

OA.No.170/00453/2017/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00453/2017

DATED THIS THE 07TH DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

S.S. Lakshmana

57 years

S/o Late Somalappa,

Postal Assistant,

Bellary HO – 583 101

Residing at 'Sri Hari Nivas', 1st Main,

3rd Cross, K.R. Nagar,

Harihar – 577 601

.....Applicant

(By Advocate Shri B. Venkateshan)

Vs.

1. The Union of India,
Represented by the Secretary,
Department of Posts,
Dak Bhavan,
New Delhi – 110 001

2. The Chief Post Master General,
Karnataka Circle,
Bangalore – 560 001

3. The Director of Postal Services,
N.K. Region,
Dharwad – 580 001

4. The Superintendent of Post Offices,
Bellary Division,
Bellary – 583 102

....Respondents

(By Shri V.N. Holla, Senior Panel Counsel)

ORDER

(HON'BLE SHRI DINESH SHARMA, MEMBER (A))

The applicant's case, in brief, is that he was awarded a punishment of compulsory retirement by memo dated 18.01.2010 which was confirmed in appeal by the CPMG. The applicant had filed an OA (No. 270/2010) before this Tribunal which quashed the appellate authority's order with direction to take a fresh decision. Following the imposition of the same punishment vide memo dated 06.09.2013, the applicant filed another OA No. 1186/2013 in which the Tribunal quashed the order of the Disciplinary Authority. Following this, by order dated 11.08.2014 the applicant was reinstated in service,

however, despite his repeated representations, he has not been granted pay and allowance for the period 18.01.2010 to 16.08.2014. A denovo enquiry was conducted subsequently vide memo dated 30.11.2016 and a punishment of reduction of pay by 5 stages and recovery of Rs.44,493/- in 24 instalments has been imposed on him. His appeal against that order was yet to be finalized (by the time he filed this OA). The applicant has sought the relief for grant of pay and allowance for the period for which he remained out of service.

2. The respondents, while not disputing with the chronology of facts mentioned by the applicant, have denied that the applicant can have any claim to get the pay and allowance for the period for which he remained out of service. They claimed that the appeal of the appellant was still pending (at the time of filing the reply) and thus his coming before the Tribunal was premature. During the pendency of this case before the Tribunal, it was brought to the notice of the Tribunal that the appeal of the appellant was rejected by an order dated 20.01.2018 confirming the penalty imposed by the Disciplinary Authority. The respondents have also claimed that the denovo enquiry has found the appellant guilty of severe infringement and therefore, though he was ordered to be reinstated, he can have no claim to get this period treated as duty. The applicant has been made available all reasonable opportunities to defend his case at every stage and therefore there has been no denial of justice. Any delay in conclusion of enquiry is attributable to applicant and therefore he cannot claim to get any beneficial treatment on account of his own failure in co-operating with the conduct of

enquiry. The rejection of the applicant's claim for pay and allowance during the period for which he remained out of service is based on Fundamental Rules (FR 54-B) and therefore the OA needs to be dismissed.

3. The applicant in his rejoinder has admitted that though his appeal was rejected, he had not been communicated the order of rejection till date (30.08.2018). He also averred that his case should be dealt under provisions of FR 54 and not FR 54-B.

4. We have gone through the pleadings and heard the counsels of both the sides. The main issue is whether the applicant is entitled to get full pay and allowance for the period for which he remained out of service. The concerned rules on this matter are reproduced below:

FR 54 and 54 [2] reads as follows:

“FR-54 [1] [a] When the Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, while under suspension or not, the authority competent to order reinstatement shall consider and make specific order regarding the pay and allowances to be paid to the Government servant for the period of absence from duty and [b] whether or not the said period shall be treated as a period spent on duty. FR-54[2] provides that if the Government servant has been fully exonerated, be paid full pay and allowances to which he has been entitled, had he not been compulsorily retired.”

FR 54-B reads as follows:

“The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as “non-duty”.

If no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as ‘non-duty’. In such an event, the past service (i.e. service rendered before dismissal, removal, compulsory retirement or suspension) will not be forfeited.”

5. A plain reading of these rules will make it clear that the payment of full pay and allowances for the period is not a matter of right and will depend on the judgment of the appropriate authority about how it should be treated. Since the respondents have arrived at that judgment after conduct of a full fledged denovo enquiry during which the applicant had all the opportunity to defend himself and since his appeal against this order has also been rejected, we see no reason to interfere in this matter.

6. The OA is therefore not allowed. A copy of the appellate authority's order, if still not supplied to the applicant, should be given to the applicant within 15 days of this order. We grant the applicant liberty to agitate against this order if he still finds valid reasons to do so. No order as to costs.

(DINESH SHARMA)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00453/2017

Annexure A1 Copy of the SPOs memo dated 03.02.2004

Annexure A2 Copy of the SPOs memo dated 18.07.2007

Annexure A3 Copy of the DPS memo dated 11.09.2010

Annexure A4 Copy of the applicant's appeal dated 19.05.2010

Annexure A5 Copy of the CPMG memo dated 28.10.2010

Annexure A6 Copy of the Central Administrative Tribunal order in O.A. No.

270/2010 dated 02.07.2013

Annexure A7 Copy of the PMG memo dated 06.09.2013

Annexure A8 Copy of the Central Administrative Tribunal order in O.A. No. 1186/2013 dated 06.06.2014

Annexure A9 Copy of the SPOs memo dated 11.08.2014

Annexure A10 Copy of the SPOs memo dated 11.08.2014 regarding posting orders

Annexure A11 Copy of the SPOs memo dated 30.11.2016

Annexure A12 Copy of the applicant's representation dated 16.02.2017

Annexure A13 Copy of the applicant's appeal dated 02.09.2014

Annexure A14 Copy of the SPOs letter dated 25.09.2014

Annexure A15 Copy of the DPS letter dated 05.03.2015

Annexures with reply statement

Annexure-R1: Copy of the ASPO letter dated 01.10.2014

Annexure-R2: Copy of the SPOs letter dated 14.10.2014

Annexure-R3: Copy of the letter No. NKR/LC/522/2013 dated 16.10.2014

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