

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH, JABALPUR

Original Application No.654/02

Indore,, Dated this the 20th day of July, 2004.

Coram

Mr.M.P.Singh, Vice Chairman
Mr.Madan Mohan, Judicial Member

Durga Prasad Soni
S/o Motilal Soni
Fireman Gr.I
Central Proof Establishment
Itarsi.

Applicant

(By advocate Mr. S.K.Nagpal)

Versus

1. Union of India through the Secretary
Govt. of India, Ministry of Defence
Department of Defence Production
New Delhi.
2. Director General
Quality Assurance, Govt. of India
Ministry of Defence
Dept. of Defence production
Gen.Quality Assurance
DHQ P.O.New Delhi.
3. Commandant
Central Proof Establishment
Itarsi.

Respondents

(By advocate Sh.K.N.Pethia)

O R D E R

By Madan Mohan, Judicial Member

The applicant seeks the following reliefs;

- (i) To quash the impugned orders dt. 17.6.02, 8.3.02 and 14.3.02 (Annexures A1,A2 & A3 respectively).
- (ii) Direct that the period of suspension and the period from the date of compulsory retirement to the date of reinstatement will be treated as duty for all purposes with consequential benefits.
- (iii) Direct that the arrears of pay and allowances due to the applicant consequent to above, be paid to the applicant within three months together with interest @ 18% thereon.


2. The brief facts of the case are as follows:

The applicant is working as Fireman Grade I in Central Proof Establishment, Itarsi. By order dated 27.2.98 (Annexure A-4), the applicant was placed under suspension on the ground that a disciplinary proceeding against him was contemplated. He was placed under suspension vide order dated 12.5.98. The applicant submitted a reply dated 21.5.98 (Annexure A6).

The enquiry officer submitted his report to the Disciplinary Authority vide letter dated 18.11.98 (Annexure A-7) and on asking to submit by the Disciplinary Authority, the applicant submitted his representation dated 18.12.98 (Annexure A-9). The suspension of the applicant was revoked by order dated 12.12.98. To the surprise of the applicant the Disciplinary Authority by order dated 29th Jan. '99 (Annexure A10) directed to re-convene the enquiry. The Disciplinary Authority did not agree and the enquiry officer reconvened the enquiry as per the directions of the Disciplinary Authority. The Disciplinary Authority imposed punishment of compulsory retirement on the applicant (A-11). The applicant submitted an appeal. The appellate authority vide order dated 25th May 2000 set aside the penalty of compulsory retirement and directed the disciplinary authority to take decision considering only the enquiry report dated 18.11.98 and representation dated 18.12.98. The order of compulsory retirement was cancelled and the disciplinary authority imposed major penalty of reduction of 3 stages of pay for a period of 3 years with cumulative effect, further stipulating that as regards the period of suspension w.e.f 29.2.98 to 14.12.98 and period from 9th Aug.99 i.e. the date of commencement of penalty awarded to the date of reporting back on duty (Annexure A11), separate communication would follow. The disciplinary authority vide order dated 27.7.2000 ordered for regularization of suspension period from 27.2.98 to 19.12.98 as under:

"Earned leave from 27th Feb.98 to 23rd Sept. 98
dies non period from 24.9.98 to 13.10.98".


The applicant was reinstated in service w.e.f. 19.6.2000. The disciplinary authority vide his order dated 27.7.02 (A14) directed to treat the period of compulsory retirement from



9.8.99 to 19th June 2000 i.e. the date of reinstatement as 'Dies Non' the said period shall be treated as period spent on duty but shall not be treated as break in service.


The applicant submitted an appeal (A-15). The said appeal was rejected by the appellate authority vide order dated 8.3.2002. The Director General Quality Assurance vide his letter dated 22.3.02 (A-16) issued a show cause notice to the applicant with regard to the treatment of the period of absence from the date of compulsory retirement to the date of reinstatement stating that ^{for} the said period the applicant will be paid 50% of pay and allowances. The action of the respondents is not in accordance with rules and A-3 is liable to be quashed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the disciplinary authority has passed the order of compulsory retirement from the service of the applicant but by the order of the appellate authority this punishment was set aside and the the disciplinary authority imposed on the applicant major penalty of reduction of pay for a period of 3 years and directed to treat the period of compulsory retirement from 9.8.99 to 19.6.2000 i.e. the date of reinstatement as 'Dies Non', the said period shall be treated as period spent not on duty but shall not be treated as break in service. Thus the applicant was only paid 50% of the pay and allowances. He made a representation which was rejected. Applicant is entitled for full pay and allowances for the said period as per rules as he was reinstated on his post because the order of the disciplinary authority of compulsory retirement of the applicant was set aside and subsequently the disciplinary authority imposed on the applicant another penalty.



4. In reply, the learned counsel, for the respondents argued that the appellate authority considered the reply dated 8.4.02 submitted by the applicant and after due consideration and taking into account all the relevant records arrived at the subjective satisfaction that the period of absence from duty from the date of compulsory retirement to the date of reinstatement i.e. 19.8.2000 will not be treated as duty period and for the said period he will be paid 50% pay and allowance to which the applicant would have been entitled had he not been compulsorily retired. As the applicant was not fully exonerated from the charges levelled against him after setting aside of compulsory retirement, he was penalised with a major penalty vide order dated 17.6.2000, he was not entitled to full pay and allowances for the said period which cannot be treated as duty period as per the statutory provisions enshrined under sub rule (4), (5), (6) and (8) of FR 54. The charge against the applicant was proved and due opportunity of hearing was given to him and there was no irregularity or illegality in passing the impugned orders.


5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant was given an opportunity of hearing. He preferred an appeal against the order passed by the disciplinary authority and the appellate authority had considered all the facts and circumstances of the case and directed the disciplinary authority to impose major penalty of reduction of pay and allowances by three stages for a period of 3 years with cumulative effect. The charge against the applicant is serious and it is proved and so far as the payment of full amount of salary is concerned, the action taken by the respondents is perfectly legal and justified because the applicant was not fully exonerated from the charges levelled against him. The charge was proved and established. But the order of

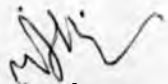


compulsory retirement was modified to major penalty.
Hence the applicant cannot claim another 50% of pay and allowances for the said period.

6. Considering all the facts and circumstances of the case, we are of the opinion that the impugned orders passed by the respondents are perfectly legal and justified and the OA deserves to be dismissed.

7. Hence the OA is dismissed. No costs.


Madan Mohan
Judicial Member


M.P. Singh
Vice Chairman


aa.

फ़ांक्न सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अवे शित:-

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के काउंसल

(3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल

 (4) दंडपाल, को.प.अ., जबलपुर न्यायाधीश
सचना एवं आवश्यक कार्यवाही हेतु

5-8-04

उप रजिस्ट्रार

Issued
On 5.8.04
BS