

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

R.A. NO.90/2005
M.A. NO.786/2005
M.A. NO.787/2005
M.A. NO.1799/2004
M.A. NO.1336/2004
M.A. NO.1719/2004
M.A. NO.1720/2004
M.A. NO.2236/2005

in
O.A. NO.2947/2003

This the 12th day of January, 2006

HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

Vijay Kumar Aggarwal, IAS
S/O Prem Chand Aggarwal,
R/O C-8-C, Pandav Nagar,
Delhi-110092.

... Applicant

(In person)

versus

1. Union of India through
Secretary, Ministry of Personnel,
North Block, New Delhi-1.
2. State of Maharashtra through
Chief Secretary, Government of Maharashtra,
Mantralaya, Mumbai-400032 through
Principal Secretary & Special Commissioner,
Government of Maharashtra,
Maharashtra Sadan, Copernicus Marg,
New Delhi-110001.

... Respondents

(By Shri R.K.Adsure, Advocate for Respondent No.2)

ORDER

Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

Through RA No.90/2005 applicant has sought review of order dated
18.5.2004 whereby OA No.2947/2003 along with OA Nos.3092/2003 and
3141/2003 were found to be without merit and as such, were dismissed

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2. Applicant has also filed several MAs as is clear from the title, which require consideration and disposal.

3. MA No.1719/2004 MA No.1336/2004 : Through MA No.1336/2004 applicant has sought recall/modification etc. of Tribunal's orders dated 18.5.2004 in OA No.2947/2003. Vide MA No.1719/2004 applicant has sought that the issue involved in MA No.1336/2004 be referred to a Full Bench. The purpose of MA No.1336/2004 and RA No.90/2005 is identical, as by virtue of both of these applicant has sought recall/review/modification etc. of Tribunal's orders dated 18.5.2004 whereby OA No.2947/2003 was dismissed. Applicant has pointed out that there is a conflict between Tribunal's orders dated 18.11.2003 in OA No.1714/2003 and order dated 18.5.2004 in OA No.2947/2003, and as such, the issue of review of orders dated 18.5.2004 in OA No.2947/2003 should be referred to a larger Bench. Applicant contended that vide order dated 18.11.2003 in OA No.1714/2003 respondents' orders dated 13.5.1996, whereby applicant was reinstated but the revocation of his suspension was made subject to disciplinary proceedings and regularisation to be decided after completion of proceedings, had been quashed and set aside. He argued that under rule 5B of the All India Services (Discipline & Appeal) Rules, 1969 (hereinafter referred to as the 1969 Rules) not only applicant's suspension should have been revoked and he should have been reinstated, order regarding his pay and allowances should have been passed simultaneously. Respondents had not complied with the provisions of rule 5B *ibid* in total. Applicant submitted that while vide order dated 18.11.2003 in OA No.1714/2003 respondents' order dated 13.5.1996 had been quashed and set aside, Tribunal interpreted these orders vide order dated 18.5.2004 in OA No.2947/2003 that in orders dated 18.11.2003 in OA No.1714/2003, order dated 13.5.1996 regarding revocation of applicant's suspension had not been quashed. Applicant contended that divergent views having been expressed by the Tribunal



in two different orders in regard to respondents' orders dated 13.5.1996, the present review application should be referred to a larger Bench.

4. On the other hand, the learned counsel of respondents stated that the views of the Tribunal in the aforesaid two orders in regard to the revocation of the suspension order are not at all divergent; as a matter of fact, in the later orders full reasons have been given to the effect that in the earlier orders revocation of suspension order was not quashed.

5. In paragraph 16 of Tribunal's order dated 18.5.2004 it has been observed as follows:

"16. ...It is true that this Tribunal in the order passed, recorded that the impugned order of 13.5.1996 is quashed but in the subsequent line it was made clear that respondents had to pass a fresh order so far as the suspension period is concerned under Rule 5(B) of the Rules within a period of three months. This makes it clear that the main order whereby the suspension was revoked, was not quashed. The order passed by this Tribunal should be read as a whole and not one line in isolation of the rest. In fact, in paragraph 26 which we have reproduced above, the Tribunal recorded that the applicant had not brought anything on the record that he joined the post of Deputy Secretary in Social Welfare Department. It went on to hold further that if the applicant joins the post of Deputy Secretary, the respondents shall start paying him salary as per the Rules. This clearly shows that the revocation of the suspension order was not quashed, otherwise question of permitting the application to join the post of Deputy Secretary in the Social Welfare Department would not have arisen."

After considering the contentions raised on behalf of both sides as also perusing Tribunal's orders dated 18.5.2004, particularly paragraph 16 thereof which has been extracted above, we are of the considered view that there is no divergence in the views of the Tribunal in the two orders in question and as such, we do not find any reason for referring the matter to a larger Bench. In this view of the matter MA No.1719/2004 in MA No.1336/2004 is dismissed.

