

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.29 of 2010

Jabalpur, this Friday, the 7th day of September, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

K.S. Hunjan S/o Late Shri Chamkaur Singh
Aged about 52 years R/o Behind Prem Nagar
Post Office, Besides Dr. Dawar's house
Prem Nagar, Jabalpur (M.P.) 482001
(By Advocate –**Shri M.K. Verma**)

-Applicant

V e r s u s

1. Union of India, Through its Secretary
Ministry of Defence, New Delhi, 110001

2. The Director General, Ordnance Factory Board
10-A Shaheed Khudiram Bose Marg Kolkatta 411029

3. The General Manager, Gun Carriage Factory
Jabalpur (M.P.) 482001

- Respondents

(By Advocate –**Shri N.K. Mishra**)

(Date of reserving the order:03.08.2018)

O R D E R

By Navin Tandon, AM.-

The applicant is mainly aggrieved by considering the intervening period from 09.10.1997 to 06.05.2007 as not spent on duty vide order dated 24.11.2009.

2. The brief facts of the case are that the applicant while working as Turner Skilled was charge-sheeted under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 vide memo dated 22.02.1994. He was placed under

suspension vide order dated 22.01.1994. However, his suspension was revoked vide order dated 25.04.1995, but the applicant joined his duties on 02.05.1995. After conclusion of enquiry, punishment of removal from service was imposed vide order dated 08.10.1997. Against the order of removal, the applicant had approached this Tribunal, which turned down the prayer for relief. However, aggrieved by the order of the Tribunal, the applicant had approached the Hon'ble High Court in Writ Petition No.5534/2002. The said Writ Petition was allowed vide order dated 25.4.2007, by quashing the appellate order, order of punishment and the enquiry report, with liberty to proceed further in the enquiry. Thereafter, vide order dated 07.05.2007 (Annexure A-3) the applicant's removal was cancelled and he was reinstated in service on 07.05.2007 (Annexure A-3). Thereafter, further enquiry was conducted and the applicant was imposed the penalty of reduction of pay by two stages for a period of two years with cumulative effect vide order dated 30.07.2008 (Annexure A-12).

2.1 A show cause notice dated 15.03.2009 (Annexure A-14) was issued to the applicant for regularizing the intervening period. The applicant submitted his reply dated 15.04.2009 (Annexure A-15) to the said cause notice. Vide impugned order dated 24.11.2009 (Annexure A-17) the competent authority has regularized the

intervening period from the date of his removal from 09.10.1997 to date of his reinstatement on 06.05.1997 as not spent on duty.

3. The applicant in this Original Application has prayed for the following reliefs:-

“(8).Relief Sought:

(8.1) This Hon’ble Court may kindly be pleased to quash the order dated 24.11.2009 (Annexure A-17) in the interest of justice.

(8.2) That this Hon’ble Court may further be pleased to direct the respondents to grant the pay in accordance with the rules and regularization to the applicant with interest of 18% w.e.f. the date of reinstatement i.e.7.5.2007.

(8.3) This Hon’ble Court may further be pleased to direct the respondents to grant promotion to the applicant from the date his juniors have been promoted with all consequential benefits.

(8.4) That this Hon’ble Court may kindly be pleased to direct the respondents to do proper pay fixation of the applicant calculating all the increments during the period as spent on duty.

(8.5) That this Hon’ble Tribunal may, further be pleased to award the cost of instant lis in favour of the applicant.

(8.6) Any other relief(s), direction(s), instruction(s), which this Hon’ble Tribunal deem fit and proper looking to the above facts and circumstances of the case be also awarded in favour of applicant in the best interest of justice.”

4. The contention of the applicant is that when the applicant was removed from service he was getting subsistence allowance on an enhanced rate of 50%. After quashing of punishment order of removal by the Hon’ble High Court, the applicant was reinstated in service. The applicant submits that in terms of Rule 10(4) of the CCS (CCA)Rules,1965, the applicant should have been treated

under deemed suspension from the date of removal till the date of reinstatement.

4.1 The applicant has further submitted that in terms of FR 54-A(2) the applicant is also entitled for payment of subsistence allowance during the intervening period from date of removal to date of reinstatement, and in terms of provisions of sub-rule (7) of FR 54 the amount so determined should not be less than the subsistence allowance and other allowances under FR 53.

4.2 The applicant has further submitted that the applicant has been reinstated back by the respondents in the year 2007 on the original pay which he was receiving at the time of removal from service, without calculating the increments which he would have received during the interregnum period and the applicant is still continuing with the same fixation of pay and that further deduction of pay by two stages as per the order dated 30.07.2008, meaning thereby the applicant has been indirectly inflicted with a penalty of stoppage of 12 increments with cumulative effect which is per se illegal, arbitrary and bad in the eyes of law.

4.3 The applicant further submits that the persons who were working along with the applicant are now working on the post of Master Craftsman and the applicant is still languishing on the post of Turner Skilled.

4.4 The applicant further submits that he has also not been granted the benefit of ACP Scheme in accordance with the recommendations of the Sixth Pay Commission.

5. By filing their reply the respondents have simply submitted that the applicant's absence was regularized in accordance with the provisions contained in sub-rule (5) of FR 54B as he was not exonerated on merits and reinstatement by the court of law was because of non-compliance of the provisions of CCS(CCA) Rules and the departmental proceedings culminated in the imposition of major penalty, hence full pay and allowance was not granted.

