

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00156/2016

DATED THIS THE 24<sup>TH</sup> DAY OF JANUARY, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)  
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

R. Narayanaswamy  
S/o Shri Ramaya  
Aged about 57 years,  
Working as Senior Field Assistant,  
O.o: Silk Worm Seed Production Centre  
Central Silk Board,  
Hunsur  
Tamil Nadu

... Applicant

(By Advocate Shri Izzhar Ahmed)

Vs.

1. The Member Secretary  
Central Silk Board  
Ministry of Textiles  
CSB Complex, BTM Layout,  
Hosur Road, Madiwala,  
Bangalore – 68.

2. The Chairperson  
Central Silk Board  
Ministry of Textiles  
CSB Complex, BTM Layout,  
Hosur Road, Madiwala,  
Bangalore – 68.

3. The Director  
National Silk Worm Seed Project  
Ministry of Textiles  
Central Silk Board  
CSB Complex, BTM Layout,  
Hosur Road, Madiwala,  
Bangalore – 68.

4. Union of India  
Through the Secretary  
Ministry of Textiles,  
Udyog Bhavan,  
New Delhi – 11

...Respondents

(By Shri N. Amaresh, Counsel for the Respondent No. 1 to 3)

### ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The present OA has been filed seeking the following reliefs:

- i. Set- aside the fresh charge memo No. CSB-18(50)/85-Es-I (law) dated 08.01.2010 (Annexure-A8), inquiry report No. CSB-1(1)/2010-Vig dated 20.06.2014 (Annexure-A36), penalty of dismissal No. CSB-1(1)/2010-Vig dated 20.02.2015 (Annexure-A38) and the appellate order No. CSB-1(1)/2010-Vig dated 19.08.2015 (Annexure-A41) as illegal, arbitrary, without considering the orders passed by the Hon'ble High Court of Karnataka at Bangalore dated 05.01.2007 in WP-46579/2003 (Annexure-A5), dated 09.03.2009 in Writ Appeal – 240/2007 (Annexure-A6), dated 16.10.2009 in Review Petition – 177/2009 (Annexure-A7) and dated 08.08.2011 in SLP-3208/2010 (Annexure-A9),
- ii. Direct the respondents to consider the case of the applicant and refund the penalty amount deducted from pay with 18% till the payment with consequential benefits.

2. The applicant who was a Senior Field Assistant was placed under suspension and a charge memo for major penalty proceeding was initiated on the applicant on September 2001 and on completion of the proceeding a penalty of compulsory retirement was imposed on him vide order dated 07.02.2003. The same was also confirmed by the Appellate Authority on 22.09.2003. The applicant challenged the said orders before the Hon'ble High Court of Karnataka in WP No. 46579/2003 and the Hon'ble single Judge vide

order dated 05.01.2007 quashed the orders of Disciplinary Authority and Appellate Authority. The respondents have filed a Writ Appeal-240/2007 dated 09.03.2007 directing that proceeding should be submitted to the Disciplinary Authority along with the Inquiry Report since the suspension and penalty orders were passed by incompetent authority. The respondents filed a Review Petition in which direction was issued on 16.10.2009 that Disciplinary Authority should pass appropriate orders. Thereafter the applicant was reinstated in service and a de novo inquiry proceeding was initiated vide charge memo dated 08.01.2010 on the same allegation. The complainant based on whose complaint the original charge memo was issued expired in 27.12.2003. The inquiry that was subsequently taken up did not take into account all the evidences and ignored the representation and defence statement to IO before finalizing the Inquiry Report. Based on the Inquiry Report and the representation submitted by applicant, the Disciplinary Authority imposed a penalty of dismissal from service which shall ordinarily be a disqualification for future employment under the Government. The applicant then filed an appeal before the Appellate Authority and the Appellate Authority modified the major penalty of dismissal from service to that of reduction to a lower stage in the time-scale of pay by two stages. The Appellate Authority also held that he should not be allowed annual increments of pay during the period of such reduction. Further the Appellate Authority held that the intervening period from the date of dismissal from service till the date of rejoining of duty shall be treated as 'dies non' for all purposes. The entire period placed on suspension shall also be treated as 'non duty' for all purposes. Aggrieved by the said order, the applicant has filed the present OA.

