

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.518/2000 Date of order: 3/12/2001
S.S.Kaushik, S/o late Sh.Bihari Singh, R/o House
No.2/52 Housing Board, Sawaimadhopur.

...Applicant.

Vs.

1. Union of India through Secretary, Mini.of Communication, Deptt. of Posts, New Delhi.
2. Chief Post Master General, Deptt. of Posts, Jaipur.
3. Supdt.of Post Offices, Deptt.of Posts Sawaimadhopur,

...Respondents.

Mr.Shiv Kumar : Counsel for applicant

Mr.Sanjay Pareek : for respondents.

CORAM:

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

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

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

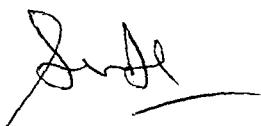
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to quash the impugned order dated 15/19.2.2000 (Annx.Al); (ii) to direct the respondents to make the payment of pay and allowances to the applicant w.e.f. 29.11.94 to 19.10.96 with interest and (iii) to direct the respondents to pay retiral benefits accordingly with arrears and interest thereon.

2. Facts of the case as stated by the applicant are that while working on the post of Sub-Postmaster, Sawaimadhopur Town, the applicant was served with a charge-sheet under Rule 14 of CCS(CCA) Rules, 1968 but the applicant was retired during the pendency of disciplinary proceedings on 31.7.97. It is stated that the President of India vide order dated 7.7.2000 has dropped the proceedings.



It is stated that no punishment was imposed upon the applicant but even then the applicant was not paid his final retiral dues. The applicant submitted his representation thereby a show cause notice dated 21.8.2000 was issued by respondent No.3 to the applicant as to why payment of suspension period should not be restricted to the amount already paid and thereafter ^{vide} the impugned order dated 15/19.9.2000, respondent No.3 ordered to regularise the period of suspension w.e.f. 29.11.94 to 19.10.96 by restricting the pay and allowances which have been duly paid as subsistance allowance while remaining under suspension. However, it was held that the period of suspension shall not be break in service. It is stated that the President of India dropped the proceedings against the applicant thereby no punishment was imposed upon the applicant, therefore, the applicant was entitled to full pay and allowances for the period of suspension and retiral benefits accordingly. But vide the impugned order Anxx.Al, the applicant was denied his rightful claim therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply it is stated that the applicant has facilitated Sh.H.P.Gupta to retire on 30.4.94 instead of 6.9.94 and for the above acts of imprudence the applicant was placed under suspension vide order dated 29.11.94 and was served with charge-sheet. The suspension of the applicant was revoked on 7.10.96. It is stated that pending disciplinary proceedings the applicant was superannuated on 31.7.97 and accordingly proceedings were completed under Rule 9 of CCS (Pension) Rules, 1972. Thereafter, the President of India passed an order to drop the proceedings pending against the applicant vide order

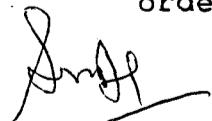


dated 7.7.2000 and was observed that no doubt due to negligency of the retired official a loss of Rs.8571/- was caused to the department. Normally the amount should have been recovered from the official. Therefore, the impugned order was issued following the provisions contained in Rule 54-B(5) of Fundamental Rules. Hence, the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The admitted facts between the parties in this case are that charge-sheet was issued to the applicant on 2.12.96, after the suspension of the applicant was revoked on 7.10.96 and pending disciplinary proceedings the applicant was retired from service on 31.7.97. It is also an admitted fact that proceedings after retirement were converted under Rule 9 of CCS(Pension) Rules, 1972 at the approval of the President of India. The President ordered to drop the proceedings vide order dated 7.7.2000. Thereafter the suspension period from 29.11.94 to 19.10.96 was regularised restricting the payment of pay and allowances which has already been paid to the applicant as subsistence allowance and the suspension period shall not be break in service for the purpose of pension.

6. The learned counsel for the applicant vehemently argued that the disciplinary proceedings were dropped against the applicant by the President vide order dated 7.7.2000 meaning thereby no penalty has been imposed upon the applicant and observations in the order cannot take the place of penalty, therefore, the provisions of FR 54-B(5) are not attracted in the instant case. Hence the impugned order dated 15/19.9.99 is not sustainable in law. The



counsel for the respondents has seriously objected to this argument and stated that the impugned order is perfectly legal and valid and calls for no interference.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. The main emphasis of the respondents' department is while passing the order dated 7.7.2000, the applicant was not fully exonerated and the President in this order dated 7.7.2000 has observed that a loss of Rs.8571/- was caused to the department due to negligency of the retired official and normally the amount should have been recovered from the concerned official. Therefore, in view of the observations in the order dated 7.7.2000, a show cause notice was given to the applicant and thereafter the impugned order was issued.

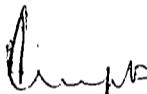
9. If the proceedings are dropped against the delinquent govt servant, it puts the delinquent govt servant in the same position as if no proceedings have been initiated against him and he regains the status/position as he was having when no charge-sheet was issued to him. Where after placing the govt servant under suspension pending an enquiry against him, the authorities withdraw the enquiry, the govt servant would be entitled to claim full pay and allowances for the period of his suspension and provisions of FR 54-B(5) shall not be applicable in such situation. In our considered opinion, the provisions of FR 54-B(5) are not attracted in the instant case and the impugned order passed by the respondents' department is not sustainable in law. As in case of proceedings are dropped the applicant shall be



entitled to full pay and allowances for the period of suspension and he is also entitled to the retiral benefits accordingly.

10. We, therefore, allow this O.A and quash the impugned order dated 15/19.9.99 (Annx.A1) and direct the respondents to treat the entire period of suspension w.e.f. 29.11.94 to 19.10.96 as spent on duty. The applicant shall be entitled to full pay and allowances for the aforesaid suspension period and he will also be entitled to all his retiral benefits, accordingly. The arrears of pay and allowances and retiral benefits shall be paid to the applicant within a period of 3 months from the date of receipt of a copy of this order. The applicant shall not be entitled to any interest on this amount.

11. No order as to costs.


(A.P.Nagrath)

Member (A)


(S.K.Agarwal)

Member (J).