

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00042/2016

Reserved on :- 23.07.2019

Date of Order : 31.07.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKARIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Janki Raman Nidhi, S/o Late Madhusudan Nidhi, Village-Samaila, P.O.- Pacharih, P.S.-Keoti, District- Darbhanga, at present residing at New A.G. Colony, Danapur-Khagaul Road, Danapur, District-Patna.

..... Applicant.

- By Advocate : Shri J.K.Karn

-Versus-

1. The Union of India through the Comptroller and Auditor General, 9, Deen Dayal Upadhyay Marg, New Delhi-110124.
2. The Asstt. Comptroller & Auditor General (P), O/o The Comptroller and Auditor General, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi.
3. The Principal Director (Personnel), O/o The Comptroller and Auditor General, Pocket-9, Deen Dayal Upadhyay Marg, New Delhi.
4. The Principal Accountant General (Audit), Office of Principal Accountant General, Birchand Patel Marg, Patna.
5. The Accountant General (A&E) Bihar, Birchand Patel Marg, Patna.

..... Respondents.

By Advocate :- By Advocate :- Shri Bindhyachal Rai.

O R D E R

Per Mr. J.V. Bhairavia, J.M.:- In the instant OA, the representation of the applicant for regularization of his suspension period from 03.04.2012 to 24.03.2013 has been rejected by the respondents vide impugned order dated 25.05.2015 (Annexure A/8) treating the said period as non duty.

However, the said period has been ordered to be qualified for the purpose of pension. The appeal against the said decision was also not accepted by the appellate authority vide order dated 10.11.2015 (Annexure A/10).

Aggrieved by the said order, the applicant has filed the present OA.

2. The brief facts as contended by the applicant are as follows :-

[i] The applicant is a retired employee of A.G. Bihar, Patna. He retired on 31.01.2015 on attaining the age of superannuation while holding the post of Senior Accounts Officer, Office of Accountant General (A&E), Bihar, Patna. While applicant was in service, due to criminal case lodged against him by a private person, the applicant was taken in judicial custody and he remained in judicial custody for the period from 03.04.2012 to 11.05.2012. No disciplinary proceeding was initiated by the department against the applicant. On 10.05.2012, the applicant was granted bail by Hon'ble Patna High Court (Annexure A/1).

[ii] Vide order dated 18.05.2012, issued by the respondents, the applicant was ordered to be in deemed suspension w.e.f. 03.04.2012 in terms of Rule 10 (2) of CCS (CCA) rules, 1965. The applicant has submitted his representation before the departmental authorities praying for revocation of his suspension. However, he was kept continuing under suspension without any departmental proceeding. He has also submitted various reminders for revocation of his suspension. Finally, vide order dated 23.04.2013, the suspension of the applicant was revoked (Annexure A/4).

[iii] It is further contended that vide order dated 01.11.2013, the Hon'ble Patna High Court cognizance taken against the applicant in complain case no. 1512 [c] of 2007, Trial no. 1922 of 2011 was quashed in Misc. Cr. No. 31140 of 2012 decided on 01.11.2013 (Annexure A/5).

[iv] It is further contended that when the applicant was due for his retirement w.e.f. 31.01.2015, he was served notice dated 13.01.2015 whereby he was called upon to submit his representation against proposed orders regarding quantum of pay and allowance for his period of suspension and treatment of that period as duty or otherwise in terms of FR 54-B (Annexue A/6).

[v] Pursuance to the said notice dated 13.01.2015, the applicant has submitted his detail representation on 28.01.2015 and submitted that the cognizance taken by the trial Court has been quashed. It is in fact a case of civil nature

and compoundable, the judicial Magistrate, Patna has closed the case in light of the order of Hon'ble Patna High Court and requested to regularize the suspension period as duty for all purposes (Annexure A/7).

[vi] However, the respondents have not considered the request of the applicant in its true spirit and vide impugned order dated 25.05.2015 (Annexure A/8), the period of suspension of the applicant from 03.04.2012 to 24.04.2013 has been treated as non duty. However, the said period has been ordered to be qualify for the purpose of pension and pay and allowance for the said period has been kept limited to the subsistence allowance which was already paid. The appeal thereon has also been rejected vide impugned order dated 10.11.2015 (Annexure A/10).

