

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3855/2014

This the 16th day of March, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Syed Sajid Ali S/o Syed Mahmud Ali,
Dy. SP, CBI Academy (under suspension),
HQ CBI/Head Office, New Delhi,
R/o 200, HIG Arunodaya Apartments,
F-Block, Vikaspuri,
New Delhi-110018.

... Applicant

(By Advocate: Mr. V. P. Singh)

Versus

1. Union of India through
Secretary (P), Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001.
2. Director,
Central Bureau of Investigation,
5-B, CGO Complex, Lodhi Road,
New Delhi-110003.

... Respondents

(By Advocates: Mr. Rajeev Kumar)

O R D E R

Justice Permod Kohli, Chairman :

While posted as Dy. SP, CBI at Port Blair, the applicant was served with a major penalty charge-sheet under rule 14 of the CCS (CCA) Rules, 1965 vide memorandum dated 19.04.2002, communicating him three charges. He was placed under suspension under rule 10(1) vide order dated 08.09.2000 w.e.f. 29.09.2000 in view

of contemplated disciplinary proceedings. His suspension was, however, revoked under rule 10 (5) (c) of the CCS (CCA) Rules, 1965 vide order dated 11/16.11.2004. It is stated that the applicant remained under suspension w.e.f. 29.09.2000 to 08.12.2004 for a period of four years two months and ten days. He re-joined his duties on 09.12.2004, as is evident from order dated 28.12.2004, and posted at CBI/SCR-I, New Delhi (Annexure A-26).

2. The disciplinary proceedings initiated against the applicant resulted in passing of the penalty order dated 08.06.2006 whereby penalty of reduction of his pay by two stages was imposed upon him. An appeal preferred by the applicant against the aforementioned penalty order also resulted in dismissal vide order dated 07.08.2008. Both these orders were challenged by the applicant before this Tribunal in OA No.728/2009 on various grounds, including non-supply of CVC second stage advice. The Tribunal found that the CVC's advice was for the first time sent to the applicant along with the punishment order. The Tribunal vide its judgment dated 22.09.2010 quashed the penalty and appellate orders and the respondents were allowed to proceed against the applicant from the stage where the CVC's advice was served upon the applicant. The respondents were allowed four months' time to complete the process of inquiry. Since further proceedings could not be concluded within the time allowed by the Tribunal, the applicant

filed a contempt petition, C.P. No.868/2011. This contempt petition was, however, disposed of vide order dated 16.12.2011 allowing the respondents to pass the order within a month from the date the CVC advice was received, as the matter had again been sent to CVC for statutory advice, and the CP was closed. It appears that the respondents could not comply with the direction to complete the departmental inquiry proceedings within the time allowed by the Tribunal. The respondents, however, passed order dated 31.05.2013 imposing minor penalty of reduction to a lower stage in the time-scale of pay by one stage till December, 2014, without cumulative effect and not adversely affecting his pension. Instant OA has been filed with the following reliefs:

“a) to regularise the suspension period from 29.09.2000 to 08.12.2004 and payment of full pay & allowances with interest and consequential benefits as per FR-54-B.

b) to grant any other relief or reliefs as may be deemed fit and proper under the circumstances of the case, as the applicant is retiring on 31.01.2015 i.e. within 3 months time.”

3. Admittedly, the period of suspension of the applicant has not been decided by the respondents. In the counter affidavit filed by the respondents, while admitting all the averments made in the OA, it is stated that apart from initiating the disciplinary proceedings, CBI filed criminal proceedings against the applicant vide RC No. 2(A)/2000-ACU.IV on 25.08.2000 on the allegations of possession of

assets disproportionate to the known sources of his income. After investigation, a charge-sheet was filed against the applicant in the Court of Special Judge, CBI Cases on 30.08.2000 u/s 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988. On conclusion of the trial, Special Judge, CBI Cases, Saket District Courts, New Delhi convicted the applicant for both the offences vide judgment dated 27.08.2012, and by a subsequent order dated 28.08.2012 sentenced him to undergo simple imprisonment for a period of one year with fine of Rs.1 lakh, and in default of payment of fine, to further undergo simple imprisonment of four months. On his conviction, the applicant was issued a show cause notice dated 25.10.2012 under rule 19(i) of CCS (CCA) Rules, 1965 giving him opportunity of making representation on the proposed penalty of dismissal from service which would ordinarily be a disqualification for future employment under the Government. The applicant submitted his representation dated 20.11.2012 in response to the show cause notice, and after seeking UPSC's advice which was received on 28.05.2014, the applicant was dismissed from service vide order dated 31.10.2014. Based upon the above, the respondents have taken a stand that since the applicant has been convicted his period of suspension cannot be regularized.

4. In the rejoinder, the applicant has pleaded that on revocation of his suspension, and particularly on a minor penalty

being imposed, the respondents were under a statutory obligation to regularise the period of suspension and give full pay and allowances to the applicant minus the subsistence allowance paid. His further contention is that the applicant was never placed under suspension on account of registration and pendency of the criminal proceedings against him, and thus his conviction in the criminal case has no relation with regularization of the period of suspension. In any case, the applicant has already been dismissed from service on account of his conviction.