6. MA No.1336/2004 and RA No.90/2005 : MA No.1719/2004 in MA No.1336/2004 having been dismissed, we propose to deal with MA No.1336/2004



and RA No.90/2005. as both seek review of Tribunal's orders dated 18.5.2004 in OA No.2947/2003.

7. MA No.786/2005 : This is an application seeking condonation of delay in filing RA No.90/2005 in OA No.2947/2003. It is allowed and RA No.90/2005 is being considered after hearing both parties on merit.

8. MA No.787/2005 : By virtue of this MA applicant has sought personal hearing in RA No.90/2005. This request has been granted as is clear from paragraph 7 above. As such this MA stands disposed of.

9. MA No.1720/2004 : Applicant has sought clubbing of O.A. filed vide diary No.1896 dated 29.8.2005 (with PT No.208/2005) with the present case. That OA along with PT No.208/2005 has been recently filed, i.e., August, 2005. We do not find any justification for clubbing of a recent case with the present old matter. MA No.1720/2005, as such, is rejected.

10. MA No.1799/2004 : In this MA applicant has submitted his written submission in OA No.2947/2003. Granting this MA would involve granting the same opportunity to respondents, which would further delay consideration and disposal of this case. The applicant has also wanted oral hearing. As we have granted full opportunity of hearing in the present case, this MA is rejected.

11. MA No.2236/2005 : Through this MA applicant has sought clubbing of OA No.2415/2005 with the present matter. It is stated that applicant has filed OA No.2415/2005 in which notice vide order dated 31.10.2005 returnable on 7.12.2005 has been issued. There is no justification for clubbing this most recent case with the present old matter and as such, the request is rejected. MA No.2236/2005 stands rejected.

12. Facts of the present case briefly stated are that applicant is a member of the Indian Administrative Service (IAS) - 1982 batch (Maharashtra Cadre). On

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4.5.1998 disciplinary proceedings were initiated against him on grounds of unauthorized absence despite posting orders dated 7.6.1996 on the post of Deputy Secretary, Social Welfare Department, Mantralaya, Mumbai. The enquiry officer was appointed on 18.9.2002. He submitted his report to the disciplinary authority who forwarded the same to applicant for making representation thereagainst in November, 2003. Applicant submitted his representation on 17.11.2003. Before the disciplinary authority passed final orders, applicant challenged the enquiry report dated 1.11.2003 through OA No.2947/2003. On 26.12.2003 this Tribunal rejected applicant's prayer for interim relief in OA No.2947/2003 observing that the prayer for interim relief was premature the disciplinary authority not having passed any final orders. OA No.2947/2003 was finally dismissed observing that the OA was premature as only the enquiry report had been filed and that applicant could raise his grievance only in case of final order passed by the disciplinary authority. Thereafter, applicant filed MA No.1336/2004 for recalling order dated 18.5.2004 in OA No.2947/2003 and RA No.90/2005 on 4.4.2005 for recalling the same order, i.e., dated 18.5.2004 in OA No.2947/2003.

13. In OA No.1714/2003 applicant had sought the following reliefs :

“In the facts and circumstances of the case, it is respectfully prayed that this Hon'ble Court may be graciously pleased to:

- a) Quash and set aside the impugned order dated 13.5.96 (ANNEXURE A) to the extent of contravention of Rule 5B of All India Services (Discipline and Appeal) Rules, 1969, with consequential benefits.
- b) Quash and set aside the impugned orders dated 7.6.96, 4.5.98, 5.10.98, 18.9.02 and 27.3.03 (ANNEXURES B, C, D, E and F), with consequential benefits.
- c) Direct respondent No.2 to make bona fide reinstatement and posting orders, in compliance with Rule 5-B of All India Services (Discipline and appeal) Rules, 1969, with consequential benefits.
- d) Direct respondent No.2 to pay full salary for the period 1.5.88 till date, with interest and compensation for damages caused to him and his family members, with consequential benefits.”

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13.^(A) Applicant had contended that respondents had asked him to accept charge of the post of Deputy Secretary, Social Welfare Department, Mantralaya, Mumbai, by an invalid order dated 7.6.1996, and that in order dated 13.5.1996, respondents had contravened rule 5B of the 1969 Rules, and the authorities while ordering reinstatement should make a specific order regarding pay and allowances to be paid to applicant, and also whether the period of suspension would be treated as period spent on duty. Tribunal in its orders dated 18.11.2003 in OA No.1714/2003 recorded the following observations/directions:

“23. If one has regard to above, when a member of service who is under suspension is re-instated, it is incumbent upon the authorities concerned, while ordering re-instatement, to make a specific order regarding pay and allowances to be paid to the member and to decide whether or not the said period of suspension shall be treated as a period spent on duty. If it is found that suspension was wholly unjustified; under clause (3) of the Rules *ibid*, suspension period is to be treated as a period spent on duty and a member is to be paid full pay and allowances to which he was entitled. However, as per clause (6), where suspension is revoked pending finalization of the disciplinary proceedings, any orders passed under sub-rule (1) shall have to be reviewed on its own motion after the conclusion of the proceedings by the authorities concerned.”

