

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 29.1.2015

OA No.291/00142/2014

Mr. C.B.Sharma, Counsel for the Applicant.

Mr. Mukesh Agarwal, Counsel for the Respondents.

Heard the learned counsel for parties.

The OA is disposed of by a separate order on separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00142/2014

DATE OF ORDER: 29.01.2015

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mahendra Kumar Karadia S/o Shri Gyan Chand Karadia, aged about 47 years, R/o Plot No. 10, Tagore Nagar, Near Kartarpura Phatak, Jaipur, and presently working as Daftari, Library & Training Section, Office of the Principal Accountant General (General and Social Area Audit Examination), Rajasthan, Near Statue Circle, Jaipur-302005.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi.
2. The Comptroller & Auditor General of India, 9 Deendayal Upadhyaya Marg, New Delhi - 110124.
3. The Principal Accountant General (General and Social Area Audit Examination), Rajasthan, Near Statue Circle, Jaipur - 302005.
4. Audit Examination Officer, Office of the Principal Accountant General (General and Social Area Audit Examination), Rajasthan, Near Statue Circle, Jaipur-302005.

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

The applicant has filed the present Original Application praying for the following reliefs:

- "(i) That the respondents be directed to reconsider the matter as per request of the applicant and to treat period from 23/08/2005 to 06/03/2006 at least for counting towards increment by

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quashing letter dated 10/01/2014 (Annexure A/1) with all consequential benefits.

- (ii) That the respondents be further directed to modify order dated 06/03/2006 (Annexure A/6) with the fixation order dated 11/07/2013 (Annexure A/9) to the extent of allowing increment due on 01/07/2006 and to re-fix the pay with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant while working as Group 'D' in the office of the respondent no. 3 was served with a major penalty charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 vide memo dated 19.10.2004 (Annexure A/2).

3. The applicant was placed under suspension on 02.09.2004 and the same was revoked vide order dated 29.04.2005 (Annexure A/3). An enquiry was conducted against the applicant. The respondent no. 4 being Disciplinary Authority imposed a punishment of removal from service and treated certain period in question as dies-non vide order dated 23.08.2005 (Annexure A/4).

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4. The applicant being aggrieved by the order of the Disciplinary Authority submitted an appeal before the Appellate Authority on 13.09.2005. The Appellate Authority after considering the facts and circumstances of the case reduced the penalty of removal from service vide order dated 06.03.2006 (Annexure A/6) to withholding of one increment of pay for one year without cumulative effect and also ordered that suspension period w.e.f. 02.09.2004 to 02.05.2005 shall be treated as duty and other period including 24.08.2005 to 06.03.2006 i.e. the date of removal from service to the date of the order passed by the Appellate Authority be treated as dies-non and the same shall not cause interruption in service.

5. As per the provisions of FR-54, the period should be decided by the competent authority but the Appellate Authority decided the period without extending any chance of hearing which is against the provisions of FR-54 and by this action, the applicant was denied increment fallen due on 01.07.2006. The applicant's increment has been released w.e.f. 01.07.2008 vide order dated 22.10.2008 (Annexure A/7). Subsequently, the applicant submitted a representation dated 13.06.2013 (Annexure A/8) with the prayer to allow revised pay and allowances. The respondents vide Office Order No. 75 dated 11.07.2013 (Annexure A/9) revised the pay and allowances by allowing

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withheld increment, but did not allow increment which was due on 01.07.2006 in the garb of dies-non. The junior to the applicant is drawing more pay and allowances than the applicant. The applicant further submitted a representation to the respondents on 11.09.2013 (Annexure A/11). The respondents vide letter dated 25.09.2013 (Annexure A/12) informed the applicant that order dated 06.03.2006 is passed by the Appellate Authority under Rule 27 of CCS (CCA) Rules, 1965 so his request cannot be considered. The applicant further submitted that Rule 27 of CCS (CCA), Rules 1965 nowhere provides for the Appellate Authority to decide about the period and the Appellate Authority can only consider the appeal.

6. The applicant further filed a representation dated 17.10.2013 (Annexure A/13) with the request that by not allowing the increment, he is virtually facing a penalty of punishment of withholding increment with cumulative effect. The respondents vide letter dated 03.12.2013 (Annexure A/14) informed the applicant that since he has not completed six months service upto 01.07.2006 so increment cannot be allowed w.e.f. 01.07.2006. The applicant again submitted a representation dated 12.12.2013 (Annexure A/15), which has also been rejected by the respondents vide letter dated 10.01.2014 (Annexure A/1).