3. Learned counsel for the applicant submitted that no disciplinary proceeding was initiated against the applicant, but he was left in continuous deemed suspension for a long time erroneously. After order passed by Hon'ble High Court, there was no charge left against the applicant in the criminal case. Therefore, the suspension of the applicant becomes without any foundation and resultantly fully unjustified. The long period of suspension is required to be regularized as on duty for all purposes but the same has been decided erroneously putting the applicant in huge financial loss.

4. It is further submitted that the findings recorded in the impugned order are wholly misconceived. The Hon'ble High Court has categorically observed that money demanded by the Samiti was deposited in the account of Samiti by the complainant but there is no allegation that the money deposited by the applicant in the name of development cost in the account of Samiti or misappropriated or defalcated. The applicant has placed reliance on the following cases and submitted that the impugned orders are bad in law and the same are required to be quashed and set

aside. The deemed suspension period ought to have been considered by the respondents as on duty instead of non duty:-

- [i] 2001 (3) ATJ- 274- Abdul Waheed vs. U.O. I. & Ors.
- [ii] 2001 (1) ATJ-365- Gyasi Ram vs. U.O.I. & Ors.
- [iii] OA 42 of 2008- Krishna Nand Yadav vs. U.O.I. & Ors.
- [iv] OA 445 of 2014- Suresh Prasad Singh vs. U.O.I. & Ors.
- [v] CWJC No. 393 of 2018-Bameshwar Singh Vs. U.O.I. & Ors.

5. The respondents have filed their written statement and denied the contention of the applicant. It is submitted that the Hon'ble Patna High Court has quashed the criminal prosecution against the applicant vide order dated 01.11.2013 passed in Cr. Misc. No. 31140 of 2012 and the judicial Magistrate has closed the criminal case vide order dated 02.12.2013.

6. It is submitted that the Hon'ble High Court was pleased to take note of the fact that the grievance of the complainant was satisfied and the case was finally closed by the Trial Court on the basis of compromise/settlement. It is further contended that the suspension of the applicant was revoked vide order dated 23.04.2013 wherein it is stated that the decision regarding treatment of period of suspension will be taken on conclusion of criminal proceeding pending against him. It is contended by the respondents that a criminal complaint was filed by a private party in the Court of Judicial Magistrate, Patna regarding non allotment of residential plot to her by the Society which was said to be managed by the applicant being President/Secretary of the said Society. The Judicial Magistrate had taken cognizance under Section 420 and 406/34 of IPC. The applicant was detained in judicial custody on 03.04.2012 and released on bail on 11.05.2012. The acquisition of cheating and misappropriation of money of a private party being incompatible with the reputation of the post of

Welfare Officer (applicant herein), it was decided to repatriate the applicant to his parent post of Sr. Accounts Officer. Subsequently, his suspension was revoked vide order dated 23.04.2013.

7. It is further submitted that vide order dated 13.03.2013, the Hon'ble High Court, Patna had quashed the criminal prosecution and subsequently, Judicial Magistrate has closed the case on 02.12.2013. Therefore, for the purpose of making specific order regarding treatment of the suspension period as on duty or otherwise under the provision of FR 54-B (1), a notice dated 13.01.2015 issued to the applicant and in response to it, the applicant has submitted his explanation/representation dated 28.01.2015. The disciplinary authority had considered it by providing due opportunity to the applicant and recorded its finding that the closure of the case after compromise with the complainant does not automatically imply honourable exoneration of the accused. Further, there is nothing in the Court's order as to the detention of the accused being erroneous. Therefore, suspension of the applicant cannot be said to be wholly unjustified. Consequently, the period of suspension cannot be treated as period spent on duty. Accordingly, the disciplinary authority has treated the suspension period as non duty. However, the said period has been ordered to be qualified for the purpose of pension.

7. Learned counsel for the respondents submitted that the impugned decision is in consonance of the provision of FR 54 B. It is further contended that the applicant was also granted due opportunity to avail his right of appeal which he availed but remained unsuccessful. However, he

has not availed the alternative remedy under Rule 70 of CCS (Pension) Rules. Therefore, the applicant is not entitled for any relief.