“24. If one has regard to above, the only logical interpretation to be given to the aforesaid provision is that as soon as a member of service is re-instated, whether he is facing enquiry or not, an order in terms of rule 5(b)(1) & (3) has to be passed. From the perusal of the order passed by the respondents, it transpires that the order of suspension was revoked and was subjected to completion of departmental enquiry and the question of regularizing the suspension period has been kept in abeyance whereas the same has to be decided for the reasons to be recorded. As such keeping the suspension to be decided after completion of disciplinary proceedings and non-payment of subsistence allowance is violative of the dictum laid down by the Apex Court in *Capt. M. Paul Anthony v Bharat Gold Mines*, 1999 (2) JT 456.”

“25. We are of the considered view that respondents are bound to pass an order under rule 5(b) and the applicant is entitled for pay and allowances as per rules on decision to be arrived at by the respondents and also keeping in view the pendency of the disciplinary proceedings.”

“26. As regards claim of the applicant for grant of pay and allowance from 5.6.1996 is concerned, as the applicant, without express permission of the competent authority, has failed



to bring on record any credible material showing that he has joined the post of Deputy Secretary in Social Welfare Department, having not worked on the post by the applicant, at present he is not entitled for this relief of grant of salary for the aforesaid period. However, the aforesaid period shall remain subject to pending finalization of the disciplinary proceedings and on culmination, the law shall take its own course. However, we observe that in the event, the applicant joins the post of Deputy Secretary in the Social Welfare Department, respondents shall start paying him the salary as per rules. We at present, are not inclined to allow the prayer of the applicant for grant of salary for the period from 1996 till date."

"27. In the result, as the applicant has prayed for multiple reliefs, which is barred under Rule 10 of the CAT (Procedure) Rules, 1987, the OA is partly allowed. Impugned order dated 13.5.1996 is quashed and set aside. Respondents are directed to pass a fresh order in so far as treatment of suspension period is concerned under Rule 5(b) of the Rules *ibid* within a period of three months from the date of receipt of a copy of this order. Whatever is entitled in the shape of subsistence allowance or the pay and allowances as a consequence of revocation of suspension, shall be paid to the applicant within the aforesaid period. As regards disciplinary proceedings, in case any final order is passed, applicant shall be at liberty to take recourse in accordance with law. No costs."

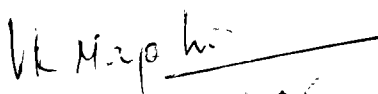
14. In orders dated 18.5.2004 in OA No.2947/2003 the following observations were made:

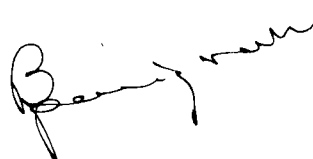
"16. These facts clearly show that this Tribunal had not quashed the order of 13.5.1996 whereby the suspension of the applicant had been withdrawn. It is true that this Tribunal in the order passed, recorded that the impugned order of 13.5.1996 is quashed but in the subsequent line it was made clear that respondents had to pass a fresh order so far as the suspension period is concerned under Rule 5(B) of the Rules within a period of three months. This makes it clear that the main order whereby the suspension was revoked, was not quashed. The order passed by this Tribunal should be read as a whole and not one line in isolation of the rest. In fact, in paragraph 26 which we have reproduced above, the Tribunal recorded that the applicant had not brought anything on the record that he joined the post of Deputy Secretary in Social Welfare Department. It went on to hold further that if the applicant joins the post of Deputy Secretary, the respondents shall start paying him salary as per the Rules. This clearly shows that the revocation of the suspension order was not quashed, otherwise question of permitting the application to join the post of Deputy Secretary in the Social Welfare Department would not have arisen."

15. Ultimately, OA No.2947/2003 along with OA Nos.3092/2003 and 3141/2003 was dismissed being without merit.

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16. All contentions raised here were considered at length by the Tribunal in its orders dated 18.5.2004 in OA No.2947/2003. We do not find any contradiction between Tribunal's orders dated 18.11.2003 in OA No.1714/2003 and order dated 18.5.2004 in OA No.2947/2003. No fresh contentions have been raised before us. MA No.1336/2004 in OA No.2947/2003 and RA No.90/2005 in OA No.2947/2003 are clearly an attempt to re-argue the matter, which is beyond the scope and ambit of review. Accordingly, these are dismissed being without merit.


(V. K. Majotra) 10.1.06
Vice-Chairman (A)


(B. Panigrahi)
Chairman

/as/