

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 29/2003  
I.A. No.

198

DATE OF DECISION 10.12-03

Deo Kishan Sharma Petitioner

Mr. S.S. Hassan Advocate for the Petitioner(s)

Versus

UOI and others Respondent

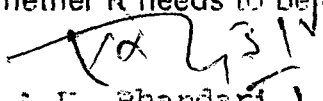
Mr. H.C. Goyal Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( A.K. Bhandari )  
Administrative Member

  
( J.K. Kaushik )  
Judicial Member.

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

Date of Order : 10.12.2003

O.A. No. 29/2003

Deo Kishan Sharma S/o Shri Pawa Chand, aged about 73 years, resident of House No. 28/2424, Bihari Ganj, Opp. Grave Yard, Ajmer and Ex Sub Post Master, Dargah Shareef, Post Office Ajmer.

.....Applicant.

(By Advocate Mr. S.S. Hasan, for applicant)

versus

1. Union of India through the Secretary to the Government Of India, Department of Posts, Ministry of Communications, New Delhi 110 001.
2. The Director, Postal Services, Southern Region, Ajmer.
3. The Post Master General, Ajmer.
4. The Sr. Superintendent of Post Offices, Ajmer Division, Ajmer.
5. The Dy. Director (Accounts), Postal Pension, A/22, Shanti Path, Tilak Nagar, Jaipur.

.....Respondents.

(By Advocate Mr. N.C.Goyal, for respondents)

.....

CORAM :

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

Hon'ble Mr. A.K. Bhandari, Administrative Member

.....

**ORDER**

**(BY J.K.KAUSHIK) :**

Shri Deo Kishan Sharma has assailed the orders dated 17.8.2001 (A/1) and 19.8.2002 and has inter alia prayed for treating the period of his suspension from 11.7.74 to 31.12.89 as spent on duty for all purposes amongst other consequential reliefs.



2. The admitted factual panorama leading to filing of this case is that applicant while working as Sub Postmaster, Dargah Shareef Post Office in Ajmer was placed under suspension with effect from 10.7.74 (A/N) for the reason that three criminal cases were registered against him. He was continued to remain under suspension till he was retired from service on attaining the age of superannuation on 31.12.89. In one of the above criminal case, the applicant was convicted by the trial court on 3.5.91. On this the entire pension and the DCPG was withheld vide order dated 3.5.95.

3. The had also challenged the aforesaid conviction before the Hon'ble High Court who was pleased to remand the criminal case to the Trial Court vide order dated 13.5.98. The Trial court exonerated the applicant from all the charges in criminal cases. The applicant was granted provisional pension and he filed an OA. No. 332/99 before this Bench of the Tribunal for grant of all the pensionary benefits which came to be allowed vide order dated 2.5.2000 as under :-

"We, therefore, allow the OA and direct the respondents to pay pension and release the amount of gratuity and other retrial benefits payable to the applicant within a period of three months from the date of receipt of a copy of this order subject to the applicant executing and indemnity bond with the sureties to the effect that the applicant will refund the amount to the respondents in the event of recovery being ordered from him by the appropriate authorities. "

The respondents filed a Review Application which was dismissed and thereafter took recourse to filing of DBC Writ



Petition No. 3586/2000 before Hon'ble Rajasthan High Court but dismal failure. A contempt petition was filled which was disposed of on the basis of statement made on behalf of respondents.

4. The period of suspension has been decided vide order dated 17.8.2001 and it has been ordered that the same shall count of the purpose of qualifying service for pension and pay and allowances shall be restricted to the subsistence allowance only. The representation against same has been rejected on dated 19.8.2002. A legal notice was also sent but the same remained un-replied.

5. The impugned orders have been challenged on diverse grounds mentioned in para 5 and its sub-paras which we shall deal a little later in this order.

6. Now turning to the variances, it has been averred by the respondents that the applicant was acquitted from all the three criminal cases for want of prosecution on 8.5.97, 8.5.97 and 13.5.98, respectively. The suspension period has been decided as per FR. 54(B) after giving show cause notice to the applicant. He is not entitled for full pay and retiral benefits.

7. We have heard the learned counsel for the parties at a considerable length and bestowed our earnest consideration to the pleadings and the records of this case.



8. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant. He has submitted that after the acquittal of the applicant in all the three criminal cases, there remained no obstruction in restoring his position as if nothing adverse ever were in existence. He has placed reliance on the judgement passed by the Delhi High Court in case of Mohan Lal V. Union of India and others 1982(1) SLR 573 and has submitted that FR 54 has no application to this case and the ratio of the said decision squarely covers the controversy.

