

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A. No. 88/2016 and
O.A. No. 138/2013
M.A. No. 1400/2016

Reserved on : 14.12.2016
Pronounced on : 19.12.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Jasmer Singh
S/o Late Shri Inder Singh
R/o House No.52,
Village Pitam Pura, Delhi-110034.

.. Applicant

(By Advocate : Shri R.K. Jain)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
5th Floor, Delhi Sachivalaya
New Delhi.
2. Secretary (Education)
Directorate of Education
GNCT of Delhi, Old Secretariat, Delhi.
3. The Director of Education
GNCT of Delhi
Old Secretariat, Delhi.

.. Respondents

(By Advocate : Ms. Sangita Rai)

ORDER

Mr. P.K. Basu, Member (A)

R.A. 88/2016

Heard the learned counsel for both sides.

2. The applicant, who is a Driver in Directorate of Education, was imposed with a penalty vide order dated 24.10.2011. This was

challenged by the applicant in O.A. No.138/2013, which was dismissed by this Tribunal vide order dated 01.07.2015.

3. The present R.A. has been filed stating that in the original Application, the applicant had also prayed for quashing and setting aside of order dated 28.11.2011 by which the respondents had treated his suspension period as "Not spent on duty". It is submitted that while dismissing the O.A., the Tribunal had not passed any order regarding this prayer. This R.A. has, therefore, been filed for recall of order dated 01.07.2015 passed in OA. No.138/2013 and re-hearing the matter.

4. The R.A. is allowed and the O.A. was also heard simultaneously.

O.A. 138/2013

The applicant relies on provisions of FR 54-B (1), (2) and (6), which provide as follows:

"F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended,

subject to adjustment in respect of subsistence allowance already paid.

xxx xxx xxx

(6) Where suspension is revoked pending finalisation of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.”

2. It is argued that according to these provisions, the respondents were required to take a view on the period of suspension and make a specific order regarding how that period has to be treated at the time the suspension was revoked, but in the case of the applicant, no such order was passed when the applicant was reinstated. Order dated 28.11.2011, treating the suspension period as “Not spent on duty”, was passed much after the departmental proceeding was finally concluded.

3. From the provisions of Rule 54-B(1) itself, it becomes clear that those are cases pertaining to retirement/death etc. of the employees. Moreover, sub-rule 6 makes it abundantly clear that even if the suspension is revoked prior to the finalization of the disciplinary or court proceedings, the respondents can review, on its own motion, after conclusion of the proceedings by the authority as to how the period of suspension would be treated.

4. Thus, the Disciplinary Authority can decide the way the period of suspension would be treated on conclusion of the departmental proceedings and that is what has been done in the present case. We

see no illegality or violation of any rule by the respondents in passing order dated 28.11.2011. Therefore, the prayer of the applicant to treat the period of suspension as 'spent on duty' cannot be interfered with by this Tribunal.

5. The other prayer of the applicant for quashing of order dated 24.10.2011 inflicting the major penalty on the applicant and order dated 03.02.2012, rejecting the appeal against the penalty also are dismissed for the ground already mentioned in the earlier order dated 01.07.2015 but again repeated hereunder:

"6. It would be clear from para 8 of the order of the Additional Chief Judicial Magistrate, Sonapat that because the case property (the liquor bottles) was not produced by the prosecution, therefore, the accused had to be let off by granting benefit of doubt. However, even if for the sake of argument, we accept the version of the applicant that there was no liquor bottle in the vehicle and the Haryana Police had framed him, the fact remains that he had gone out of jurisdiction with the vehicle without permission on the flimsy ground that there was no space to park the vehicle. If this kind of behaviour is tolerated and the delinquents are left scot free, it will lead to rampant misuse of vehicles at the cost of public exchequer along with other concomitant dangers of which there is a hint in this case itself."

6. The O.A. is, therefore, dismissed. There shall be, however, no order as to costs.

(P.K. BASU)
Member (A)

(V. AJAY KUMAR)
Member (J)

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