

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 125/2003

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~~Ex-AxxNex~~

DATE OF DECISION

31.5.2004

Hari Prasad Dadhich

Petitioner

Mr. C.B. Sharma

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. Tej Prakash Sharma

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member

The Hon'ble Mr. M.K. Misra, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

M. K. Misra
(M.K. Misra)
Adm. Member

J. K. Kaushik
(J.K. Kaushik)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 125/2003

Date of decision: 31.5.2004

CORAM:

Hon'ble Mr. J. K. Kaushik, Judicial Member
Hon'ble Mr. M.K. MISRA, Administrative Member

Hari Prasad Dadhich son of Late Shri Bhooramal Dadhich aged about 55 years, resident of 62, Muktanand Nagar, Tonk Road, Jaipur. Presently working as Postal Assistant, Jaipur G.P.O. Jaipur.

...Applicant

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

V e r s u s

- (1) Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communication Dak Bhawan, New Delhi - 110001.
- (2) Chief Post Master General, Rajasthan Circle, Jaipur - 302007
- (3) Director Postal Services, Jaipur Region, Jaipur - 302007.
- (4) Senior Superintendent of Post Offices, Jaipur City Postal Division, Jaipur 303006.

...Respondents.

Mr. Tej Prakash Sharma, counsel for the respondents.

O R D E R

PER J.K. KAUSHIK, JUDICIAL MEMBER

Shri Hari Prasad Dadhich has made a second attempt to approach this Bench of the Tribunal and has inter alia prayed for the following reliefs:-

"(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to



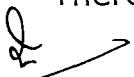
treat the period of removal to reinstatement i.e. 12/5/1997 to 11/8/2000 as spent on duty for all purposes including full pay and allowances by modifying memos dated 27/1/2003, (Annexure A/1 and Annexure A/2) and by quashing memos dated 2/3/2001 (Annexure A/3 and A/4) with all consequential benefits.

(ii) That the respondents be further directed to release difference of full pay and allowances for the period 12/5/1997 to 11/8/2000 by adjusting amount paid to the applicant to the extent of 60% of pay and allowances."

2. We have heard the argument advanced by the learned counsel for the parties at a length and have anxiously considered the pleadings and records of this case.

3. Filtering out the superfluities, the undisputed material facts necessitating filing of this Original Application, are that the applicant while working on the post of Asst Treasurer at Gandhinagar HO in the year 1994, was placed under suspension on dated 25.2.1994 on the ground of pendency/contemplation of disciplinary proceedings. He was issued with a charge sheet for major penalty and after conducting the proceedings, the same culminated into imposition of penalty of compulsory retirement vide memo dated 17.5.95. On appeal, the same came to be set aside on 28.8.96 and matter was remanded to DA for de novo proceeding from the stage of supplying a copy of inquiry report alongwith a statement of disagreement.

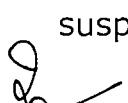
4. The DA inflicted the penalty of removal from service vide memo dated 12.5.97, against which the applicant preferred an appeal which also was rejected vide order dated 25.5.98. Thereafter, he preferred a petition to Member (P) Postal Services



Board which came to be accepted in part and the penalty was reduced to that of reduction of pay by one stage for one year without cumulative effect vide order dated 24.7.2000. He was reinstated in service on 12.8.2000. He was issued with a notice for treating the period from the date of removal order to the date of his reinstatement as not spent on duty and restricting the pay and allowance to 60% vide letter dated 16.1.2001. The applicant replied the same and submitted that since he was imposed only a minor penalty, the said period should be treated as spent on duty for all purposes.

5. The aforesaid representation came to be turned down by referring the FR 54(5). An appeal was preferred before the respondent No 3 but the period from the date of removal to the date of reinstatement was to remain as it is except that it was to count for qualifying service for the purposes of pensionary benefits. It may be noticed that the other period i.e. period of suspension and deemed suspension (25.2.94 to 11.5.97), has been treated as spent on duty for all the purposes. He had to file an Original Application before this bench of tribunal and during the pendency of case the said orders came to be passed.

6. The Original Application has been filed on diverse grounds; e.g. violation of Article 14, 16 and 21 of constitution of India, FR 54 (5) has no application since the applicant has been awarded only a minor penalty, having treated the period of suspension/deemed suspension as spent on duty for all the



purposes, the period during the period of removal to reinstatement can not be treated other then as spent on duty for all purposes etc.

7. Now adverting to variances, a show cause notice was give to the applicant prior to deciding the interregnum i.e. between date of removal to the date of reinstatement and after due application of mind the same has been treated to be reckoned for pension purposes as well as 60% of pay and allowances is to be paid. The applicant has not been fully exonerated and as per FR 54(4), he is entitled for the amount not exceeding whole of the pay and allowances which has been ordered by the DA. The case falls under FR 54(4) and FR 54 (5). The appeal has been rejected through a speaking ordér. The grounds have been generally denied.