9. On the contrary the learned counsel for the respondents has submitted that subsequently on the same charges prosecution sanction has been obtained and a Criminal Case No. 18/98 is going on against him. He has also submitted that till the said case is decided his full retiral dues can not be released. He has also submitted the respondents have decided the period of suspension according to law and since the acquittal of the applicant was on the technical grounds i.e. for want of prosecution sanction, he was not honourable acquitted. He has next urged that now subsequent case is also there against him and till it is finalised the applicant can not get his dues in full. Hence, he has no case worth interference by the Tribunal.

10. We have considered the rival contentions raised in this case. There no dispute regarding the factual aspect of the case.



Four issues of seminal significance are required to be involved/ examined in this case as under:-

(a). Whether acquittal of the applicant for want of prosecution sanction can be treated as full acquittal and the applicant entitled for grant of final pension and other benefits or not.

(b). Whether once the applicant has been acquitted in the criminal cases, he is entitled to treatment of the suspension period as spent on duty or as per FP. 54 (B).

(c). Whether the subsequent criminal case can have justify the defence of the respondents in non-finalisation of the complete retiral dues.

(d). For what benefits the applicant would be entitled.

11. We shall now take the aforesaid issue in seriatim as under:-

Taking the first issue - It is admitted position of the case that the applicant was acquitted for want of prosecution sanction. The issue does not involve any elaborate discussion. We can safely infer that until and unless, there is a proper prosecution for the criminal proceeding against an employee, the complete prosecution shall be nullity and shall have no legal existence. And that the probably reason that the applicant was exonerated. If that be so, no case can be said to have been instituted against applicant till the fresh criminal case instituted in the year 1998. Thus position of the applicant would be better than that of an acquittal on merits. Thus the irresistible conclusion would be that he would be entitled to get all the dues



as if no criminal case were ever in existence and on this point the submissions of the learned counsel for the applicant are well founded and do have our concurrence.

12. Adverting to the 2<sup>nd</sup> issue – once we have already held that the applicant would be treated as if nothing adverse existed *against* him, the suspension of the applicant would have to be treated as wholly unjustified. Otherwise also, once the applicant was suspended only on the ground of criminal case and when the criminal case is said to be a nullity, the inevitable result would be that the very base of the suspension is withered away and it has to be treated as spent on duty for all purposes. Applicability or otherwise of FR 54(B) is insignificant and need not be gone into detail. We decide the issue accordingly.

13. As regards the third issue, the issue has already been adjudicated, settled by the Supreme Court and does not remain res integra as per their Lordships' following verdict in the case of Bank of India V. Dageela Suryanarayana 2001 (1) (SLJ) 113 which reads as under :-

"13. However, the matter as to promotion stands on a different footing and the judgements of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India etc. etc. K.V., Jankiraman etc. etc. AIR 1991 SC 2010, 2113). As on 1.1.1986 the

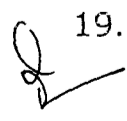
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only proceeding pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental inquiry proceedings were initiated with the delivery of the charge sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental inquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 with held for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore, right in directing the promotion to be given effect to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986."

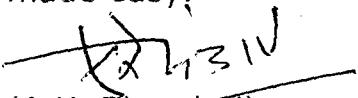
Applying the above principles of law to the facts of this case, we can have no option except to give the answer to third issue in negative and hold that the subsequent criminal proceedings can have no impact on release of his retiral dues .

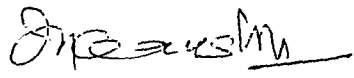
14. Now, we come to the last issue framed above i.e. as to what relief can be granted to the applicant. Firstly, the period of the suspension shall have to be treated as a period spent on duty for all purposes. His all the retiral/pensionary dues will have to be released and he will have to be put in such a position as if no criminal case were ever in existence against him.

15. In The conspectus of the aforesaid discussion, we find that the OA merits acceptance and ~~the~~<sup>9</sup> stands allowed accordingly. The impugned orders dated 17.8.2001 (Annex.A/1) and 19.8.2002 (Annex.A/2) are hereby quashed. The respondent are



directed to treat the period of suspension from 11.7.74 to 31.12.89 as spent on duty for all purposes including pay and allowances. They shall also release all the pensionary dues of the applicant. This order shall be complied within a period of three months from the date of receipt of a copy of this order. It shall be scarcely necessary to mention here that this order shall not preclude the respondent from passing any fresh order in accordance with law after conclusion of the criminal case. Costs made easy;

  
(A.K. Bhandari)  
Administrative Member

  
(J.K. Kaushik)  
Judicial Member

jrm