

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

Circuit Sitting : BILASPUR

Original Application No. 748/1999

Bilaspur, this the 11th day of December, 2003

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

G.N. Goswami
s/o Late Kapilnath Goswami
age about 51-1/2 years
Presently: S.P.M. Bilaigarh (Raipur)
Permtt. Address: Mahabir Ward, Thana
Town/Post & Tehsil Bhatapara Distt.
Raipur (MP). ... Applicant

(By Advocate: Shri S.T.H. Rizvi)

Versus

1. Union of India, represented through Secretary Deptt. of Communications Govt. of India New Delhi.
2. The Member (Personnel) Postal Services Board Dak Bhavan Sansad Marg New Delhi.
3. The Chief Postmaster General M.P. Circle, Bhopal
4. The Postmaster General Raipur Region Raipur.
5. The Director Postal Services o/o P.M.G., Raipur Region, Raipur.
6. The Senior Superintendent of Post Offices, Raipur Division, Raipur.. Respondents

(By Advocate: Shri P. Shankaran)

O R D E R (Oral)

By M. P. Singh, Vice Chairman:

The applicant has filed this OA by seeking direction to quash the order of regularisation dated 4.12.1998 (Annexure A/1) and has also sought a direction Contd...2/-



to Respondent No.2 to reconsider the case for regularisation in the light of the O.M. dated 3.12.1985.

2. The facts of the case, in brief, are that the applicant, who was working as Sub Post Master (SPM), Kharora, was issued a chargesheet ~~on 26.6.1994~~ under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and an Inquiry Officer was appointed to investigate into the charges levelled against the applicant. Accordingly, an inquiry was held and the Inquiry Officer concluded the inquiry and the charges held proved. A copy of the inquiry report was sent to the applicant for making representation. The applicant submitted his representation dated 2.6.1994. The disciplinary authority after considering the aforesaid representation and the finding of the inquiry officer and other relevant material, imposed a penalty of removal from service of the applicant. He has filed an appeal to the appellate authority, the appellate authority has modified the penalty of removal from service to that of compulsory retirement. Thereafter, the applicant has filed a revision petition to the revisional authority. The revisional authority, Board i.e., Member (Postal Services), vide its order dated 17.1.1997 has further modified the punishment from compulsory retirement to that of reduction in his pay scale by three stages for two years without cumulative effect. In pursuance of the order of

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the revisional authority, another order dated 4.12.1998 (Annexure A/1) has been passed by regulating the period of suspension from 1.1.1994 to 7.8.1994 as duty for all purposes and full pay and allowances for the said period, and in respect of the period from 8.8.1994 to 26.2.1997, pay and allowances were restricted to the subsistence allowances and other allowances admissible and the said period has been treated as duty only for the purpose of pension. Aggrieved by the aforesaid order, the applicant has filed this OA claiming the aforesaid reliefs.

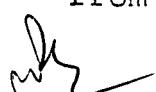
3. Heard both the learned counsel for the parties. The learned counsel for the applicant states that the entire period of suspension from 1.1.1994 to 7.8.1994 has been treated as duty and the applicant has been paid full pay and allowances and other benefits for this period. However, the respondents have not treated the period from 8.8.1994 to 26.2.1997 as duty and he has been paid only the subsistence allowance for this period and other benefits like leave, grant of bonus and increments have been denied to him. He has further submitted that since the applicant has been awarded only a minor penalty by the order of the revisional authority, the entire period for which the applicant was out of service, i.e., 8.8.1994 to 26.2.1997 should have been treated as duty for all purposes and all the benefits flowing from that order should have been granted to the applicant.

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4. On the other hand, the learned counsel for the respondents states that the impugned order dated 4.12.1998, passed by the ~~revisional~~^{authority}, is fully justified as the applicant has not been fully exonerated. The revisional authority has only modified the punishment of compulsory retirement to that of reduction in his pay scale by three stages for two years without cumulative effect, and therefore, the applicant was still found guilty and has been given a minor penalty. According to FR-54, discretion is provided ~~discretion~~ to the employer to fix pay and allowances for such period. Accordingly, the respondents have, keeping in view the facts and circumstances of the case, treated the aforesaid period as duty for the purpose of pension and have also granted the subsistence allowance and other allowance as admissible for that period, as provided under the rules, and therefore, no illegality has been committed by the respondents in passing the order dated 4.12.1998, as such the OA has no merit and is liable to be dismissed.