8. The learned counsel for the applicant has reiterated the pleadings of the applicant and has submitted that applicant has been only inflicted the minor penalty and therefore the whole of the interregnum period ought to have been treated as spent on duty. He has next contended that the period of suspension and deemed suspension has been treated as spent on duty for all the purposes but the period during which he remained under removal and the appeal/petitions of the applicant were under consideration with the respondents, is not being so treated. He has also contended that it is also not the case of the applicant that the applicant has contributed to any delay or any delay in

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any of the proceedings was attributable to him. None of the authorities has indicated any reason for such action. Even the notice for show cause does not indicate any such reason and the same was just a formality.

9. Per contra the learned counsel for the respondents has reiterated the defence of the respondents as set out in the reply and has made us to travel through the pleading made in the reply. He has submitted that since the applicant was not fully exonerated, it is the discretion of the competent authorities to treat the intervening the period in the way it likes. He has also contended that the suspension period and the other period could be decided differently and there is not embargo on the discretion of the said authority. The action has been taken as per the rules --in force and no interference is called in the matter from this Tribunal.

10. We have considered the rival submissions made on behalf of the parties. As far as the factual aspect of the matter is concerned there is hardly any quarrel. Where one is suspended and disciplinary proceedings initiated against him are culminated into imposition of a minor penalty, specific instructions have been issued vide OM dated 3.12.1985 which is appended as instruction under FR 54 wherein it has been laid down that the period of suspension would be considered as wholly unjustified and the employee paid full pay and allowances of the period of suspension. This has already been done by the respondents.

[Signature]

The question only remains regarding the period from the date of removal to the date of reinstatement. There is one peculiarity in this case- the applicant was imposed the penalty of removal from service vide order dated 12.5.97 and the same has been substituted to that of reduced by one stage for one year without cumulative effect by appellate authority vide memo dated 14.4.2000. That would mean that the punishment imposed on the applicant would be effective from 12.5.97. It is the settled proposition of law that an order may be legal or illegal but for all the times and it can not happen that the same order is legal for some time and illegal for other time i.e. legal till it is declared illegal and after such declaration by a court of law or any competent authority. If that be so the penalty of reduction ought to have come into effect from the date of removal order i.e. 12.5.97 itself. Thus the period in question can not be treated as non-duty; otherwise the giving effect to the penalty would itself become impossible.

11. We would now examine the matter from yet another angle. We have carried out an incisive analysis of the notice as well as the order passed regarding the period in dispute i.e. from dated of removal to the date of reinstatement on the applicant. We find from the perusal of the notice at A/11 that the same does not contain any reason for treating the period as Non-duty. The order passed by the DA on dated 2.3.2001 at Annexure A/3 also does not contain any reason except that the applicant was not fully exonerated and the power is conferred on him under FR

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54(5). Similar is the position of the appellate order. Appellate authority has said that the disciplinary authority has considered the matter and passed the order. It is not the case of respondents that there was any delay in the matter which could be said to be attributable to the applicant. Having power does not mean that the same can be arbitrarily used; rather public power is to be used judiciously which seems to have not been done in this case.

12. A great emphasis was laid on the point of passing a speaking order especially the order passed by the disciplinary authority. We do not expect the disciplinary authority to pass any exhaustive/detail order like that of a court of law but the order has to be a reasoned one and should indicate that there has been application of mind to the relevant facts and circumstances which is not there in this case. We hasten to add that the law on this point has been settled in unequivocal terms by the Supreme Court in Constitution Bench in case of S. N. Mukherjee V Union of India AIR 1990 SC 1984 = 1990 SCR Supl. (1) 44, wherein their Lordships have held as under:

"HELD: The requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision, or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. [62H; 63A-B]

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The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. [63B]

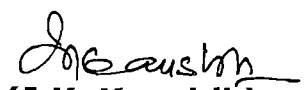
Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record' the reasons for its decision. [65B]"

13. In the instant case there is no specific provision, which makes a prohibition for recording reasons and the disciplinary authority was therefore required to pass a reasoned order, which it has not done. We can safely conclude that the disciplinary has failed to discharge its legal duty and has rather dealt with the case in a cursory manner. The action of the respondents' authorities can not be sustained in the eye of law.

14. In the result, we find ample merit and substance in the Original Application and the same stands allowed, accordingly. The impugned order dated 27.01.2003 (Annexure A/1 and Annexure A/2) and 02.03.2001 (Annexure A/3 and A/4) are hereby quashed. The respondents are directed to treat the period from 12.5.97 to 11.8.2000 as spent on duty for all purposes and the applicant shall be entitled for all consequential benefits. *No Costs*


(M.K. Misra)

Administrative Member


(J.K. Kaushik)

Judicial Member