5.1. The respondents have further stated that the intervening period was not treated as spent on duty except for pensionary benefits. Since the applicant was under the currency of penalty till 30.07.2010, his case was not considered for promotion and ACP.

6. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. We find that in the pleadings of the Original Application the applicant has specifically averred about non-observance of provisions of Rule 10(4) of the CCS(CCA)Rules, as well as the provisions of FR 54-A(2)(i) while regularizing the intervening period as in terms of both these provisions the applicant is entitled

for the subsistence allowance during the intervening period from the date of removal to date of reinstatement. However, the respondents are totally silent on this aspect and have not stated anything in this regard while filing their reply.

8. We may reproduce herewith the provisions of Rule 10(4) of the CCS (CCA) Rules, as well as the provisions of FR 54-A(2)(i) as under:

Rule 10(4) of the CCS(CCA) Rules, 1965:

“(4)Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case”.

FR 54-A 2(i) read thus:

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of [Article 311](#) of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removal or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as

the competent authority may determine, after giving notice to the Government servant 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:

Sub-rule (7) of FR 54 reads thus:

(7) The amount determine under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53”.

9. On perusal of the both the provisions of Rule 10(4) of the CCS (CCA) Rules, as well as the provisions of FR 54-A(2)(i) we find force in the contention of the applicant that since the applicant was reinstated in service, after quashing of punishment order of removal by the Hon'ble High Court, therefore, in terms of the provisions of Rule 10(4) of the CCS (CCA) Rules, 1965 he should have been treated under deemed suspension from the date of removal till the date of reinstatement. Accordingly, the respondents are required to issue an order of deemed suspension of the applicant during the intervening period from the date of removal to date of reinstatement.

10. As regards the reliance placed by the applicant on the decisions of this Tribunal in the matters of **Jagdish Prasad Rajak Vs. Union of India and others**, OA No.651 of 1999 decided on 16.02.2004 (Annexure A-9), and of Hon'ble High Court of Madhya Pradesh in the matters of **Jawaharlal Jain** (Misc.Petition

No.1132/85 decided on 02.05.1987 (Annexure A-8) for the analogy that a suspended employee is entitled for annual increments, we may observe that the Hon'ble Supreme Court in the case of **State of Punjab Vs. Jaswant Singh Kanwar** (2014) 13 SCC 622 has held thus:

(10). The only issue which arises for consideration is whether an official placed under suspension by the disciplinary authority is entitled for grant of increments during the period of suspension.

(11). To analyse the above proposition, the dictionary meaning of suspension is required to be set out. The term "suspend" would mean "to debar usually, for a time, from any privilege, the execution of an office or from the enjoyment of an income". It is temporary deprivation of office or privilege. By reason of suspension, the powers, functions and privileges remain in abeyance but one continues to be subjected to the same discipline and penalties and to the same authorities. The above definition makes it clear that during the period of suspension all the privileges and benefits attached to the office are temporarily suspended unless the period of suspension is considered as the period spent on duty.

(12). In the instant case, the High Court has concurred with the finding of the disciplinary authority and has come to the conclusion that the period of suspension is not the period spent on duty.

*(13). "Increment" has a definite concept in service law jurisprudence. It is an increase or addition on a fixed scale; it is a regular increase in salary on such a scale. As noted by this Court in **SBI v. Central Govt. Labour Court, (1972) 3 SCC 595**, under the labour and industrial laws, an increment is when in a timescale of pay an employee advances from the lower point of scale to the higher by periodic additions. In other words, it is addition in the same scale and not to a higher scale. An increment is an incidence of employment and an employee gets an increment by working the full year and drawing full salary. During the*

period of suspension, the contract of service remains suspended. The order of suspension by the departmental enquiry has the effect of temporarily suspending the relations between the master and servant with the consequence that the servant is not bound to render service and, therefore, the petitioner as an employee is not entitled to increments during this period which is taken as period not spent on duty”.

11. On a perusal of above extract of the decision of the Hon’ble Supreme Court in the matters of **Jaswant Singh Kanwar** (supra) we find that in the said matter their lordships have clearly held that an employee is not entitled to increments during the suspension period which is taken as period not spent on duty. In the instant case also the respondents have treated the intervening period between the date of removal to date of reinstatement as period not spent on duty. Thus, in view of the settled legal position as narrated above, we are of the considered view that the applicant is not entitled to increments during the intervening period between the date of removal and date of reinstatement.

12. As regards other benefits, since the order of punishment still holds good, the applicant can be entitled for other benefits only in terms of rules. The applicant has not brought to our notice violation of any of the rules or instructions issued in this regard.

13. Accordingly, this Original Application is partly allowed. The respondents are directed to issue an order of deemed suspension of the applicant for the intervening period from the date of removal to

date of reinstatement in terms of the provisions of Rule 10(4) of the CCS (CCA) Rules, 1965, and thereafter pay him the subsistence allowance. This exercise should be completed within a period of 90 (ninety) days from the date of communication of this order. Even at the cost of repetition, we clarify that no increment would be payable to the applicant during the intervening period between date of removal and date of reinstatement. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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