8. Heard the parties. It is noticed that undisputedly, the applicant remained under judicial custody w.e.f. 03.04.2012 to 11.05.2012 in connection with criminal complaint case no. 1512 [c]/2007. Vide order dated 18.05.2012, considering the said fact as well as pendency of the trial, the respondent no. 1 has issued order of deemed suspension of the applicant with effect from the date of his detention i.e. 03.04.2012 in terms of Sub-Rule (2) of Rule 10 of the CCS (CCA) Rules, 1965 until further orders. The said period of suspension was extended from time to time. The applicant was released on bail by order of Hon'ble High Court, Patna dated 18.05.2012.

9. It is noticed that vide order dated 23.04.2013, the suspension of the applicant stands revoked and he has been repatriated to his parent post. However, decision regarding treatment of period of suspension of applicant was ordered to be taken after conclusion of the criminal proceeding pending against him.

10. Subsequent to it, the Hon'ble High Court vide order dated 01.11.2013 in Cr. Misc. No. 31140/2012 by taking note of the fact that grievance of the complainant has been redressed as the complainant has compromised the case, observed that allowing the prosecution to continue further is an abuse of process of the Court and in the interest of justice, entire criminal prosecution with regard to complaint case no. 1512[c]/2007,

TR No. 1922/2011 has been quashed and set aside and the petition of the applicant was allowed.

11. Thereafter, the disciplinary authority issued show cause notice on 13.01.2015 intimated the applicant that it is proposed to make specific orders regarding quantum of pay and allowances for the period of suspension and treatment of that period as duty or otherwise in terms of FR-54B and for that 15 days time was granted to the applicant to respond on it. In pursuance to the said notice, the applicant has submitted his representation and the said representation was considered by the disciplinary authority and recorded its finding vide order dated 25.05.2015 that the closure of the case after compromise with the complainant does not automatically imply honourable exoneration of the accused. However, there is nothing in the Courts order as to the detention of the accused being erroneous. The suspension of Shri Nidhi (applicant herein) therefore, cannot be said to be wholly unjustified. Consequently, the period of suspension cannot be treated as period spent on duty and for which only, proportionate pay and allowances can be paid and concluded that the period of suspension i.e. 03.04.2012 to 24.04.2013 shall be treated as non-duty. However, this period shall qualify for the purpose of pension and pay and allowance shall be limited to the subsistence allowance.

12. Against the said order, statutory appeal filed by the applicant, has been rejected, vide order dated 10.11.2015. In our considered view, we do not find any infirmity in the impugned decision for the reason that, for treatment of the period of suspension of the Central Govt. employee,

governs under the provision FR-54B. It is noticed that the authority i.e. disciplinary authority herein thought that the suspension period was not wholly unjustified. The said conclusion of disciplinary authority is based on the fact that the criminal case/complaint lodged against the applicant for which the applicant was arrested and remained under judicial custody for the period from 03.04.2012 to 11.05.2012. Subsequently, due to the compromise with the complainant and submission of the original complainant before the Hon'ble High Court that he has no grievance against the accused, the Hon'ble High Court has held that in view of the subsequent development, there will be abuse of process, if the criminal prosecution be allowed to continue. Therefore, criminal prosecution initiated against the applicant and other accused were set aside. Accordingly, concerned criminal Court has closed the criminal case. Since the closure of the said criminal case was due to compromise taken place between the parties and criminal prosecution was set aside, the disciplinary authority has considered it as not honourable acquittal of the applicant. In a case of acquittal or discharge in a criminal case based on benefit of doubt or any other technical reason, the employer taken into consideration the relevant factors to take an appropriate decision as to the fitness of incumbent for treatment of suspension period of his employee and regulate his service. The decision taken by the disciplinary authority and appellate authority in the instant case cannot be faulted.

13. Once the competent authority has treated the period of suspension of the applicant as non-duty under the provision of FR-54B that too by providing due opportunity to the applicant, the said decision of the

disciplinary authority cannot be said to be in violation of principle of natural justice or arbitrary. In view of it, the submission of the applicant that the complaint lodged against the applicant was a civil nature and there was no evidence against him for the offence under Section 420 and 406 of IPC and, therefore, respondents ought to have treat the suspension period as on duty is not tenable. The judgment relied upon by the applicant therefore not helpful to the applicant in view of the facts and circumstances discussed herein above. It is well settled principle of law that discharge of the accused as well as closure of the criminal case based on compromise cannot be said to be honourable acquittal. We do not find any infirmity in the impugned decision hence, the OA is dismissed.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Pkl/

