

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2937/2019

Thursday, this the 3rd day of October 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)

Tushar Ranjan Mohanty
Aged 61 years
Group A – Retired
s/o Shri Rabi Narayan Mohanty
Indian Statistical Service, 1981 – Retired

Current Address:

403, Rama House, 269, Masjid Moth
New Delhi – 110 049

(Mr. Prateek Tushar Mohanty, Advocate)

..Applicant

Versus

Union of India through
The Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Parliament Street
New Delhi – 110 001

..Respondent

(Mr. R V Sinha, Mr. A S Singh and Mr. Amit Sinha, Advocates)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

This is another instance where the same applicant, who has instituted hundreds of proceedings before this Tribunal while in service, has wasted the time of the Tribunal by instituting a third O.A. against suspension ordered against him. The experience only shows that he has no regard for law and he does not feel restricted, in any manner whatever.

2. The applicant was placed under suspension through an order dated 19.12.2017, w.e.f. 26.12.2017, for a period of 90 days, pending disciplinary proceedings. The period of suspension was extended from time to time. The applicant filed O.A. No.4603/2017 challenging the order of suspension. That was dismissed by the Tribunal, through an order dated 22.03.2018.

3. Challenging the subsequent extensions, the applicant filed O.A. No. 1224/2018. That was allowed on 31.05.2018 on the ground that the charge memo was not issued within 90 days from the date of initial suspension. As a result, the applicant was reinstated into service, through order dated 26.06.2018.

4. The applicant filed W.P. (C) No.4257/2018 challenging the dismissal of O.A. No.4603/2017, which related to initial suspension for a period of 90 days. The writ petition was dismissed, through an order dated 20.08.2019. The plea of the applicant that the manner in which the period of 90 days must be treated, was not dealt with by the Tribunal, was not accepted since it was not raised in the O.A. However, it was left open to the applicant to agitate the issue in relation to his rights, if any, arising out of the order passed by the Tribunal in O.A. No.1224/2018.

This O.A. is filed with a prayer to declare that the period of suspension between 26.12.2017 and 25.03.2018 be treated as

on duty for all purposes, and to direct the respondent to pay full salary and allowances for that period. Compound interest @ 18% per annum is also claimed.

5. The applicant contends that the authority, which passed the order of reinstatement consequent upon the order passed in O.A.No.1224/2018, was under obligation to indicate the manner in which the period of suspension must be treated, and that there was a clear infraction of F.R. 54-B. Reliance is placed upon an order passed by this Tribunal in O.A. No.1508/1991 dated 11.05.1993.

6. We heard Mr. Prateek Tushar Mohanty, learned counsel for applicant and Mr. R V Sinha, learned counsel for respondent, at the stage of admission, at length.

7. It is rather unfortunate that the applicant, who held very senior positions in the Ministry of Statistics & Programme Implementation, Government of India, has been and continues to be instrumental in keeping the Tribunal and the entire Department busy in attending to his unending litigation. Several disciplinary proceedings were initiated against him and each time, he filed dozens of proceedings. Hundreds of O.As. are filed even when there are no disciplinary proceedings.

8. The applicant was placed under suspension, through an order dated 19.12.2017, w.e.f. 26.12.2017 for a period of 90 days. That was in contemplation of disciplinary proceedings. Though

he filed O.A. No.4603/2017, the same was dismissed by observing that there is no illegality in the order of suspension. The subsequent extensions were challenged by the applicant by filing O.A. No.1224/2018, which was allowed in terms of the judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary v. Union of India**, (2015) 7 SCC 291. As a result, the applicant was reinstated into service.

9. It is important to mention that while passing the order in O.A. No.1224/2018, this Tribunal did not mention anything about the initial period of suspension of 90 days. In case the applicant was of the view that he was entitled to be paid salary for that period also, he was required to take that plea in that O.A. Even after he was reinstated in service, the applicant perused a writ petition filed against the order in O.A. No.4603/2017. The Hon'ble High Court refused to entertain the same. However, an attempt made by the applicant to claim the salary of 90 days was thwarted by stating that he did not raise that plea in the O.A.

10. This O.A. is clearly barred by principle of *res judicata* or at least, of the constructive *res judicata*. Even otherwise, it is fairly well settled principle of law that the occasion to deal with the manner in which the period of suspension must be treated, would only arise when the disciplinary proceedings are concluded. F.R. 54-B makes this amply clear. It reads as under:-

“F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, 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 the 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 re-instatement 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 reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on 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 finalization 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.

Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

- (a) extraordinary leave in excess of three months in the case of temporary Government servants; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent 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.”

11. A perusal of sub rule (3) with the proviso thereto, sub rules (5) and (6), makes it amply clear that it is only on conclusion of disciplinary proceedings, that the disciplinary authority has to decide whether or not the suspension was warranted, or whether the disciplinary proceedings were unduly delayed. We are yet to come across a case where the disciplinary authority is required to decide the manner in which the period of suspension is decided, while the disciplinary proceedings are still pending.

12. O.A. No.1508/1991, on which the reliance is placed upon, is a case where the disciplinary proceedings against the employee were already concluded. The Tribunal held that the disciplinary authority was required to determine the manner in which the period of suspension must be treated. In the instant case, the disciplinary proceedings are still pending.

13. We do not find any merit in this O.A. It is accordingly dismissed. A cost of ₹5000/- is imposed upon the applicant, to be paid to the C.A.T. Bar Association, Library Fund. We have chosen this as a small measure to protect the Tribunal from the applicant.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

October 3, 2019
/sunil/