5. We have heard the learned counsel appearing for parties at length.

6. It is relevant to notice that the disciplinary proceedings against the applicant were initiated on three articles of charge alleging – (i) that the applicant claimed transfer TA for himself and his family members by falsely including the claim for transportation of luggage; (ii) claimed HRA though he was residing in Government premises; and (iii) demanded a bribe of Rs.5 lakhs. The applicant was placed under suspension on 08.09.2000 on account of contemplated disciplinary proceedings. The suspension order reads as under:

“WHEREAS a disciplinary proceeding against Shri S. S. Ali, Dy. SP/CBI is contemplated.

NOW, therefore, the President, in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and

Appeal) Rules, 1965, hereby places the said Shri S. S. Ali, Dy. SP/CBI under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri S. S. Ali, Dy. SP/CBI should be New Delhi and the said Shri Ali shall not leave the headquarters without obtaining the previous permission of the undersigned."

As far as the criminal case is concerned, even though the FIR was registered against the applicant on 25.08.2000 and charge-sheet was filed on 13.08.2002, the applicant was never arrested in the criminal case. His suspension order was revoked on 16.11.2004. The disciplinary proceedings also culminated in imposition of the minor penalty of reduction to a lower stage in the time-scale of pay by one stage till December, 2014, i.e., for a period of less than two years as the penalty order was passed on 31.05.2013. From a perusal of the suspension order as also the penalty order, we find that the applicant was never placed under suspension on account of criminal proceedings registered against him, and thus the conviction of the applicant in August, 2012 has nothing to do with treating the period of suspension under FR 54-B. Once the suspension was revoked on 16.11.2004, it was obligatory upon the respondents to have passed the order under FR 54-B pending finalization of the disciplinary proceedings. FR 54-B deals with revocation of suspension and treating the period of suspension. This rule 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 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 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 reason 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 in 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 servant shall subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the full 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 finalisation of the disciplinary or 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.

(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.”

7. It is admitted case of the respondents that till date no order under FR 54-B has been passed. This OA was filed on 27.10.2014. In the relief clause (b) the applicant has mentioned that he is retiring on 31.01.2015. He has since retired, but no order has been passed by the competent authority treating the period of suspension under FR 54-B. The case of the respondents is that since the applicant has suffered conviction and awarded sentence, he is not entitled to any amount during the period of suspension otherwise than the subsistence allowance already paid. This contention is not sustainable in law. Once the suspension of a Government servant is revoked pending finalization of the disciplinary proceedings, it is the bounden duty of the competent authority to pass specific order in regard to the pay and allowances to be paid to be Government servant for the period of suspension ending with his reinstatement under FR 54-B (1) read with sub-rule (6). At the time of revocation, the applicant had not suffered any punishment under the disciplinary proceedings. Thus, he is deemed to be reinstated without any condition. His suspension period was required to be treated under FR 54-B (1), as also sub-rule (6). Sub-rule (6) further empowers the competent authority to review on its own motion any order passed earlier under sub-rule (1) after conclusion of the

disciplinary proceedings in accordance with sub-rule (3) or sub-rule (5), as the case may be. Sub-rule (3) provides that where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant shall be paid full pay and allowance subject to provisions of sub-rule (8). Sub-rule (8) merely deals with compliance of other conditions whereunder allowances are admissible, and thus the mandate of sub-rule (3) is where the suspension is found to be unjustified, the Government servant would be entitled to full pay and allowances. Such right of the Government servant is, however, further subjected to the condition that where the delay in conclusion of the proceedings is attributable to the Government servant, the competent authority may order such pay and allowances as may be determined by it. In the present case, admittedly no opinion has been formulated that there has been delay in conclusion of the disciplinary proceedings attributable to the applicant. To the contrary, the two orders passed by the Tribunal indicate that the delay in completion of the disciplinary proceedings was not attributable to the applicant, but was due to administrative or other reasons, which are entirely attributable to the respondents. Under such circumstances, the applicant was entitled to full pay and allowances. Such pay and allowances were, however, subject to review on conclusion of the disciplinary proceedings under sub-rule (6). Neither any opinion under sub-rule (3) nor under sub-rule (5)

has been formulated by the competent authority. At the same time, the applicant having suffered minor penalty, his suspension cannot be said to be unjustified.

8. There is one important aspect which needs to be considered and which should weigh in considering the entitlement of the applicant for grant of full pay and allowances. Initially, the charge memo was issued for major penalty, and a major penalty was imposed, which was set aside by the Tribunal. The authority, on consideration of the inquiry report, itself imposed a minor penalty as the inquiry could not be completed within the prescribed time. Thus, the applicant cannot be held responsible for any delay. He was kept under suspension for a period of four years two months and ten days. Such a long suspension is absolutely unjustified. Since delay is attributable to the respondents, the applicant cannot be punished for the same. We are of the considered opinion that the applicant is entitled to full pay and allowances in the present circumstances, notwithstanding the minor penalty imposed upon him. His conviction in the criminal case is totally unrelated to the disciplinary proceedings. The suspension order dated 08.09.2000 (Annexure A-24) clearly demonstrates that the suspension was on account of contemplated disciplinary proceedings, and not on account of registration or pendency of the criminal proceedings. Thus,

conviction of the applicant in the year 2012 has nothing to do with his suspension.

9. For the above reasons, this OA is allowed. The respondents are directed to treat the period of suspension from 29.09.2000 to 08.09.2004 as on duty and grant full pay and allowances admissible to the applicant as if he was not placed under suspension.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/