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7. Learned counsel for the applicant submitted that the action of the respondents in not allowing the increment from the due date is arbitrary, illegal and unjust. The order passed by the Appellate Authority for dies-non is against the provisions of Rule 27 of CCS (CCA) Rules 1965. As per provisions of FR-54, it is only the Disciplinary Authority who could have taken a decision about this period. Thus, the order of the Appellate Authority to the extent of treating the said period as dies-non is not justified and such action is liable to be quashed and set aside. Moreover, the Appellate Authority also ordered that dies-non period shall not cause interruption in service then the applicant is entitled for increment by counting such period at least towards increment. Therefore, the Original Application be allowed.

8. On the other hand, the respondents have submitted their written reply. In the written reply, they have stated that the applicant has prayed for modification in the order dated 06.03.2006 (Annexure A/6) passed by the Appellate Authority but he has not challenged the order dated 06.03.2006, therefore, the same has attained finality and the applicant by filing aforesaid OA after a period of 7 years has no right to get modified the order passed by the Appellate Authority. Hence, the present O.A. deserves to be dismissed on this count alone.

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9. The respondents vide letter dated 10.01.2014 (Annexure A/1) informed the applicant that the order dated 06.03.2006 has been passed by the Appellate Authority under Rule 27 of CCS (CCA) Rules, 1965, therefore, no representation against such order is maintainable. Hence, as the letter dated 10.01.2014 does not provide any fresh cause of action to the applicant and, therefore, also the present O.A. is not maintainable and is liable to be dismissed. The facts that the applicant was served with a charge-sheet under Rule 14 of CCS (CCA) Rules, 1965 and the Disciplinary Authority imposed the punishment of removal from service vide order dated 23.08.2005 (Annexure A/4) and subsequently on the appeal of the applicant, the Appellate Authority modified the order of punishment vide order dated 06.03.2006 (Annexure A/6) have been admitted by the respondents being matter of record.

10. The applicant vide letter dated 13.06.2013 (Annexure A/8) made a request that his increment which was withheld without cumulative effect for one year in pursuance of Appellate Authority order has not been released after the end of penalty period. Considering the letter of applicant, an Office Order dated 11.07.2013 (Annexure A/9) was issued, whereby accepting the error, his increment was released and accordingly his pay fixation was revised. The

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increment was released to the applicant w.e.f. 01.07.2008 as per the penalty order passed by the Appellate Authority.

11. The respondents have also stated that so far as the question of increment due on 01.07.2006 is concerned, it could not be released due to the dies-non w.e.f. 24.08.2005 to 06.03.2006. The applicant could not complete six months service between 01.07.2005 to 30.06.2006; therefore, he was not eligible to earn the increment due on 01.07.2006.

12. With regard to the representation submitted by the applicant on 11.09.2013 (Annexure A/10) referring to the order dated 23.08.2005 issued by the Disciplinary Authority and the order dated 06.03.2006 issued by the Appellate Authority, the same could not be considered by the respondents as the Controller & Auditor General of India is the revisionary authority and also the representation was filed after about 7 years of the order of the Appellate Authority.

13. The learned counsel for the respondents submitted that though the applicant has not challenged the order of the Appellate Authority dated 06.03.2006 but he is trying to get it modified by way of filing the present O.A., which is not permissible under the Rules. If he was aggrieved with any part of the order of the Appellate Authority, the applicant

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was at liberty to challenge the order of the Appellate Authority before the revisionary authority at the appropriate time. Now after a long period of 8 years, he is questioning the order passed by the Appellate Authority, which is not permissible under the rules.

14. With regard to the submission of the learned counsel for the applicant that under Rule FR-54, it is the Disciplinary Authority who could have taken a decision about the period in question, the learned counsel for the respondents drew my attention to FR-54 which provides that the authority competent to order reinstatement shall consider and make a specific order with regard to the period in question. In the present case, the Appellate Authority has ordered the reinstatement of the applicant by way of quashing the order of removal; therefore, the Appellate Authority was competent to pass the order about the dies-non as well. Thus, the present O.A. has no merit and it should be dismissed with costs.

15. Heard learned counsel for the parties and perused the documents available on record.

16. It is not disputed that the applicant was removed from service by the Disciplinary Authority and subsequently on his appeal, the Appellate Authority modified the order of the

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Disciplinary Authority vide order dated 06.03.2006 (Annexure A/6) and imposed the penalty of withholding of one increment vide para 8, which is reproduced below: -

"8. Therefore in the facts and circumstances of the case and after careful consideration of all relevant factors, the undersigned in the capacity of Appellate Authority orders to reduce the penalty under Rule 27 (2) of CCS (CCA) Rules, 1965 and hereby orders to impose a penalty of withholding of one increment of pay for one year without cumulative effect under Rule 11 (iv) of CCS (CCA) Rules, 1965. It is further ordered that the suspension period w.e.f. 02.09.04 to 02.05.05 (FN) shall be treated as duty. Besides, that the period from 02.02.02 to 05.02.02, 18.02.02 to 21.02.02, 28.02.02, 18.1.02, 21.1.02, 14.03.02, 31.05.02 and 24.08.05 to 06.03.06 shall be treated as dies non, which shall not cause interruption in service. He is reinstated in service w.e.f. 07.03.06 (FN)."

