, is clearly adhered to the earlier Judgment in TA.No.27 of 1991 and also rule FR.54(A). Reliance on the Fundamental Rule 54(B) in our opinion is not proper.

17. In view of what is stated above, we find that the applicant has not made out a case for the relief. Hence, the OA is dismissed. No costs.


(B.S.JAI PARAMESHWAR)

MEMBER (JUDL.)
22-2-00

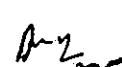

(R.RANGARAJAN)

MEMBER (ADMN.)

DATED: this the 22nd day of February, 2000

Dictated in the Open Court

DSN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HDHNC
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A(ADMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H.NASIR
VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 22/2/03

MA/RA/CP.NO.

IN

O.A. NO. 942/03

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

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