

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 783 of 2000

Indore, this the 26th day of April, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Ms. Sadhna Srivastava, Judicial Member

D.J. Mukherjee,
Aged about 58 years,
S/o Late Shri S.P. Mukherjee,
Progressman Gr.I,
O/o 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 Bhawan,
20 Ashoka Road,
New Delhi – 110 001

2. The Chief General Manager,
Telecom Factory,
Wright Town,
Jabalpur – 482 002.

Respondents.

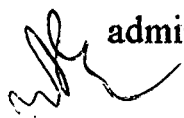
(By Advocate – Shri S.A.Dharmadhikari)

ORDER

By M.P. Singh, Vice Chairman -

By filing this Original Application, the applicant has claimed the following main relief :-

“(a) direct the respondent that the entire period of suspension from 4.10.88 to 9.2.90 be treated as duty for all purposes and consequent to above, to pay arrears of pay and allowances as admissible within a period of three months.”



2. The brief facts of the case are that the applicant was working as Progressman Grade-I in the Telecom Factory, Jabalpur. He was placed under suspension with effect from 3.10.1988 on the ground of contemplated disciplinary proceedings. Subsequently a memo of charge sheet dated 8.11.1988 was issued to the applicant by the disciplinary authority under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. There was a delay on the part of respondent no.2 in completing the disciplinary proceedings and, therefore, the applicant requested for increase ~~of~~ⁱⁿ subsistence allowance and revocation of suspension. The applicant did not get any reply from the disciplinary authority in spite of reminders. However, the Ministry of Communication, New Delhi vide order dated 5.2.1990(Annexure-A-6) directed to revoke the suspension of the applicant. Accordingly, the suspension of the applicant was revoked and he resumed his duties w.e.f. 10.2.1990. The enquiry was finally closed on 25.7.1996. The delay in enquiry was because of frequent change of enquiry officers and not for any fault of the applicant. The disciplinary authority vide its order dated 12.6.1998 forwarded a copy of the report of the enquiry officer to the applicant to show cause why penalty of censure and fine of Rs.800/- should not be imposed on him. He submitted his representation dated 12.6.1998. The disciplinary authority vide its order dated 26.6.1998(Annexure-A-2) imposed the minor penalty of censure and a lump sum fine of Rs.800/- on the applicant. The applicant filed an appeal on 30.7.1998 challenging the order of the disciplinary authority and to treat the entire period of suspension from 4.10.1988 to 9.2.1990 as period spent on duty. The appellate authority rejected the appeal vide its order dated 29.10.1998. However, in the said order it has been ordered that the applicant may be paid salary for 4.10.1988 and the same may be treated as the period spent on duty. Thereafter, the applicant filed a revision-petition which was also



rejected by the revisional authority vide its order dated 5.10.1999 (Annexure-A-3). Hence this Original Application.

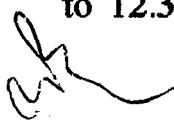
2. This Original Application was earlier finally disposed of vide order dated 23.10.2000 by passing the following order :

"4. Duly considered the submissions of the learned counsel of applicant and perused the O.A. At this stage we do not want to call for reply on behalf of the respondents because the rule and Government instructions in this regard are very clear. As per Government of India Department of Personnel and Training O.M. No.11012/15/85-Estt.(A) dated 3.12.1985, when the proceedings end in award of minor penalty, the suspension shall be unjustified and therefore in accordance with F.R.54B it is mandatory upon the respondents to pay full pay and allowances during the period of suspension and treat this period as spent on duty for all purposes. It is surprising that the revising authority after having held that the penalty as minor, has not followed the rules/ instructions. In the circumstances, it is ordered that the respondents shall pay to the applicant full pay and allowances for the period of suspension and treat the said period as spent on duty within a period of two months from the date of receipt of a copy of this order. If the payment is not made within the prescribed period, the applicant shall be paid interest at the rate of 11% per year for the delay beyond the said period".

The aforesaid order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Madhya Pradesh by way of filing Writ Petition No.2984 of 2004 and in the writ petition the following order has been passed on 26.10.2004:

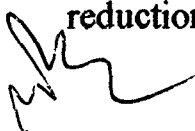
"14. We accordingly set aside the order dated 15.12.2003 rejecting the review application and also set aside the order dated 23.10.2000 allowing O.A.No.783/2000. As a consequence, O.A.No.783/2000 stands restored to the file of the Tribunal. The Tribunal shall issue notice to the respondents in the OA, hear the parties and then dispose of the application in accordance with law".

