

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 298 of 2000

Jabalpur, this the 7th day of January, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

A.J. Sunny, aged about 57 years,
S/o. Shri A.P. Joseph, Sr. Section
Supervisor, O/o. The Chief General
Manager, Telecom Factory, Wright
Town, Jabalpur.

... Applicant

(By Advocate - Shri S.K. Nagpal)

Versus

1. Union of India,
Through the Secretary,
Ministry of Communications,
Department of Telecom,
Sanchar Bhavan, 20 Ashoka Road,
New Delhi - 110 001.

2. Chief General Manager,
Telecom Factory, Wright
Town, Jabalpur 480 002.

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R (Oral)

By G. Shanthappa, Judicial Member -

The above Original Application is filed seeking the relief to quash the order dated 26th February, 1998 (Annexure A-2) and direct the respondents to treat the entire period of suspension from 05.10.1988 to 09.02.1990, as on duty for all purposes, with consequential benefits alongwith interest at the rate of 12% per annum with costs.

2. The brief facts of the case are that the applicant was placed under suspension with effect from 03.10.1988, vide order dated 03.10.1988 (Annexure A-4). Subsequently under Rule 14 of CCS (CCA) Rules, 1965 a memorandum of charge sheet dated 24.11.1988 (Annexure A-5) was issued to the

Y.S.

applicant. The applicant requested for increase in subsistence allowance and revocation of his suspension, but the same was rejected by the respondents vide order dated 23.02.1989 (Annexure A-6). Against this the applicant has preferred an appeal dated 29.03.1989 to the appellate authority. Since there was no positive response from the appellate authority the applicant submitted a petition dated 11.07.1989 to the revisional authority. The revisional authority has revoked the order of suspension and the applicant was allowed to resume his duties with effect from 10.02.1990.

3. The enquiry was finally closed on 26.07.1996. The delay in enquiry was because of frequent changes of the enquiry officers and not for any fault of the applicant. Finally the disciplinary authority has issued the orders dated 10.09.1997 imposing the minor penalty of censure and lump sum penalty of Rs. 1,000/- on the applicant. The said order was silent with regards to the treatment of suspension period from 03.10.1988 to 09.02.1990. The applicant submitted his request for treatment of the said period as on duty. The disciplinary authority has directed the suspension period from 03.10.1988 to 04.10.1988 to be treated as on duty and the remaining period from 05.10.1988 to 09.02.1990 as non duty restricting the pay and allowances to suspension allowance already paid to the applicant. Being aggrieved by the said order the applicant has filed this Original Application on the ground that the applicant is entitled for the relief under Rule 54-B.

4. Per contra the respondents have filed the detailed reply by supporting the action of the respondents. The

L.P.

relevant contention of the respondents is mentioned below :

"The departmental inquiry with regard to the incident of 5.10.88 ended with the imposition of the penalty of dismissal from service vide order dated 8.10.91. The applicant preferred an appeal under rule-23 of the CCS(CCA) Rules dated 18.11.1991 and the appellate authority once again taking a lenient view modified the penalty of dismissal to that of reduction of pay to the minimum of the time scale which he had been drawing for a period of 3 years and during the said period he would not earn increments and the reduction would result corresponding postponement of future increments. It was also ordered by the appellate authority that the period from the date of dismissal i.e. 8.10.91 to the date of reinstatement was to be treated as period not spent on duty as the charges were proved beyond doubt. A copy of the order of the appellate authority is dated 27.3.92. It is specifically submitted that the penalty for misconduct of 5.10.88 was a major penalty. The applicant preferred revision petition dated 28.7.93 and vide order dated 2.9.97 the rejection of the revision petition was communicated to the applicant. Copy annexed at Annexure R-1 & R-2.

The respondents further submit that on account of the above mentioned facts, the respondents have rightly treated the period 3.10.88 to 4.10.88 as period spent on duty and the remaining period from 5.10.88 to 9.2.90 as restricted to suspension allowance already paid to the applicant. Thus the respondents have complied with the DOPT memo dated 3.12.85 and the order does not suffer from any legal infirmity. The OA is devoid of substance and needs to be dismissed with costs.

The departmental inquiry which commenced pursuant to memo dated 25.11.88 ended with imposition of major penalty. Thus the period 5.10.88 to 9.2.90 was restricted to suspension allowance already paid to the applicant.

A plain reading of the impugned order itself reveals that the respondents have complied with the provisions of the FR 54(B) and DOPT memo date 3.12.85. The impugned order is neither arbitrary, unjustified, illegal and against the principles of natural justice."

5. Subsequent to filing the reply the applicant has filed the rejoinder clarifying the facts in pursuance to the reply of the respondents. The relevant clarification in the rejoinder is as follows :

"The respondents have clearly violated the provisions of FR 54(B) and DOPT Memo dated 03.12.1985 by not treating the period of suspension as period spent on duty as the Disciplinary Authority for the alleged misconduct on 30.09.1988 for which the applicant was placed under suspension by order dated 03.10.1988 ended in imposition of minor penalty. The suspension has no relevance to the alleged misconduct on

GJ.

05.10.1988 as no order to place/continue the applicant under suspension for the said misconduct was issued by the Disciplinary Authority."

6. After hearing the advocate for the applicant and the advocate for the respondents, after going through the pleadings and the orders of this Tribunal in OA No. 783/2000 passed on 23rd October, 2000, we decide this Original Application finally.

7. The admitted facts are that the applicant was suspended from 03.10.1988 to 09.02.1990. The disciplinary authority has/treated the entire period of suspension as ~~on~~ ^{not} duty, by exercising its powers under FR 54-B. In a similar circumstances this Tribunal has decided the OA No. 783/2000, in which the Tribunal has allowed the OA on 23rd October, 2000. The principle laid down in the said order of this Tribunal is applicable to the facts of this case. The disciplinary authority has failed to consider the representation of the applicant treating the suspension period as on duty under FR 54-B. It is also relevant to mention here that when the proceedings ended under the order of minor penalty, the suspension period shall be ~~un~~ justified ^{as} in accordance with Rule 54-B, it is mandatory on the ^{part of the} respondents to pay full pay and allowances treating the period of suspension as on duty for all purposes. Accordingly, we find that the respondents have not acted in accordance with the rules in force. Hence the applicant is entitled for the reliefs as prayed in the Original Application by treating the period of suspension from 05.10.1988 to 09.02.1990 as on duty for all purposes for and grant of consequential benefits.

GP

GP

8. Accordingly, the order dated 26th February, 1998 (Annexure A-2) is quashed and it is ordered to the respondents that they shall pay to the applicant full pay and allowances for the period of suspension i.e. from 05.10.1988 to 09.02.1990, treating the period as spent on duty within a period of three months from the date of receipt of copy of this order. If the payment is not made within the prescribed period of three months, the applicant shall be entitled for the interest at the rate of 9% per annum, for the delayed payment.

9. Hence the Original Application is allowed. No costs.

Григорьев

(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जवलपुर, दि.....

पूरिलिंगे दातो निवास

"SAM"

(1) राजित, उच्च व्यायामाद्य वारा राजीव द्वाजा, जबलपुर

(2) आवेदन की विवरी/उद्देश्य के कारण

(3) प्रसारी त्रिवैक्षणिक वे काउंसल *P. clarifrons*

(1) एकान्त द्वेषीय, असाधारण व्यापकीय

(4) छविलाल, दृष्टिल, लाल, लाली हैं।

सुनाजा हुव उपरियक कावयाला ४५ *Explanatory*

उप रजिस्ट्रेशन 1/103

Issue (6)
Mr
29.1.04