3. The respondents have filed a reply statement in which they have submitted that the initial order passed by the Disciplinary Authority was set aside by Hon'ble High Court because it was not decided by the competent authority. Hence de novo inquiry was initiated after the applicant was reinstated. The action to start de novo inquiry is clearly within the purview of the order passed by the Hon'ble High Court of Karnataka. After considering the Inquiry Report and the representation of applicant, the Disciplinary Authority, on considering all respects, passed a detailed order imposing a penalty of dismissal from service. However after going through the appeal filed by the applicant and after giving a personal hearing to him, the Appellate Authority took a sympathetic view and modified the penalty to that of reduction to a lower stage in the time-scale of pay by two stages and with further direction that he will not get annual increments of pay during the period of such reduction. The respondents submit that in spite of the gravity of the charges against the applicant, the Appellate Authority took a sympathetic view and imposed a modified penalty. Therefore there is nothing irregular in the order passed by the Appellate Authority.

4. The applicant has filed a rejoinder practically reiterating the points made in the Original Application.

5. During the hearing, the learned counsel for the applicant mainly emphasized on the Appellate Authority's order, specifically pertaining to order of 'dies non' for the period between the date of dismissal from service based on penalty order dated 20.02.2015 till the date of his rejoining duty and treating the period of suspension as 'non duty'. He submits that when the

applicant was reinstated by the respondents vide order dated 09.09.2011 pursuant to the order of the Hon'ble High Court, it was clearly stated in the said order that the suspension period involved in the disciplinary case shall be treated as 'duty' for all purposes. Therefore treating the same period as 'non duty' by the Appellate Authority is clearly unjustified. Secondly the order of the Disciplinary Authority removing him from service was modified by the Appellate Authority. When the order of the Disciplinary Authority itself was modified, treating the period from his dismissal till reinstatement as 'dies non' also defies logic. The learned counsel for the applicant however did not agitate regarding modified penalty of reduction to a lower stage in the time-scale of pay by two stages. The learned counsel for the respondents only submitted that the order of the Appellate Authority was based on de novo proceeding and after considering the order of the Disciplinary Authority and the appeal filed by the applicant. Since the suspension period was involved in respect of these charges, the order passed by the Appellate Authority is not irregular.

6. We have carefully considered the facts of the case and submissions made by either side. From the records and submissions, it is evident that initially, based on the departmental proceeding, the applicant was compulsorily retired by an order dated 07.02.2003. The applicant agitated the matter before the Hon'ble High Court of Karnataka and the said penalty order was set aside as it was passed by an incompetent authority. However the Hon'ble High Court gave liberty to respondents to review the matter in accordance with law. Thereafter the respondents issued an order dated

09.09.2011 reinstating the applicant in service. Para 3 of the said order reads as follows:

*“And whereas the undersigned, in compliance with the said Judgments/Orders of the Court of Law, hereby orders for the reinstatement of Shri R. Narayanaswamy to the Board’s service as Senior Field Assistant and for his posting at P2-Basic Seed Farm, National Silkworm Seed Organisation, Central Silk Board, Yelagiri Hills (Tamil Nadu) with all consequential benefits, i.e. Back Wages for the relevant period, viz. the period commencing from the date of his Compulsory Retirement from the Board’s service that was ordered vide the Penalty Order dated 07.02.2003 (of the Director, NSSO, Bangalore) to the date by which he rejoins the service subsequent to his reinstatement; his suspension period involved in the Disciplinary Case shall be treated as **“Duty”** for all purposes; the pensionary benefits that have already been paid to him by the Central Silk Board shall be adjusted while paying him the Back Wages. However, his reinstatement to the Board’s service has been ordered subject to the de novo inquiry that has been initiated against him by the Member Secretary, Central Silk Board / the Disciplinary Authority (by virtue of the aforesaid liberty granted to the Central Silk Board by the Court of Law) vide Memorandum / Charge Sheet No. CSB – 18 (50) / 85 – ES-1 (LAW) dated 08.01.2010.”*