Now, the respondents have filed their reply and in their reply they have stated that the applicant along with others 'Gheraod' the General Manager, Dy.General Manager and Manager from 10.00 Hrs. to 12.30 Hrs on 30.9.1988 in the office chamber of the General



Manager confining them to their chairs for 2 -1/2 hours. The applicant along with others shouted slogans at the highest pitch of their voice and hurled abuses in filthy language. These actions of the applicant amounted to a misconduct and, therefore, he was placed under suspension with effect from 3.10.1988. Thereafter, he was issued a memo of charges on 8.11.1988 (Annexure-A-5). The suspension of the applicant and five others was revoked by the Member (Production) vide DOT letter dated 5.2.1990 w.e.f. 9.2.1990. In the departmental enquiry, the charges leveled against the applicant were proved. However, the disciplinary authority on an assurance given by the applicant that he would not repeat the misconduct, took a lenient view and imposed the penalty of censure and a penalty of Rs.800/- on the applicant towards the compensation of loss of Government property for which the applicant was responsible.

3. The respondents have further stated that while the applicant was under suspension, the applicant once again along with his co-workers unauthorisedly entered the Factory premises, trespassed in the chamber of the General Manager, actively participated in a demonstration, wrongly confined the Manager, Dy.General Manager, Director (Galv.Project) and Chief Accounts Officer and used unparliamentary language against the Manager. Therefore, the applicant was charge-sheeted vide memo dated 8.11.1988 for the misconduct committed by him on 5.10.1988. The departmental enquiry with regard to the incident of 5.10.1988 ended with the imposition of penalty of dismissal from service vide order dated 8.10.1991. The applicant made an appeal against the said order, which was rejected by the appellate authority vide order dated 13.6.1992(Annexure-R-2). Thereafter, the applicant preferred a revision-petition, and the revisional authority vide its order dated 29.1.1993 (Annexure-R-3) taking a lenient view reduced the penalty of dismissal from service as awarded by the disciplinary authority to reduction in pay to the minimum of the time scale for a period of three

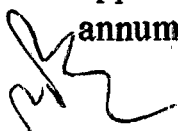


years. It was also ordered by the revisional authority that the period from date of dismissal i.e. 8.10.1991 to the date of reinstatement be treated as period not spent on duty. The applicant preferred a mercy petition on 21.7.1993 to the President of India and the same has been rejected vide order dated 1.9.1997 (Annexure-R-4). The respondents have submitted that in view of the aforementioned facts, they have rightly treated the period 3.10.1988 to 4.10.1988 as period spent on duty and the remaining period from 5.10.1988 to 9.2.1990 as restricted to subsistence allowance already paid to the applicant. The respondents have therefore contended that they have complied with the DOPT Memo dated 3.12.1985 and the order does not suffer from any legal infirmity and the present O.A. is liable to be dismissed.

4. We have heard the learned counsel of both the parties and perused the records carefully.

5. During the course of arguments, the learned counsel for the applicant has stated that two other persons namely Shri AJ Sunny and Shri M.K.Patel were also placed under suspension along with the applicant w.e.f. 3.10.1988 for the same incident. Both Shri A.J.Sunny and Shri M.K.Patel had approached this Tribunal by filing Original Applications Nos.298/ 2000 and 553/2000 respectively. The Tribunal vide its order dated 7.1.2004(Annexure-AR-3) allowed the aforesaid O.A 298/2000 (by placing reliance on the earlier order dated 23.10.2000 passed by this Tribunal in this very OA itself) in the following terms:

“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 5.10.1988 to 9.2.1990, 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.”

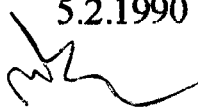


On the basis of the aforesaid order dated 7.1.2004, the Tribunal has also allowed O.A.No.553/2000 vide order dated 22.3.2004.