5. The learned counsel for the applicant, has relied upon the Judgment of this Tribunal (Hyderabad Bench) in Y. Rama Rao v. Commodore Offg., General Manager and Another, (1990) 14 ATC 185 in support of his claim.

6. We have carefully considered the submissions made by both the parties and the material placed before us. We find that the applicant was earlier removed from the service by an order passed by the disciplinary



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authority and the same penalty has been modified on filing appeal to the appellate authority to that of compulsory retirement and the revisional authority has further modified the penalty to reduction in his pay scale by three stages for two years without cumulative effect. Thereafter, the respondents have regularised the period of suspension from 1.1.1994 to 7.8.1994 as duty with full pay and allowances. As regards the period when the applicant was removed from service to the date of his reinstatement i.e. from 8.8.1994 to 26.2.1997, the respondents have paid pay and allowances, after restricting it to the subsistence allowances and other allowances and the said period was treated as duty for the purpose of pension.

7. FR-54 (4) and (7) provided as under :

FR-54(4):

" In cases other than those covered by sub-rule(2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause(1) or Clause(2) of Article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of sub-rules(5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving, notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice."

FR-54(7):

" The amount determined under the proviso to sub-Rule(2) or under sub-rule(4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."



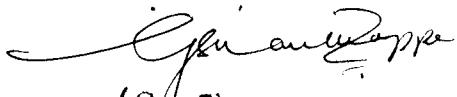
8. We find that the intervening period subsequent to removal/compulsory retirement up to reinstatement, in accordance with the provisions of FR 54 be treated as duty for all purposes only if the Government servant is fully ~~fully passes only to the Government servant is fully~~ exonerated. In this case, it is not in dispute that the charge against the applicant has been proved and only the penalty of removal from service/compulsory retirement has been modified to that of reduction in his pay scale by 3 stages for 2 years without cumulative effect, which is a minor penalty, on the ground that the charge of lack of integrity was not proved, however, the charge of lack of devotion to duty was fully proved. Therefore, the action taken by the respondents in passing the order dated 4.12.1998 restricting the pay and allowances for the period from 8.8.1994 to 26.2.1997 equal to the subsistence allowance and treating the said period as duty only for the purpose of pension is in accordance with provisions of FR 54(4) and FR 54(7) and other rules applicable in such cases. Since the order passed by the respondents to regulate the intervening period subsequent to removal/compulsory retirement and reinstatement is in accordance with the rules and law, we do not find any ground to interfere with the orders passed by the authorities.

9. The applicant has relied on the Govt. of India's instruction dated 3.12.1985 (Annexure-A-3) which stipulates that the period of suspension should be treated as duty if minor penalty is imposed. In this case, the respondents have already treated the period of suspension of the applicant as duty period for all purpose and full pay and allowances for the suspension period have been paid to the applicant. Since the aforesaid instructions dated 3.12.1985 are applicable to regulate the period of suspension only and not to the period subsequent to dismissal/removal/compulsory retirement till the date of

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reinstatement, they cannot be made applicable in the present facts and circumstances of the case as there are specific rules to regulate such period under FR 54(4) & (7). The reliance placed by the applicant on the decision of Y. Rama Rao(supra) is distinguishable. Under FR 54(4) there is a clear provision that the Government servant shall subject to the provisions of sub-rule(7) be paid such amount(not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation if any submitted by him in that connection. In the instant case the penalty of reduction in his pay scale by 3 stages for 2 years without cumulative effect, which is a minor penalty was imposed on the applicant, vide order dated 17.1.1997(Annexure-A-2). Thereafter a show cause notice was issued to the applicant on 3rd July, 1998 wherein it was proposed to regularise the period as per the provisions of FR 54. After considering the representation of the applicant dated 17.8.1998, the respondent No. 2 has passed the order dated 4.12.1998. Since the order dated 4.12.1998 passed by the respondents is in accordance with the rules and law, we do not find any ground to interfere with the same.

10. In the result, for the reasons recorded above, the OA has no merit and is accordingly dismissed. No order as to costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman