

**Central Administrative Tribunal,
Mumbai Bench, Mumbai.**

O.A.No. 698/2013

Dated this Wednesday the 14th day of November, 2018.

**Coram : Dr.Bhagwan Sahai, Member (A)
Shri R.N. Singh, Member (J).**

Subash Wig, working as
Appraising Officer,
At Jawaharlal Nehru Custom
House, Nhava Sheva and
residing at Flat No.35,
Rameshwar Bhavan, Plot No.284,
Flank Road, Sion (E),
Mumbai - 400 022. . .Applicant.

(By Advocate Shri G.K. Masand).

Versus

1. Union of India, through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. Commissioner of Customs (General),
New Custom House, Ballard Estate,
Mumbai - 400 001. . .Respondents.

(By Advocate Shri R.R. Shetty).

**Order reserved on : 24.09.2018
Order delivered on : 14.11.2018.**

**O R D E R
Per : Dr.Bhagwan Sahai, Member (A) .**

1. In this O.A. the applicant Shri Subash Wig working as Appraising Officer at Jawaharlal Nehru Custom House, Nhava Sheva, Department of Customs seeks -
(i) . examination of legality of the

communication dated 21.07.2011 from Asst. Commissioner of Customs, Personnel & Establishment, New Customs House, Mumbai to Dy. Commissioner of Customs (Appraising) Mumbai and set it aside;

(ii). direction to the respondents to regularize entire period of his suspension from 21.10.1999 to 22.07.2001 as period spent on duty and to pay him the amount due and payable after deducting the subsistence allowance paid to him;

(iii). direction to the respondents to pay him interest on delayed payment @ 18% p.a.; and

(iv). direction to the respondents to sanction and pay him annual increments for the period of his suspension as well as cost of this application.

2. Summarized facts:

2(a). When the applicant was working as Preventive Officer, in view of a case registered against him by CBI, he was suspended vide order dated 15.05.1997 for contemplated disciplinary proceedings. Since the CBI case against him was closed on 29.10.1998 and as no charge-sheet could be issued to him, his suspension was revoked by order of 17.06.1998. He was promoted on adhoc basis as Appraising Officer on 30.11.1998. He was again suspended vide order dated 21.10.1999 and sought to be reverted on 01.11.1999 to the post of Preventive

Officer. He challenged this order by filing O.A.998/1999 before this Bench of the Tribunal, which was decided on 30.04.2001 setting aside the reversion order and directing that he would be deemed to have continued/would continue in the rank of Appraiser till completion of the disciplinary proceedings.

2(b). By filing another O.A.324/2000, the applicant sought quashing of his suspension order of 21.10.1999. During hearing of the O.A., the respondents mentioned that it had been decided on 05.10.2000 to revoke the suspension order of the applicant and based thereon the O.A. was disposed of on 06.10.2000.

2(c). The applicant reported to join his duty as Appraising Officer on 13.10.2000 but inspite of his subsequent request also, he was not allowed to join the duty on the post of Appraising Officer. In view of this, the applicant submitted a legal notice to the respondents on 09.06.2001 and thereafter filed a Contempt Petition No.46/2001 in O.A.324/2000 before this Bench.

2(d). On 22.07.2001, the applicant was asked to join the duty immediately and he joined on 23.07.2001 as Appraising Officer at New Customs House, Mumbai. By order dated 01.08.2001, pay

fixation order was issued for him in which disbursement of subsistence allowance from 21.10.1999 to 22.07.2001 was mentioned and payment of normal salary with effect from 23.07.2001. However, subsequently the respondents have treated the period from 06.10.2000 to 22.07.2001 as of unauthorised absence of the applicant.

2(e). On 02.08.2001 the applicant requested for passing order under F.R.54-B regulating his pay and allowances for the period of his suspension. He submitted a representation on 16.01.2002 against payment of salary to him which was the basic pay of the new entrants in the appraising officers cadre, although he had completed 3 years on the promoted position since 1998.

2(f). On 23.01.2002 the respondents communicated to the applicant that decision on regularization of his suspension period from 15.05.1997 to 21.06.1998 and from 21.06.1999 to 22.07.2001 had not yet been received. Based on the decision of this Tribunal dated 06.10.2000 in O.A.324/2000, the applicant again requested the respondents to implement fully the order of the Tribunal. However, it is claimed that the respondents did not take any action on it.

2(g). By decision of Special Judge on 28.10.2009, the applicant was acquitted in Criminal Case

No.69/1999 registered under Prevention of Corruption Act, 1988. Thereafter on 25/28.06.2010, the Commissioner of Customs (General) issued an order to treat the period of his suspension from 21.10.1999 to 05.10.2000 as on duty with full pay and allowances (Annex A-14, page 66). Then again on 4/5.08.2010, the Commissioner of Customs (General) issued another order to treat the period of suspension of the applicant from 15.05.1997 to 17.06.1998 as period spent on duty (Annex A-15, page 67). On 28.08.2010, the applicant requested the Dy. Commissioner of Customs (In-charge Appraising), New Custom House, Mumbai for giving effect to the orders dated 25/28.06.2010 and 04.08.2010 to treat his suspension period as on duty and correct discrepancy in his basic pay. This was replied on 18.01.2011 by Asstt. Chief Accounts Officer (Appraising) stating that his absence from duty from 05.10.2000 to 23.07.2001 was yet to be regularized.

2(h). Then on 21.07.2011, the applicant was informed by the Asstt. Commissioner of Customs that the period of his absence from 05.10.2000 to 23.07.2001 was of unauthorized absence and decision to regularize it can be taken only on application to be made by him. The applicant claims that in view of payment of subsistence allowance to him from

22.10.1999 to 22.07.2001, his period of absence from 05.10.2000 to 23.07.2001 subsequently cannot be treated by the respondents as of unauthorized absence. Since he did not receive reply to the letter dated 03.08.2011, he filed an appeal to Chief Commissioner of Customs, New Custom House to set aside the order of 21.07.2011 which mentioned the period of his absence from 05.10.2000 to 23.07.2001 as of unauthorized absence and requested that the entire period from 21.10.1999 to 22.07.2001 should be treated as of suspension and thereby be regularized as spent on duty. However, the Appellate Authority has not passed any order on his appeal. Hence this O.A.

2(i). The applicant has also filed M.A.863/2013 on 19.11.2013 for condonation of delay claiming that the subject matter of this O.A. was a continuous cause of action and filing of the O.A. be considered as within the period of limitation but at the same time also requested that the delay of 15 months in filing it may be condoned and the O.A. may be disposed of on merits.

3. Contentions of the parties:

3(a). In the rejoinder filed by the applicant on 05.05.2015, he has reiterated all the contents of the O.A., has denied his unauthorized absence from

05.10.2000 till 23.07.2001, claims that he did not refuse to join duty at any time, the respondents allowed him to join duty on 23.07.2001 only after initiation of contempt proceedings by the Tribunal for non-compliance of its earlier order in O.A.324/2000, the respondents have treated the period from 05.10.2000 to 23.07.2001 as his unauthorized absence without showing any reasons and mere non-compliance by him of the reversion order dated 05.10.2000 cannot become the reason for treating that period as of unauthorized absence.

The applicant has further contended that-

3(b). the order of the Tribunal dated 30.04.2001 has not been implemented perfectly by the respondents as per rules as claimed by them. When he was suspended on 21.10.1999, he was holding the post of Appraiser and, therefore, on revocation of his suspension, he could not have been posted as Preventive Officer;

3(c). after the order of his reversion to the post of Preventive Officer from 01.11.1999, there was no specific order passed by the Competent Authority asking him to resume duty on that post as is claimed by the respondents. As per F.R.54-B while regularizing suspension period, the Competent Authority is to consider the entire period of

suspension and the nature of suspension needs to be specified to justify the suspension partly or fully;

3(d). the respondents have not segregated any period of his suspension which will not qualify as such. The Tribunal had asked the respondents to post him on the post of Appraiser which he was holding at the time of the suspension and not to post him on a lower post i.e. of Preventive Officer. The subsistence allowance paid to him for the post of Appraiser during his suspension from 01.11.1999 to 23.07.2001 was not erroneously done as now wrongly claimed by the respondents.

The respondents in their reply filed on 27.03.2014 and during hearing of arguments have contended that -

3(e). the issue to be decided in this O.A. is how to treat the period of absence of the applicant from 05.10.2000 till 23.07.2001 when he remained unauthorizedly absent. In the order dated 21.07.2011, that period has been treated as of unauthorized absence. After revocation of his earlier suspension on 17.06.1998, the applicant was promoted as Appraising Officer on adhoc basis on 30.11.1998, but he was again suspended on 21.10.1999 and, therefore, from the post of adhoc promotion he was reverted to the post of Preventive Officer vide

order dated 01.11.1999. But that order of his reversion was set aside by the Tribunal in O.A.998/1999 on 30.04.2001;

3(f). even after revocation of his suspension the applicant refused to join duty as per the order of 05.10.2010 and remained absent from 05.10.2010 till 23.07.2001. This period of his unauthorized absence cannot be treated as on duty. Therefore, this O.A. should be dismissed with cost;

3(g). the applicant also did not apply for regularization of his period of unauthorized absence as was communicated to him vide order dated 21.07.2011 because of which his salary, increments and other dues could not be finalized in time;

3(h). the allegation made by the applicant against the respondents about not allowing him to join duty are misconceived. The Disciplinary Authority had revoked the suspension of the applicant on 05.10.2000 and mere erroneous payment of subsistence allowance to him for the period from 05.10.2000 to 23.07.2001 does not entitle him to claim this additional period of absence as continuation of his earlier suspension period;

3(i). the order of the Tribunal dated 30.04.2001 was accepted by the respondents and accordingly the applicant was asked to join duty which he did only

from 23.07.2011;

3(j). the applicant has challenged the impugned order of 21.07.2011 by filing this O.A. in October, 2013 i.e. after almost 27 months, whereas in his application for condonation of delay, he has claimed the delay of about 15 months. For this delay in his application, he has not submitted any satisfactory justification except mentioning that as a model employer he was expecting review of the order of 21.07.2011 which would have caused no prejudice to the respondents. Hence on this very ground of limitation, this O.A. deserves to be dismissed. Because of all these reasons stated above, the O.A. should be dismissed;

4. Analysis and conclusions:

We have perused the application memo, rejoinder filed by the applicant, reply of the respondents and the arguments advanced by the counsel on both the sides.

4(a). It is revealed from facts of the case that the impugned communication dated 21.07.2011 is in fact only a clarification about unauthorised absence of the applicant during certain period (05.10.2000 – 23.07.2001), and mentioning how that can be regularised i.e. only on application to be made by him. Thus there seems no scope for him to agitate

against the impugned letter dated 21.07.2011. Also this O.A. has been filed belatedly i.e. after 27 months of the impugned order without satisfactory justification for the delay. The contention of the respondents in this regard is correct. Because of this, this O.A. deserved to be rejected at admission itself. As per the above communication of 21.07.2011, the applicant did not apply for its regularization. Instead he has indulged in avoidable litigation and also seems to have intentionally attempted to misread the two orders dated 25.06.2010 and 04.08.2010 regularising his earlier two suspension periods. These orders were obviously pertaining to the specific two periods of his suspension i.e. from 15.05.1997 to 17.06.1998 and from 21.10.1999 to 05.10.2000. In view of these facts, the claim of the applicant for also treating the period from 05.10.2000 to 23.07.2001 as that of his suspension is not justified.

4(b). Although on adhoc basis the applicant had been promoted as Appraiser vide order dated 30.11.1998, vide order dated 01.11.1999, he was reverted from his adhoc promotion and posted as Preventive Officer. On challenge to this posting, the Tribunal vide order dated 30.04.2001 set aside that posting order and directed that since he was

holding the post of Appraiser at the time of his suspension, he would be deemed to be Appraiser till conclusion of the departmental proceedings. When exactly the departmental proceedings got concluded is not known, as neither of the parties has brought this information on record.

4(c). From these details of the case it appears that both the parties have made persistently strenuous efforts more on technicalities which could have been avoided. While the respondents insisted that on his reversion from the adhoc promotion, the applicant should join on the reverted post as Preventive Officer, the applicant continued to insist on joining only on the adhoc promotion post of Appraiser which he hold at the time of his suspension.

4(d). As per the order of the Tribunal dated 30.04.2001, it was directed that he would be deemed to continue as Appraiser during his suspension till conclusion of the departmental enquiry. Hence that order has to be taken as valid till the departmental enquiry got concluded. In view of this, the respondents ought to have either modified the posting order of the applicant as Preventive Officer dated 05.10.2000 so as to reinstate him as Appraiser or they could have challenged that order of this

Tribunal. However, they posted him as Appraiser only on 22.07.2001.

4(e). In fact in the reply of Dy. Commissioner of Customs (Appraising) (Page 39) dated 09.01.2002, the period of suspension of the applicant has been mentioned as from 21.10.1999 to 22.07.2001. Also the subsistence allowance seems to have been paid to the applicant for this entire period of which he is now trying to take advantage. All this reveals that the respondents have handled this case in a very casual manner, there was no proper coordination and full application of mind among different officers dealing with various aspects of this case resulting in taking of contradictory view on the period from 05.10.2000 to 23.07.2001 and now they take the plea of payment of subsistence allowance for that period of absence of the applicant as having been made by mistake.

4(f). But the true facts of the matter are that for the period from 05.10.2000 to 22.07.2001, the respondents had not issued any order of suspension for the applicant but he himself remained absent, did not perform any official duty and now claims to be treated as under suspension so that in turn he can get that period regularised as on duty for payment of salary and other benefits similar to the

earlier two specific periods of his suspension. This claim of the applicant has no merit and justification, hence it cannot be accepted. In fact it is an attempt by him to draw full salary and other benefits for the period of his absence from duty camouflaged as regularization of suspension which did not exist. This period of absence from duty of the applicant can be regularized only by sanctioning him extra ordinary leave without pay.

4(g). Also keeping in mind the earlier order of this Bench dated 30.04.2001, we refrain from going into further merits of the aspect of his status of being on ad-hoc promotion as Appraiser when he was suspended and on reinstatement later to be posted as Preventive Officer.

5. Decision:

The O.A. is dismissed. The period of absence of the applicant from 05.10.2000 to 22.07.2001 be regularized as extra ordinary leave without pay if he applies for it within 30 days from receipt of a certified copy of this order, failing which his absence during that period be treated as dies non.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A) .

H.

