

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1693/2015

Order Reserved on: 09.09.2016
Order pronounced on 19.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri K. N. Shrivastava, Member (A)

Sh. Surender Kataria, Age 43 years
S/o Late Sh. Krishan Chand
R/o House No.1077-78
Village and Post Office Bawana
Delhi – 110 039
Working as Crart (sic. Craft) Instructor
Narela, New Delhi. Applicant

(By Advocate: Shri Ajit Singh)

Versus

1. The Government of N.C.T. of Delhi
Through its Chief Secretary, I.P.Estate
New Delhi – 110 002.
2. The Principal Secretary
Directorate of Training & Technical Education
Muni Maya Ram Marg
Pitam Pura
New Delhi – 110 088. ... Respondents

(By Advocate: Ms. Harvinder Oberoi)

O R D E R

By V. Ajay Kumar, Member (J):

The applicant, a Craft Instructor under the Respondent-Govt. of NCTD, has filed this OA, questioning the Annexure A Order dated

30.08.2012 in treating his suspension period w.e.f. 25.10.2005 to 12.01.2010 as non-duty.

2. Brief facts of the case, as narrated in the OA, are that the applicant was appointed as Craft Instructor on 13.04.2000. On 25.10.2005, vide Annexure E, the respondents have placed him under suspension, under Rule 10(1) of CCS (CCA) Rules, 1965, in connection with a sting operation undertaken by Sanasani, Crime Programme on Star News (BAG Film), wherein it was shown that the applicant was accepting money from a Trainee, for admission. Thereafter, a Charge Memorandum dated 20.03.2006 (Annexure G) was issued. While the said disciplinary proceedings were pending, the respondents revoked the suspension of the applicant vide Order dated 12.01.2010 (Annexure Q).

3. Basing on the Inquiry Officer's Report dated 04.05.2010 (Annexure S), whereunder the charges leveled against the applicant were held partially proved, the respondents vide Annexure T, Order dated 05.01.2011, imposed the penalty of reduction to a lower time scale of pay with all consequences in respect of promotion and seniority, with a stipulation that the same will be restored after three years, on the applicant.

4. Even after imposition of the aforesaid penalty on the applicant, as his pay was not fixed for long time, he preferred representations and the respondents vide Annexure W, issued show cause notice dated 24.01.2012, calling upon the applicant to show cause as to why his

pay and allowances for the period of suspension 25.10.2005 to 12.01.2010 should not be restricted to the pay and allowances already drawn by him during the said suspension period. The applicant, vide his Annexure X, submitted the reply dated 02.03.2012 to the said show cause notice, stating that in view of the decisions of the Hon'ble High Court of Delhi and also as per Rules, he is entitled for treating the suspension period on duty. However, the respondents vide the impugned Annexure A, Order dated 30.08.2012, treated the period of suspension of the applicant as non-duty.

5. Heard Shri Ajit Singh, the learned counsel for the applicant and Ms. Harvinder Oberoi, the learned counsel for the respondents, and perused the pleadings on record.

6. The learned counsel for the applicant, inter-alia, contended as under:

- a) As per FR-54-B, while passing an order for revocation of suspension, itself, the competent authority has to give a finding about the treatment of the suspension period, but the competent authority, while passing the Annexure Q, revocation of suspension order dated 12.01.2010, has not stated anything about the treatment of the suspension period.
- b) Though a major penalty Chargesheet dated 20.03.2006 was issued under Rule 14 of the CCS (CCA) Rules, 1965, but the disciplinary authority finally vide Annexure T, penalty order

dated 05.01.2011 imposed a minor penalty. Once, finally a minor penalty is imposed, though the chargesheet was issued for imposing a major penalty under Rule 14 ibid, the period of suspension has to be treated as duty only.

c) The learned counsel placed reliance on **Giridhari Lal V. Delhi Administration, Delhi, (1993) 25 ATC (CAT-New Delhi) 321**; **Basant Ram Jaiswal v. Area Manager (North), Mahanagar Telephone Nigam Ltd., Bombay Telephones and Anr, (1993) 24 ATC (CAT-Bombay) 641**; **O.P.Gupta v. Union of India , AIR 1987 SC 2257**.

7. Ms. Harvinder Oberoi, the learned counsel appearing for the respondents, refuting the contentions of the applicant, would contend that once a major penalty chargesheet is issued, and the procedure required thereto was also followed, even if a minor penalty is imposed, the competent authority is empowered to treat the period of suspension as not on duty. The criminal case registered against the applicant under the Prevention of Corruption Act, is still pending. It is further submitted that the procedure required under FR 54-B is followed by the respondents before issuing the impugned order and hence, there is no illegality in their action. The decisions on which the applicant placed reliance have no application since the facts are different.

8. The learned counsel for the respondents further submits that the OA is liable to be dismissed on the ground of limitation as the impugned order is dated 30.08.2012.

9. The applicant, by way of this OA, is seeking to quash the impugned Annexure A order dated 30.08.2012 whereunder his request for fixation of his pay and allowances w.e.f. 25.10.2005, i.e., on which date he was placed under suspension, by treating the suspension period as duty, and accordingly filed the OA on 30.04.2015. As per the settled principles of law, and as held by the Hon'ble Apex Court in **M.R. Gupta v. Union Of India & Ors**, (1995) 5 SCC 628, non-fixation or wrong fixation of pay scale is a continuous cause of action. Hence, the objection of the respondents, on the ground of limitation, is rejected.

10. FR 54-B, which governs the procedure for treating the period of suspension of an employee, on his reinstatement, reads as under:

"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 (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 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.

(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 sub0rule

(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 sixty 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 failing under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (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 sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalization 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 purposes:

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."

11. The Office Memorandum No.11012/15/85-Estt.(A), dated 03.12.1985 of the DoP&T, which was issued under FR 54-B, reads as under:

"(3) Period of suspension to be treated as duty if minor penalty only is imposed.- Reference is invited to O.M.No.43/56/64-AVD, dated 22-10-1964 [not printed], containing the guidelines for placing Government servants under suspension and to say that these instructions lay down,

inter alia, that Government servant could be placed under suspension, if a *prima facie* case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened."

12. The Government itself vide the aforesaid OM dated 3.12.1985 categorically has stated that "where departmental proceedings against the suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of FR 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR 54-B."

13. Admittedly, in the present case also, though a major penalty chargesheet was issued against the applicant, but finally the same was ended with imposition of a minor penalty. Hence, the impugned order is against to their own Office Memorandum, and accordingly, the same is liable to be set aside. In view of this finding, there is no necessity to deal with the other rival contentions and decisions, relied upon thereto.

14. In the circumstances, and in view of the aforesaid discussion, the OA is allowed, and the impugned order is quashed, and the respondents are directed to treat the period of suspension of the applicant as on duty for all purposes and to fix his pay and allowances, accordingly, and to pay the consequential arrears. This exercise shall be completed within three months from the date of receipt of a copy of this order, failing which the respondents are liable to pay interest at the rate of 12% per annum. There shall be no order as to costs.

(K. N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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