

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 4th August, 2001

OA No.201/96

Chiranjit Lal Sanwaria s/o Shri Ghazi Ram, at present posted as Class-IV in the NCC Directorate, Bani Park, Jaipur r/o No.B/86, Laxmi Narain Puri, Ram Ganj, Jaipur

..Applicant

Versus

1. The Union of India through the Secretary, M/o Defence (Department of Defence, Govt. of India, New Delhi).
2. The Director General, N.C.C. Ministry of Defence, Govt. of India, West Block No. IV, R.K.Puram, New Delhi.
3. The Deputy Director (Personnel) for the Director General, NCC, West Block No.IV R.K.Puram, New Delhi.
4. The Deputy Director General, N.C.C., Rajasthan, D-58, Bani Park, Jaipur

.. Respondents

Mr. Hemant Gupta, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

Applicant, Chiranjit Lal Sanwaria, an-Peon of N.C.C. Directorate, Jaipur was proceeded against under Rule 14 of the CCS (CGA) Rules, 1965 and a penalty of removal from service was imposed upon him by the Disciplinary Authority vide order dated 31.5.1982. On appeal, the Appellate Authority rejected the appeal of the applicant against the said penalty. The Reviewing Authority after examining the records remitted the case back to the Disciplinary Authority for further inquiry from the stage of the chargesheet and for passing

appropriate orders. While passing these orders, the Reviewing Authority permitted the applicant to resume duty, which he did on 6.4.1985. On completion of the fresh disciplinary proceedings, the applicant was awarded penalty of withholding of next annual increment without cumulative effect for a period of one year. The applicant submitted representation for pay and allowances for the period of absence from 8.6.82 to 5.4.85. Vide order dated 13th March 1990 (Ann.A2), the following order was passed by the Addl. Director General, NCC:-

"i) Shri CL Sanwaria be paid 75% of his basic pay and allowances admissible thereon for the period from 8.6.82 to 5.4.85 including the annual increments;

(ii) the period of absence from the date of removal from service to the date of re-instatement be treated as "non duty".

It appears that the applicant has made further representation and his case was decided by the order dated 21.7.95 (Ann.A1) stating that the period of absence cannot be treated as on duty which was communicated to him vide order dated 7th August, 95. The applicant is aggrieved with this order and has filed this application with the prayer that respondents be directed to treat the absence period of the applicant w.e.f. 8.6.82 to 5.4.85 as period spent on duty for all purposes with all consequential benefits.

2. The applicant's plea is that since he was reinstated in service and has also been given 75% of the back wages for the period of absence and also granted annual increments during the said period, the respondents should have treated this period as having been spent on duty. It has been stated that the respondents have not given any

reason for their action of treating this period as non-duty.

3. The respondents in their written statement have raised preliminary objection by stating that the applicant had earlier filed an OA No. 538/89 for quashing the order dated 7.11.85 by which the period of absence had been regularised by granting Extra Ordinary Leave. During pendency of that OA an order came to be passed on 30.3.90 by the competent authority by which the applicant was to be paid 75% of his basic pay and allowances admissible for the period from 8.6.82 to 5.4.85 including annual increments. Being fully satisfied with this order, the applicant withdrew his OA by filing an application and consequently the OA was dismissed as withdrawn by order of the Tribunal dated 17.7.90. The respondents plea is that since that OA was related to the treatment of the same period which had been regularised by grant of Extra Ordinary Leave and which could not have been counted as qualifying service for pension purposes, the same claim cannot be agitated now by the applicant. The respondents submit that the effect of Ann.A2 dated 13.3.90 is also the same where the period has been treated as non-duty and is required to be excluded for the periods of qualifying service for pension purposes. Thus, the respondents contend, the present OA is not maintainable and deserves to be dismissed. The respondents have also raised the ground of limitation stating that the order for treating this period as non-duty was passed on 13.3.90 by the competent authority exercising powers vested under FR.54. The applicant did not avail any statutory remedy available to him and subsequently submitted a representation only on 22.1.95 which has been properly disposed of by the impugned order.

4. We have heard the learned counsel for the parties and perused the written statements and documents.



5. The learned counsel for the applicant stated that the case of the applicant was covered under Government of India's order No.4 issued by the Ministry of Home Affairs under OM dated 27th May, 61 and 30th May, 1962. His contention was that under this decision, few questions have been addressed and the applicant's case was under question No.2 which is as follows:-

"(4) Regulation of pay on reinstatement on ground of equity or Court judgment, etc.

(1).....

(2) whether in cases of reinstatement on the ground of dismissal/removal/discharge or termination of service being held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory."

and this has been answered in para 3(ii) of the said OM. The learned counsel argued that the applicant had not been placed under suspension and in such a situation FR 54 is not applicable as his removal was held by the reviewing authority to have been ordered without following the required procedure. However, the learned counsel for the respondents stated that the period of absence has been treated as period of suspension and the applicant had been paid 75% of the pay and allowance as subsistence allowance. He maintained that under FR 54 the competent authority had discretion to pay a proportionate pay and allowances and to treat the period as non-duty. The learned counsel strongly opposed the maintainability of this OA on the ground of limitation as his contention was that the decision of treating the period as non-duty has been taken in 1990 and the applicant did not challenge the same for a number of years. He made a representation only in January, 1995 which was duly considered and rejected. The learned counsel's stand was that the period of limitation should count from March, 90 when the decision to treat the period as non-duty was

suspended employee for the imposition of a major penalty finally end with the imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

These orders will become effective from 3rd December, 1985, Past cases already decided need not be reopened."

It is clear from above, that the case of the applicant is squarely covered by this decision. After the reviewing authority ordered further inquiry in the matter and the same ended in imposition of only a minor penalty i.e. stoppage of increment for one year without cumulative effect, there was no option then with the department than to treat this period as period spent on duty. In such a situation the suspension is considered unjustified and full pay and allowances become payable for this period. It is the duty of the competent authority to follow the provisions of FR 54 B (3) and (4).

These provisions are reproduced below:-

"F.R.54-B. (1).....

(2).....

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

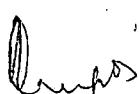
Provided that where such authority is of the opinion that the termination of the proceedings instituted

against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

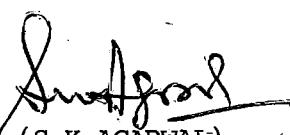
(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes."

8. In view of this clear rule position, we have no hesitation in holding that action of the respondents in treating the period as non-duty is contrary to the Fundamental Rules and is liable to be rejected.

9. We, therefore allow this OA and quash the impugned order Ann. Al dated 21.7.95. The respondents are directed to treat the absence period of the applicant w.e.f. 8.6.82 to 5.4.85 as period spent on duty for all purposes. The applicant shall also be entitled to all consequential benefits. The respondents shall comply with this order within the period of two month of receipt of this order. No order as to costs.


(A.P. NAGRATH)

Adm. Member


(S.K. AGARWAL)

Judl. Member