It is admitted that the applicant did not file any revision against this order. However, he filed a representation on 11.09.2013, which was duly replied by the respondents on 25.09.2013.

17. Learned counsel for the applicant argued that he is aggrieved by the order of the Appellate Authority only to the extent that the period between 24.08.2005 to 06.03.2006 has been treated as dies-non. According to the learned counsel for the applicant, the Appellate Authority could not have passed this order because as per the provisions of FR-54, it is the Disciplinary Authority / Appointing Authority which could have passed this order.

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On the other hand, learned counsel for the respondents pointed out that as per FR-54 (1), it is the authority competent to order reinstatement that can pass such an order.

18. I have carefully perused the provisions of FR-54 and I am inclined to agree with the arguments of the learned counsel for the respondents that the Appellate Authority was competent to pass such an order because it was the Appellate Authority who quashed the order of removal from service and consequently the order of reinstatement of the applicant was also passed by the Appellate Authority. In the order passed by the Appellate Authority dated 06.03.2006 (Annexure A/6), it is clearly ordered that the applicant is reinstated in service w.e.f. 07.03.06 (FN). Thus, it is clear from the order of the Appellate Authority that the reinstatement order of the applicant has been passed by the Appellate Authority and, therefore, he was also competent to pass the order about the dies-non for the period from 24.08.2005 to 06.03.2006 i.e. from the date of removal from service on 24.08.2005 to the date prior to his reinstatement i.e. 06.03.2006. Thus, I do not find any merit in the prayer of the applicant that the Appellate Authority was not competent to pass an order under FR 54 regarding dies-non. Moreover, in the same order dated 06.03.2006 (Annexure A/6) there are other period like

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02.02.02 to 05.02.02, 18.02.02 to 21.02.02, 28.02.02, 18.1.02, 21.1.02, 14.03.02 and 31.05.02 have also been treated as dies-non by the Appellate Authority but the applicant has no grievance to that part of the order. If the Appellate Authority cannot pass any order regarding the dies-non under FR-54 then he could not have passed the order of dies-non for the above period also but the applicant has not sought any relief for that period. The order of the Appellate Authority is dated 06.03.2006 and it is admitted that the applicant did not file any revision against this order. Therefore, the order of the Appellate Authority dated 06.03.2006 has attained finality. Now after a period of 8 years, the applicant has filed the present O.A., which is barred by limitation. In the garb of getting one increment w.e.f. 01.07.2006, basically the applicant is challenging the order of the Appellate Authority dated 06.03.2006. Without modification in the order of the Appellate Authority, the relief claimed by the applicant in the present O.A. regarding increment to be given w.e.f. 01.07.2006 cannot be granted. However, the applicant has not challenged the order of the Appellate Authority dated 06.03.2006 and without the challenge to the order passed by the Appellate Authority dated 06.03.2006 no modification in that order can be considered. Thus, on this ground also the applicant is not entitled for any relief in the present O.A.

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19. From the perusal of the Office Order No. 290 dated 22.10.2008 (Annexure A/7), it is clear that the applicant was informed that his next increment was sanctioned w.e.f. 01.07.2008 and there is an enclosure of this office order, which is the statement of his pre-revised and post-revised pay fixation. Note 1 & 2 of this enclosure are quoted below:

- "Note: 1. Due to Dies Non period from 24.08.2005 to 06.03.2006, increment due on 01.07.2006 is not released.
2. Increment due on 01.07.2007 is not released due to penalty of withholding of one increment without cumulative effect. This increment is released on 01.07.2008 with regular increment."

Thus, the applicant was clearly informed as back as on 22.10.2008 (Annexure A/7) that his increment which was due on 01.07.2006 was not released due to the dies-non period from 24.08.2005 to 06.03.2006. Similarly his increment due on 01.07.2007 was not released due to the penalty of withholding of one increment without cumulative effect. This increment was released on 01.07.2008 with regular increment. However, the applicant did not challenge this order before the competent authority, if he was aggrieved by this order. He only submitted a representation on 13.06.2013 (Annexure A/8) i.e. after almost 5 years of the order dated 22.10.2008. Even in this

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representation, he has not referred to the Office Order No. 290 dated 22.10.2008 (Annexure A/7). This order is also not under challenge in the present Original Application. Therefore, no relief can be given to the applicant in the present Original Application.

20. Thus, looking from any angle, the applicant has failed to make out any case for grant of relief in the present Original Application.

21. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat