

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.93/2012

M.A.No.77/2012

Order Reserved on: 10.11.2016

Order pronounced on 09.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Subhash Chander Bhatia
R/o House No.7
Radhey Vihar, Model Town
Panipat.

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Applicant

(By Advocate: Mr. Rajeev Sharma)

Versus

1. East Delhi Municipal Corporation
(through its Commissioner)
East Delhi Municipal Corporation, Udyog Sadan
Patpatganj Industrial area
Delhi.
2. The Commissioner
East Delhi Municipal Corporation, Udyog Sadan
Patpatganj Industrial area
Delhi.
3. The Director (Horticulture)
East Delhi Municipal Corporation, Udyog Sadan
Patpatganj Industrial area
Delhi.

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Respondents

(By Advocate: Mr. Rahul Singh)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a retired Pharmacist filed the OA questioning the order dated 28.07.2010 of the respondents, whereunder the pay and allowances of the applicant were restricted to what he has already been paid during his suspension period, and the suspension period was ordered to be treated as spent on duty for pensionary benefits only.

2. The brief facts of the case, as narrated by the applicant, are that the applicant was appointed as Pharmacist on 3.08.1972. While he was working as such, on 17.06.1994, he was arrested by the Anti Corruption Branch alleging that he had demanded and accepted bribe of Rs.150/- from one Shri Dharamvir, for issuing a Certificate. FIR No.17 dated 17.06.1994 was registered against the applicant and he was suspended from service on 26.08.1994. After the trial, the Court of Shri P.K.Bhasin, Special Judge, Delhi vide its Judgement dated 21.07.2003, acquitted the applicant and the operative portion of the said Judgement reads, as under:

"29. So, from the foregoing discussion, it is clear that the prosecution can not be said to have proved its case beyond reasonable doubt and so benefit of doubt has to be given to the accused Subhash Chander Bhatia and he has become entitled to have acquitted.

28. (sic. 30). In the result, I hereby acquit accused Subhash CHander Bhatia of the charges framed against him under Section 7/13(1)(d) r/w 13(2) Prevention of Corruption

Act, 1988. The accused is on bail and as result of his acquittal his bail bond stands discharged.”

3. In pursuance of the aforesaid acquittal of the applicant from the criminal case, the respondents reinstated the applicant into service w.e.f. 10.09.2003.

4. In pursuance of a chargesheet issued on 01.03.2006, a departmental inquiry was conducted by the respondents and the inquiry officer, vide his inquiry report dated 25.03.2009, held that the charge levelled against the applicant stands not proved. Consequently, the competent authority, vide Order dated 13.07.2009 closed the RDA case No.1/5/2006, and the same was communicated to the applicant, vide Office Order dated 09.09.2009.

5. When the respondents vide their orders dated 23.04.2010 and 12.05.2010 proposed to restrict the pay and allowances for the period from 17.06.1994 to 15.09.2003, pertaining to the treatment of the period of suspension, the applicant filed OA No.2579/2010 and since during the pendency of the OA, the respondents passed orders on 13.07.2010, which was communicated to the applicant vide order dated 28.07.2010, rejecting the representation of the applicant, the said OA was dismissed as not maintainable, however, with a liberty to file a fresh OA with better particulars, including challenge to the order dated 28.07.2010. In pursuance of the said liberty, the applicant filed the present OA questioning the impugned Annexure A1 dated 28.07.2010, along with an MA No.77/2012, seeking condonation of delay in filing the OA.

6. Heard Shri Rajeev Sharma, the learned counsel for the applicant and Shri Rahul Singh, the learned counsel for the respondents, and perused the pleadings on record.

7. In the circumstances, the MA is allowed and the delay in filing the OA is condoned.

8. The learned counsel for the applicant mainly contends that the respondents before passing the impugned order have not complied with the mandatory requirements under FR 54B. On the other hand, the respondents' counsel would submit that they have fully complied with the requirements under FR 54B before passing the impugned order.

9. FR 54B reads as under:

"(1) When a government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension the authority competent to order reinstatement shall consider and make a 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 (including premature retirement) 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 allowance 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.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the

provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended;

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within 60 days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5). In cases other than those falling under sub-rules (2) and (3) the Government shall, subject to the provisions of sub-rule (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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 60 days from the date on which the notice has been served as may be specified in the notice.

(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.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances Under sub-rule (2), sub-rule (3) or sub rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub- rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

10. It is the specific case of the applicant that the respondents before passing the impugned order have not given him any notice as required under FR 54B(5).

11. The respondents vide their counter specifically denied the said contention by submitting that vide Orders dated 23.04.2010 and 12.05.2010, issued notice to the applicant proposing to restrict the pay and allowances of the applicant to what he has already been paid during his suspension period with its treatment as spent on duty for pensionary benefits, and that the applicant submitted a reply on 21.05.2010 and before the respondents passes a final order, the applicant filed OA No.420/2010, which was disposed of on 05.05.2010 wherein the respondent was directed to pass a final order within six weeks. The said facts were also recorded in another OA 2579/2010, filed by the applicant himself, which was dismissed as not maintainable vide Order dated 02.11.2011, by giving liberty to the applicant to challenge the order dated 28.07.2010, which is the impugned order in the present OA. Accordingly, they submit that the OA is liable to be dismissed on the ground of suppression of facts and also on merits.

12. We find force in the submission made by the respondents. The averments of the respondents were supported by the orders of this

Tribunal dated 02.11.2011 in OA No.2579/2010 wherein it was observed that the applicant was put on notice vide orders dated 23.04.2010 and 12.05.2010 and that he submitted representation thereto on 21.05.2010 and then only the competent authority passed orders on 13.07.2010, rejecting the representation of the applicant and the same was communicated to the applicant vide the impugned order dated 28.07.2010. Though the applicant filed a rejoinder, has not denied the fact of issuance of notice to him and submission of a representation by him before passing the impugned order by the respondents.

13. In the circumstances and for the aforesaid reasons, the OA is devoid of any merit and accordingly the same is dismissed. No costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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