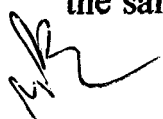
6. The directions given by the Tribunal in the aforesaid OAs 298/2000 and 553/2000 have been implemented by the respondents vide their orders dated 2.8.2004 and 9.8.2004 respectively (Annexures AR-5 & 6) and the period of suspension from 4/5.10.1988 to 9.2.1990 ^{has} have been treated as spent on duty for all purposes and accordingly full pay and allowances were paid to both Shri A.J.Sunny and Shri M.K.Patel. Thus, two other co-workers who were similarly placed and were involved in the same incident and also suspended along with the applicant on the same date have been granted the pay and allowances for the suspension period by placing reliance on the judgment rendered earlier in the case of the applicant as observed above, whereas in the case of the applicant the respondents are insisting that this period should not be treated as the period spent on duty.

7. The learned counsel for the respondents has contended that it is true that the applicant was suspended on 3.10.1988 for committing the misconduct on 30.9.1988 but he had committed another misconduct on 5.10.1988. Since he was already under suspension, no further order of suspension could be passed by the respondents. As the misconduct committed on 5.10.1988 has resulted in imposition of major penalty, the respondents have treated 3rd and 4th October, 1988 as the period spent on duty and the period from 5.10.1988 to 9.2.1990 has been treated as not spent on duty.

8. We have given careful consideration to the rival contentions. We find that the applicant was suspended vide order dated 3.10.1988 (Annexure-A-4) on the ground of contemplated disciplinary proceedings against him for the misconduct committed by him on 30.9.1988. The said order of suspension was revoked vide order dated 5.2.1990 (Annexure-A-6) issued by the Department of



Telecommunication. Vide this order dated 5.2.1990, not only the suspension of the applicant but also of aforementioned other co-workers Shri A.J.Sunny and M.K.Patel , who were also suspended along with the applicant, has been revoked. While revoking the suspension we find that in the order dated 5.2.1990 a reference has been made to the order issued on 3.10.1988 placing the applicant under suspension for contemplated disciplinary proceedings. There is no mention in the order dated 5.2.1990 to the misconduct or contemplated disciplinary proceedings by the respondents for the misconduct committed by the applicant on 5.10.1988. Therefore, the contention of the learned counsel for the respondents that the suspension period from 5.10.1988 to 9.2.1990 is to be treated as a separate suspension on the ground of the misconduct committed on 5.10.1988, is not acceptable and is accordingly rejected. We also find that no separate order placing the applicant under suspension has been passed for the misconduct committed by him on 5.10.1988. In the absence of any fresh order being passed, the same period of suspension cannot be treated differently for the misconduct on subsequent occasion. Particularly at the time of revocation of suspension along with other co-workers there is no mention of misconduct committed by the applicant on 5.10.1988. In fact, the order issued for revocation of suspension only referred to the order issued on 3.10.1988 placing the applicant under suspension for the misconduct committed by him on 30.9.1988 and for contemplation of disciplinary proceedings consequent to the said misconduct. The respondents have failed to show us any order whereby it is mentioned that the suspension for committing misconduct on 5.10.1988 will run concurrently as the applicant had already been placed under suspension w.e.f. 3.10.1988 for committing misconduct on 30.9.1988. Apart from it, Shri A.J.Sunny and Shri M.K.Patel, who were also involved in the same incident along with the applicant and were also suspended w.e.f. 3.10.1988 and their suspension was also revoked by the same order dated 5.2.1990, they had approached this Tribunal and




their OAs were allowed in terms of the earlier directions given by the Tribunal in the case of the present applicant. We also find that aforementioned A.J.Sunny was also dismissed from service because of his misconduct committed on 5.10.1988 and on appeal his punishment was modified to a major penalty of reduction of pay to the minimum of the time scale for a period of three years with cumulative effect. However, the respondents have implemented the directions given by this Tribunal in the case of Shri A.J.Sunny as well as in the case of Shri M.K.Patel treating the period of suspension as spent on duty for all purposes and full pay and allowances have been paid to them vide Annexures AR-5 and AR-6.

