

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2450/2013

New Delhi this the 27th day of April, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)

Shri M.T.J. Chishti
S/o Late J.A. Chishti,
425, Sector-A, Pocket C,
Vasant Kunj,
New Delhi-110070.

...Applicant

(Argued by: Ms. Rashmi Chopra, Advocate)

Versus

1. Union of India
Through the Secretary,
Department of Culture,
Shastri Bhavan,
New Delhi-110011.

2. The Director General of Archives,
Government of India,
National Archive of India,
Janpath, New Delhi-110001.

Respondents

(By Advocate: Shri Subhash Gosain)

ORDER (ORAL)

The matrix of the facts which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant reference and emanating from the record is that, applicant Shri M.T.J. Chishti preferred the instant OA to quash the impugned orders dated 26.12.2012 and 03.05.2013 and to direct the respondents to treat the period of his illegal suspension as spent on duty with all consequential benefits.

2. Although this case has a chequered history, but I have the benefit to peruse the contour of facts and material as already recapitulated in the order of Hon'ble Member (A).

3. A perusal of the record would reveal that in contemplation of departmental enquiry, the applicant was suspended with effect from 21.08.1997. He remained under suspension till 19.01.2009. In supersession of order dated 14.12.2012, his period of suspension w.e.f. 22.08.1997 to 19.01.2009 was treated as non-qualifying service by the competent authority. The case of the applicant is that he is to be deemed in service from 18.02.2000 to 19.01.2009 in view of the order passed in OA No.365/2008 and the impugned action of the respondents treating his period of suspension as non-qualifying service, is arbitrary and illegal.

4. The Hon'ble Administrative Member has held that the impugned orders whereby the period of suspension of the applicant was treated as non-qualifying by the respondents, cannot be assailed as he has failed to challenge the source orders of the Disciplinary Authority dated 19.01.2009 and 22.09.2009 whereas the Hon'ble Member (J) has held that his period of suspension with effect from 21.08.1997 is liable to be adjudicated upon in terms of Fundamental Rules (FR) 54-B. That is how this matter is placed before me in view of conflicting orders.

5. I have heard the learned counsel for the parties and gone through the record with their valuable assistance.

6. What cannot possibly be disputed here is that applicant was suspended with effect from 21.08.1997 and remained under suspension till 19.01.2009.

7. Now the short and significant question, though important, that arises for determination in this case is as to whether the indicated period of suspension of the applicant is liable to be treated as non-qualifying service or otherwise.

8. Having regards to the rival contention of the learned counsel for the parties, to my mind, the respondents are legally bound to decide afresh, the fate of period of suspension of the period of applicant in accordance with law for the reasons mentioned herein below.

9. As is evident from the record, the main ground which appears to have been weighed with Hon'ble Member (A) to negate the plea of the applicant, was that once the applicant had been paid the subsistence allowance for the intervening period and the respondents carried out the order dated 10.11.2008 passed in OA No.365/2008, so his period of suspension was rightly treated as non-qualifying service. Here to me, the Hon'ble Member (A) has not assigned any cogent reason in this regard. On the contrary, the Hon'ble Member (J) held as under:-

“...In other words, even in terms of the order dated 15.04.2004 the period between 18.02.2000 onwards was treated under suspension but the O.A. No.365/2008 the Division Bench had quashed the said order. The clear ramification of the Order is that the Tribunal had not approved the action of the respondents of treating the period beyond 18.02.2000 under suspension and had directed reinstatement of the applicant in service. Merely because the applicant was paid subsistence allowance for the intervening period, we cannot avoid taking decision regarding treatment of such period. While doing so, we cannot disregard the view taken by the Division Bench, which has attained finality. Once in order dated 31.05.2013 passed in M.A. No.1177/2012 in O.A. No.1208/2010, Division Bench of this Tribunal presided by Hon'ble Chairman, could give liberty to the applicant to challenge the order dated 30.05.2013, it would not be fair to say that by filing the present O.A. the applicant has sought to reopen the settled point. The plea raised by the applicant need to be adjudicated on merits. Paragraph 2 of the Order dated 31.05.2013 reads thus:-

“When the matter is taken up today, Shri H.K. Gangwani, learned counsel for respondents, states that the aforesaid order of the Tribunal has fully been implemented as the representation of the applicant has been disposed of by a reasoned order. He has also produced a photo copy of the order of Dy. Director of Archives, Government of India dated 30.05.2013, whereby the applicant's claim of benefits had been disposed of by recording reasons. A copy of the order has also been given to the learned counsel for the applicant. Therefore, in view of the fact that the representation of the applicant has now been disposed of, we are of the view that no further order is required to be passed in this proceeding. However, learned counsel for the applicant submits that since the order passed on the representation addressed to the applicant has not been given to him, therefore, liberty may be given to him, if not satisfied with the order, to assail the same in appropriate proceeding. The Miscellaneous Application is, therefore, dismissed with liberty to the applicant to challenge the order dated 30.05.2013, if aggrieved, in appropriate proceeding.”

64. There is no challenge by the applicant to any inquiry report, penalty order or the order of appellate authority. The only plea espoused in the O.A. is regarding treatment of the period of suspension w.e.f. 21.08.1997. Such plea need to be adjudicated. Once in O.A. No.365/2008 this Tribunal had taken a view that the order dated 15.04.2004, in terms of which the period after 18.02.2000 was treated under suspension, was not sustainable and the applicant was directed to be reinstated back in service, the impugned order passed by the respondents being contrary to the spirit of the Order of the Tribunal and cannot be sustained”.

10. What cannot possibly be disputed here is that Rule 10 of the Central Civil Services (Control, Classification & Appeal) Rules, 1965 deals with suspension of the

employees. Rules 10 (6) postulates that an order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension [before expiry of ninety days from the effective date of suspension], on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time. According to sub-rule (7) an order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

11. A plain and meaningful reading of these provisions would reveal that in case period of suspension is not extended within a stipulated period of 90 days or 180 days, as the case may be, then the suspension orders would automatically become invalid after that period.

12. In the instant case, no cogent material is forthcoming on record to indicate that, either the respondents have passed any such extension order beyond the stipulated period of 90 days or 180 days, as the case may be, or such orders were ever communicated to or received by the

applicant. It is not a matter of dispute that subsequently the applicant was compulsory retried by the respondents.

13. Sequelly, FR 54-B posits that when a Government servant who has been suspended is re-instated or would have been so reinstated 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 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 or otherwise.

14. Meaning thereby, the respondents were legally required to examine the matter of period of suspension of the applicant in view of Rules 10(6) and 10(7) of the CCS(CCA) Rules, 1965 and FR 54-B, by means of passing a speaking order, which admittedly has not been done in the present case.

15. Therefore, I concur with the view taken by Hon'ble Member (J) and direct the respondents to decide the matter of period of suspension of applicant with effect from 21.08.1997 till 18.02.2000 by treating it as non-qualifying service or otherwise, in accordance with FR 54-B, as

ordered by Hon'ble Member (J). Therefore, the reference is accordingly answered in favour of the applicant.

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

Rakesh