

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/493/2015

New Delhi this the 5th day of December, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. P. K. Basu, Member (A)**

Dr. M.L. Khatri (CMO) (Retd.) Aged 64 years
#2308 (LGF),
Hudson Lane, Delhi-9. ... Applicant

(Argued by: Ms. Vaibhavi Sharma, Advocate)

Versus

1. The Director (Ayush)
12th Floor, Civic Centre,
MCD (North), New Delhi-2.
2. Commissioner, MCD (North),
Civic Centre, New Delhi-2.
3. Chief Secretary
Govt. of NCT of Delhi,
5th Level, Delhi Secretariat,
I.P. Estate, Delhi-2. .. Respondents

(By Advocates: Shri R.N. Singh for respondents)

ORDER (ORAL)

Justice M. S. Sullar, Member (J):

The matrix of the facts and material, culminating in the commencement & relevant for deciding the instant Original Application (OA), and expository from the record, is that, applicant, Dr. M.L. Khatri (since retired), was working as Chief Medical Officer, Ayurvedic Dispensary, Vidhan Sabha, Delhi. A criminal case was registered against him, on accusation of having committed the offences, punishable under Section 13(1)(d) and 13(2) of Prevention of Corruption Act (hereinafter to be referred as "POC Act") read with Section 420/468/471/120-B

IPC, vide FIR No.2 dated 27.01.2009 (Annexure A-4) by the police of Police Station, Anti Corruption Branch (for brevity "ACB"). He was arrested in the criminal case. Admittedly, the police did not file the challan/final police report under Section 173 Cr.PC against the applicant till today. However, the applicant was released on bail, vide order dated 31.03.2009 (Annexure A-5) by Special Judge, Delhi. The applicant conveyed the fact of his release, from custody in indicated criminal case, vide letter dated 01.04.2009 (Annexure A-6) to the department.

2. As a consequence thereof, applicant was suspended w.e.f. 28.01.2009, vide letter dated 27.02.2009 (Annexure A-2). At the same time, a charge sheet dated 01.10.2007 was served upon him. Thereafter, a regular Departmental Enquiry (DE) was initiated against him under the provisions of Regulation 8 of the DMC Services (Control & Appeal) Regulations, 1959. An Enquiry Officer was appointed, who submitted his report dated 13.04.2012. Meanwhile, applicant was retired from service on superannuation on 30.11.2011 (Annexure A-10). The North Delhi Municipal Corporation (NDMC), after considering the advice tendered by CVC, and allied record of the case, dropped the charges levelled against the applicant, vide Resolution bearing No.478 dated 17.02.2014, which reads as under:-

"Having considered the inquiry report along with allied records annexed to Commissioner's letter No.F.33/Vig.NDMC/1373/C&C dated 06.09.2013 and recommended by the appointments, Promotions, Disciplinary & Allied Matters Committee vide its Resolution No.44 dated 3.10.2013, resolved that charges levelled upon Dr. M.L. Khatri, DHO/ISM (Retd.) in RDA case NO.1/117/2007, be dropped".

3. According to the applicant, that after attaining the age of superannuation, he filed representation dated 29.04.2014

followed by reminder dated 19.06.2014 claiming the benefit of period of his suspension, but in vain.

4. Aggrieved thereby, the applicant has preferred the instant OA, challenging the impugned action of the respondents, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

5. The case set-up by the applicant, in brief, insofar as relevant, is that, he was falsely implicated in the criminal case in which he was granted bail. Even the investigation agency has not submitted the final police report/challan in the criminal court till today. It was alleged, that once the departmental proceedings were dropped by the NDMC, then he is entitled to all the consequential benefits of period of suspension. On the basis of aforesaid grounds, the applicant claimed the following reliefs:-

"(i) Direct the respondents to treat period of suspension of the applicant, i.e., 27.02.2009 to 31.11.2011, as the period spent on duty and accordingly, direct the release of all consequential due emoluments including all post retiral benefits;

(ii) Declare the applicant deemed to be reinstated w.e.f. 27.02.2009, so the applicant becomes entitled for other sundry service benefits; and

(iii) Or any other order or directions as deemed fit in the facts and circumstances of the case may be passed".

6. Sequelly, the respondents refuted the claim of the applicant and filed the reply, wherein it was admitted, that the above mentioned criminal case was registered against him. Vide letter dated 09.11.2009, AC Branch of Government of NCT of Delhi, informed the respondents that the above case is still pending investigation. The representations dated 29.04.2014 and 19.06.2014, filed by the applicant, were stated to have been placed before the higher authorities and it was decided that the

suspension period of the applicant will be decided only after the conclusion of the pointed criminal case.

7. However, the respondents have admitted, that due to the retirement of the applicant, his case was placed before the NDMC through Appointments, Promotions, Disciplinary and Allied Matters Committee and was resolved to drop the charge against the applicant, vide Resolution dated 63 dated 22.04.2013. After receipt of second stage advice of the CVC, his case was again placed before the higher authorities. The North DMC, after considering the second stage advice tendered by the CVC and allied record of the case, dropped the charges levelled against the applicant, vide Resolution No.478 dated 17.12.2014.

8. Virtually acknowledging the factual matrix and reiterating their stand, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

9. Controverting the pleadings in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed the rejoinder. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, for the reasons mentioned hereinbelow.

11. As is evident from the record, that a criminal case was registered against the applicant, vide FIR No.2 as back as on 27.01.2009, in which final police report has not yet been submitted by the investigating agency, even after a lapse of about 7 years and 11 months. The DE commenced against the applicant, as a consequence thereof, has already been dropped by the NDMC, vide Resolution No.478 dated 17.12.2014. It is not a matter of dispute, that the applicant has already retired from service on attaining the age of superannuation on 30.11.2011.

12. Surprisingly enough, the competent authority has not decided the fate/nature of the period of suspension of the applicant. The mandatory rule FR 54-B postulates that when a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement (including premature retirement) while under suspension, the authority competent to order re-instatement shall consider and make a specific order 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 whether or not the said period shall be treated as a period spent on duty. Sub-rule (3) of FR 54-B posits that 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.

13. A conjoint and meaningful reading of these provisions would reveal, that 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 have to consider the matter regarding the period of his suspension. The competent authority cannot legally be permitted to avoid such determination of period of suspension of the applicant in the garb of the FIR, registered as back as on 27.01.2009 (Annexure A-4), in which the investigating agency has not submitted the final police report

under Section 173 Cr.PC against the applicant even after a lapse of more than 7 years and 11 months, for the reasons best known to it.

14. Be that as it may, applicant cannot be kept in dark and to wait indefinitely, for his legitimate claim of consideration of period of his suspension. As soon as the departmental proceedings were dropped, it was the statutory and mandatory duty of the competent authority, to consider and make a specific order regarding the allowances of suspension period, as contemplated under FR 54B.

15. In the light of the aforesaid reasons, the OA is partly accepted. The respondents are directed to consider the matter with regard to the benefits of the period of suspension of the applicant, by passing a reasoned and speaking order within a period of 3 months positively from the date of receipt of a certified copy of this order. . However, the parties are left to bear their own costs.

**(P.K. BASU)
MEMBER (A)**

Rakesh

**(JUSTICE M.S. SULLAR)
MEMBER (J)
05.12.2016**