9. Before we may part, we may state the conduct of the respondents and their standing counsel, ~~namely~~^{by} Shri S.D.Singh, while dealing with the case of the present applicant Shri D.J.Mukherjee. The applicant as well as Shri A.J.Sunny and Shri M.K.Patel, who were involved in the same incident and were also placed under suspension along with the applicant on the same date and their suspension was also revoked by the same order along with the applicant on 5.10.1990 have treated them quite differently from the applicant. In the case of the present applicant, the respondents have raised the objection before the Hon'ble High Court that they were not given an opportunity to file the reply, ^{to which} ^{a similar} ^{by} ^{the} Whereas a detailed reply which has been filed now in the present case, was already filed ^{by} them in the earlier OA filed by A.J.Sunny, ~~and~~^{and} the Tribunal after considering the ^{said} detailed reply, which is filed in the present OA also, and after hearing the counsel for the respondents, have granted the relief to Shri A.J.Sunny. Subsequently, in the O.A. filed by Shri M.K.Patel, the learned counsel for the respondents had agreed along with the learned counsel for the applicant that their "case is fully covered in all fours by the decision of this Tribunal dated 7th January, 2004 passed in O.A.No.298 of 2000 (filed by Shri A.J.Sunny), as the applicant of the present case and the applicant in the above referred case were

involved in the same incident and were issued a similar charge sheet. Accordingly the O.A. filed by Shri M.K.Patel was also allowed. The respondents instead of challenging the orders passed in the cases of Shri A.J.Sunny and M.K.Patel have implemented the directions given by the Tribunal. Thus, we find that the respondents as well as their counsel while dealing with the case of the present applicant Shri D.J.Mukherjee have not placed all the facts before the Hon'ble High Court in writ petition no.2984/2004. We presume that after the Tribunal had passed the order dated 7.1.2004 granting the benefit to A.J.Sunny – a similarly placed co-worker, the respondents had approached the Hon'ble High Court against the order passed by this Tribunal in the case of the present applicant and taken the plea that they had not been given the opportunity of hearing and filing their reply. We find that their detailed reply has already been considered by this Tribunal in a similar OA (No.298/2000) and they have also been heard and thereafter their plea has been rejected by the Tribunal on 7.1.2004 and the respondents had accepted the said judgment of the Tribunal in another OA (No.553/2000) which was decided on 22.3.2004. The respondents had not challenged these orders before the Hon'ble High Court and had implemented the aforesaid orders in August, 2004. We find that the respondents had argued before the Hon'ble High Court as late as in October, 2004 in the Writ Petition No.2984/2004 by suppressing all these facts and harping on the single point that they had not been given an opportunity of hearing. Therefore, we find that the order passed by the Hon'ble High Court is obtained by suppressing all these material facts and this conduct of the respondents and their counsel is not acceptable. Therefore, we direct the respondent no.1 the Secretary, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi-1, respondent no.1 for taking suitable action against the officer who is responsible for verifying the affidavits.



10. In the conspectus of the aforesaid facts and circumstances, the OA is allowed. The respondents are directed to treat the entire period of suspension of the applicant from 3.10.1988 to 9.2.1990 as the period spent on duty and grant him the difference of pay and allowances within a period of three months from the date of communication of this order. In case, the amount is not paid within the aforesaid time limit, the respondents are liable to pay interest at the rate of 8 per cent from the date it was due to the date of actual payment. Since we find that the applicant has been compelled to remain in continuous litigation since September, 2000 a cost of Rs.15,000/- (Rs. Fifteen thousand only) is imposed on the respondents which may be recovered from the officer found responsible for the conduct of this case. The Registry is directed to send directly a copy of this order to the Secretary, Department of Telecommunication by registered post. A copy of this order be also sent to the Law Secretary, Govt. of India, Ministry of Law & Justice (Department of Legal Affairs), Shastri Bhavan, Rajendra Prasad Road, New Delhi for any action as deemed necessary.


(Ms. Sadhna Srivastava)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv

प्रकाशन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि एवं निवासी:-

(1) अतिरिक्त न्यायाधीश, न्यायालय, जबलपुर

(2) अतिरिक्त न्यायाधीश, न्यायालय, जबलपुर के सीएसजी


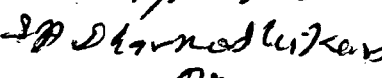
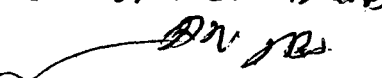

(3) अतिरिक्त न्यायाधीश, न्यायालय, जबलपुर के कार्यालय

(4) न्यायाधीश, न्यायालय, जबलपुर के कार्यालय

सूचना एवं आचार्य के कार्यालय, जबलपुर

न्यायाधीश

Issued
On 6.5.05
BB

 K. K. Singh
 P. K. Singh
 P. K. Singh
 P. K. Singh