

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 10 of 1999

Jabalpur, this the 6th day of November, 2003

Hon'ble Shri Sarweshwar Jha, Administrative Member
Hon'ble Shri G. Shanthappa, Judicial Member

D.K. Pachori, aged about 51 years,
S/o. Shri R.D. Pachori, Office
Superintendent Gde I, Civil Maintenance
Section, Vehicle Factory, Jabalpur (MP),
R/o 1245, Lal Bangla, Rajiv Nagar,
Babatola, Jabalpur (MP).

... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India,
through the Secretary,
Department of Defence
Production, Government of
India, South Block, New Delhi.
2. Director General, Ordnance Factory
Board, 10-A, Shaheed Khudiram Bose
Marg, Calcutta - 700 001.
3. Deputy Director General,
Ordnance Factory Board, 10-A,
Shaheed Khudiram Bose Marg,
Calcutta - 700 001.
4. General Manager, Vehicle
Factory, Jabalpur (MP). ... Respondents

(By Advocate - Shri Gopi Chourasia on behalf of Shri S.A.
Dharmadhikari)

O R D E R (Oral)

By Sarweshwar Jha, Admnv. Member -

The applicant has impugned the order dated 08.01.1997 issued by the respondent No. 3 imposing the penalty of withholding of one increment of the applicant for a period of 2 years cumulatively. He has also impugned the appellate order dated 25.09.1998 issued by the respondent No. 2 by which the appeal preferred by him against the said penalty order has been dismissed and also order dated 14.07.1997 by which the period of his suspension has been treated as not spent on duty. He had accordingly prayed that these orders may be

quashed and the period of his suspension from 15.12.1992 to 29.01.1997 be declared as having been spent on duty.

2. The facts of the matter, briefly, are that the applicant who entered the services of the Ordnance Factory Organisation in January, 1968 as a Lower Division Clerk at Ambarnath (Maharashtra), was awarded 3 promotions to the post of Upper Division Clerk, Office Superintendent and finally to Superintendent Grade-I, which he is holding presently since 30.01.1992. He has claimed that he had rendered satisfactory service during his entire service life.

3. However, he was placed under suspension with effect from 15.12.1992 vide Annexure A-2. The applicant has submitted that it was alleged by the respondents that he was involved in some scandal involving arranging fake Railway tickets for LTC claims for factory employees in lieu of illegal gratification. He was charge sheeted and he submitted a reply, denying all the charges as being false and baseless initiated vide his letter dated 05.03.1993. Enquiry was against him on 13.08.1993 and finally the enquiry report was prepared and a copy was furnished to the applicant vide memo dated 05.10.1995 (Annexure A-5). The applicant has also referred to instances of irregularities committed during the course of conducting the enquiry proceedings, as submitted by him in paragraph 4.7 to 4.11. The applicant has urged that the respondent No. 3, without appreciating the facts, the evidence and material available on record, imposed the penalty of withholding of one increment for a period of 2 years cumulatively on him vide the impugned order dated 08.01.1997 (Annexure A-7).

4. Aggrieved by the aforesaid penalty he preferred an appeal dated 28.03.1997 (Annexure A-8) and the same also

was dismissed vide the impugned order dated 25.09.1998 (Annexure A-9). He has further submitted that a show cause notice dated 30.01.1997 was issued to him asking him to show cause as to why the period of suspension from 15.12.1992 to 29.01.1997 be not treated as not having ^{been} spent on duty (Annexure A-10). However, while the applicant submitted a reply to the said show cause on 25.02.1997 vide Annexure A-11, vide the orders dated ^{the} 14th July, 1997 the period of suspension was held to be justified, disentitling the applicant to full salary. The reply in the matter is placed at Annexure A-12.

5. The learned counsel for the applicant in his oral submission has submitted that the penalty of withholding of increment is a minor penalty and accordingly the period of suspension should have been treated as on duty. In his opinion, the argument of the respondents that the penalty of withholding of one increment was to have cumulative effect and, therefore, it was treated as a major penalty and hence the period of suspension was not treated as spent on duty. In this connection, the learned counsel has referred to an explanation under FR 54-B in Paragraph K which relates to period of suspension to be treated as on duty if minor penalty only is imposed. The relevant provisions are as under :

"K. Period of suspension to be treated as duty if minor penalty only is imposed.— (1) Reference is invited to O.M. No. 43/56/64-AVD, dated 22.10.64 (not printed), containing the guidelines for placing Government servants under suspension and to say that these instructions lay down inter alia that Government servant could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The staff side of the Committee of the National Council set up to review the CCS (CCA)

Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. The Government has accepted this suggestion of the Staff side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a 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."

According to him, there is no separate provision for treating the penalty of withholding of one increment with cumulative effect as being a major penalty and, therefore, the respondents are in the wrong to have taken a position that this penalty is a major penalty and ^{that} the same would necessitate the period of suspension being treated as a period not spent on duty. However, the applicant has not appealed against the orders of the respondents issued on the 14.07.1997 (Annexure A-12), which normally he should have appealed against.

6. The respondents in their reply have, after having stated some of the things which are already stated in the OA, submitted that the applicant was prima facie found responsible for arranging fake/tickets and journey particulars for factory employees and also for accepting illegal gratification for processing fake LTC claims by taking undue advantage of his official position. They have proceeded to recount the process of enquiry, findings of enquiry report, imposition of the penalty, consideration of appeal and rejection of the appeal etc. and have finally come to the point that a show cause notice was served on the applicant on the question of why suspension period should not be treated as justified and on receiving a representation from the applicant in reply to the show cause they examined ^{it} carefully and sympathetically, but did not find the same fully justified. Accordingly, taking a sympathetic view they allowed a part of

the suspension period being adjusted against leave to the extent possible and to the extent leave was available to the credit of the applicant. They have not gone beyond that.

7. After having heard the learned counsel for the parties as well as after having gone through the materials on record, we are of the view that the applicant should have appealed against the orders of the respondents issued on the 14th July, 1997 (Annexure A-12) and requested for reconsideration of the matter, which obviously he has not done, as submitted by his learned counsel. We are also of the view that the respondents should have looked into the matter with reference to the explanation under FR 54-B as reproduced above and ~~have~~ should examined the matter in the light of the said explanation/clarification. We, therefore, allow this Original Application partly and direct the respondents to reconsider the matter with reference to the above observations and dispose it of by issuing a reasoned and speaking order within a period of 2 months from the date of receipt of a copy of this order. Accordingly, we also quash their orders dated the 14th July, 1997 placed at Annexure A-12 to the Original Application. No costs.

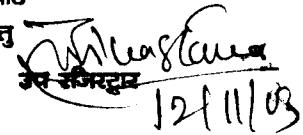

(G. Shanthappa)
Judicial Member


(Sarveshwar Jha)
Administrative Member

पूर्वानुमान रां ओ/म्हा.....जलालपुर, नि.....
प्रतिलिपि अवोदितः—

- (1) संविध. उच्च व्यायामीय द्वारा एसोसिएशन, जलालपुर
- (2) आवेदक श्री/श्रीमती/व्यु. के व्यायामीय द्वारा S. Nagu, Ash.
- (3) प्रस्तावी श्री/श्रीमती/व्यु. के व्यायामीय द्वारा SA Dhammadiikun. Adi.
- (4) व्यायामीय नो. ४३३, जलालपुर व्यायामीय
सूचना एवं आवश्यक कार्यवाही द्वारा


"SA"
12-11


T. Nagaswara Rao
12/11/03