7. Thereafter a de novo inquiry was ordered and following the inquiry proceeding and the Inquiry Report holding charges as proved the applicant submitted a detailed representation against the Inquiry Report and the Disciplinary Authority after considering the representation of the applicant passed a detailed order imposing the penalty of dismissal from service which shall ordinarily be disqualification for future employment under the Government. The applicant then filed a detailed appeal to the Appellate Authority. The Appellate Authority also gave a personal hearing to the applicant as sought by him. After detailed consideration of the representation and also his hearing the Appellate Authority passed the following order:

*“7) Now, therefore, the Appellate Authority, by taking a lenient / sympathetic view, hereby orders the reduction of the Major Penalty of ‘Dismissal from Service’ that has been imposed on the said Shri R. Narayanaswamy [by the Disciplinary Authority vide Penalty Order No.*

*CSB-1 (1) / 2010 – VIG. Dated 20.02.2015] to that of ‘Reduction to a lower stage in the time-scale of pay for a specified period’ which is the statutory Penalty specified under Rule 11 (v) of CCS (CCA) Rules, 1965. Accordingly, the said Major Penalty of ‘Dismissal from Service’ hereby stands reduced / modified to that of **‘Reduction to a lower stage in the time-scale of pay’ by two stages.** This reduced Penalty imposition shall naturally / obviously come into effect from the date of the Penalty Order, i.e. 20.02.2015, and it will be in force till the date of his retirement on superannuation, i.e. upto 31.08.2018, viz. for a period of 3 Years 6 Months & 9 Days. It is further ordered hereby that he **would not** earn his annual increments of pay during the period of such reduction ; the intervening period between the date of his Dismissal from Service (ordered vide the said Penalty Order dated 20.02.2015) till the date of his joining duty consequent on his reinstatement to Board’s service vide this Order (with the above said reduced / modified Penalty) shall be treated as ‘DIES NON’ for all purposes ; the entire period for which he was placed under suspension in the Case (i.e. in connection with the said assault episode that had taken place on 06.07.2001) shall be treated as ‘NON DUTY’ (**‘Suspension’** only) for all purposes. Consequent on his reinstatement to the Board’s service with the imposition of the said reduced / modified Penalty, he is posted at Sericulture Service Centre, Central Silk Board, Bagalur (Tamil Nadu). He is advised to immediately report for duty at the said place of posting.”*

8. On going through the Inquiry Report and the order of the Disciplinary Authority and Appellate Authority, we are of the view that the modification of the major penalty of dismissal from service to reduction to a lower stage in the time-scale of pay by two stages till the retirement of the applicant on superannuation and ordering that he will not get annual increments of pay during the period of such reduction appears justified and does not call for any interference. The applicant has not also emphasized against this aspect of order during the hearing. However the main issue raised relates to treatment of the original suspension order which the Appellate Authority ordered to be treated as ‘non duty’ and treating the period between the dismissal order and reinstatement as ‘dies non’.

9. As already mentioned, at the time of reinstatement of the applicant in 2011, the respondents had clearly ordered for treating the period of suspension as 'on duty'. Having done so, a subsequent order by Appellate Authority to treat the same period as 'non duty' appears as unjustified. Similarly the penalty of dismissal from service passed by Disciplinary Authority was modified by the Appellate Authority. The period of absence from dismissal till reinstatement cannot be attributed to the applicant. Since the dismissal order itself stood modified, it will be unfair to penalize the applicant by treating the said period as 'dies non'. Hence in our view this decision is also unjustified.

10. Therefore on detailed consideration we hold that the order of the Appellate Authority as far as treating the suspension period as 'non duty' and for treating the intervening period from the date of dismissal from service till the date of rejoining duty consequent on reinstatement by the Appellate Authority's order as 'dies non' is completely unjustified and cannot be sustained. Therefore we set aside the Appellate Authority's order as far as treatment of the intervening period between dismissal till the date of rejoining duty consequent on reinstatement as 'dies non' and also the direction to treat the period placed on suspension in the case as 'non duty'. However the other portion of the order of the Appellate Authority, i.e., reduction to a lower stage in the time-scale of pay by two stages upto 31.08.2018 and the order that he would not earn annual increments of pay during the period of such reduction shall stand.

11. The OA is accordingly disposed of in terms of the aforesaid directions. No order as to costs.



(P.K. PRADHAN)  
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)  
MEMBER (J)

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