

(2019) 01 CAT CK 0076

In the Central Administrative Tribunal

Case No : Original Application No. 2142 Of 2013

Anil Vats

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Arms Act, 1959 — Section 27

Indian Penal Code, 1960 — Section 34, 323, 324, 427

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 19, 19(1)

Citation : (2019) 01 CAT CK 0076

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : S.K. Gupta, Rajinder Nischal

Final Decision : Allowed

Judgement

V. Ajay Kumar, J

1. The applicant, a Sorting Assistant under the respondent- Department of Posts, filed the OA challenging the Annexure A-1 order dated 07.03.2013 whereunder the respondents have rejected his claim for payment of full pay and allowances for the period from 09.12.1997 to 31.12.2002 during which time he was under suspension.

2. In connection with a Criminal Case registered against the applicant under 324/323/427/34 IPC and under Section 27 of the Arms Act, the applicant was arrested on 28.07.1985 and was detained in judicial custody exceeding 48 hours and was released on bail on 09.08.1985. As a result, he was deemed under suspension from 28.07.1985. His suspension was revoked on 02.09.1985 and he was reinstated in service. The applicant was convicted in the said criminal case vide judgment dated 17.11.1997. He was again placed under suspension vide order dated 18.11.1997. In the Criminal Appeal filed by the applicant, the sentence imposed against the applicant was suspended. The applicant remained under suspension till 27.06.2000, on which date he was removed from service.

The Criminal Appeal No.423/1997 filed by the applicant before the Hon'ble High Court of Delhi, against his conviction and sentence, was disposed of as under:-

"In view of the compromise filed and taken on record and the statement of learned counsel for the State, I allow compounding of the offence under Section 324/323/34 IPC as also offence under Section 427 IPC. All the appellants are acquitted of charges as regards offence under Section 324/323/34 and 427 IPC. The conviction of Anil Vats under Section 27 of the Arms Act is confirmed. However, as regards the sentence for the offence under Section 27 of the Arms Act, I deem it appropriate at this stage, in view of the fact that 16 years have elapsed and the occurrence which gave rise to this offence has more or less been settled between the parties, it would be in the interests of justice that the sentence therefor is modified to that already undergone. Learned counsel for the State has no objection. I order accordingly.

With this modification, Criminal Appeal No.423 of 1997 is disposed of".

3. In view of the judgment of the Hon'ble High Court of Delhi in the Criminal Appeal, this Tribunal in OA No. 1382/2001 by its order dated 02.09.2002, quashed the removal order dated 27.06.2000 and the Appellate Authority's order dated 26.03.2001 and directed the Disciplinary Authority to pass a fresh order keeping in view the decision of the Hon'ble High Court. In terms of the said order, the Disciplinary Authority reconsidered the issue, however, imposed the penalty of compulsory retirement, on the applicant, by order dated 31.12.2002 and the said order was upheld by the Appellate Authority, by order dated 08.10.2003. However, the Revisional Authority, vide Annexure A-7 order dated 27.09.2004, allowed the revision of the applicant and the relevant paragraph of the said order reads as under:-

"In view of the foregoing and the fact that the case does not involve moral turpitude on the part of the petitioner and the fact that the petitioner was acquitted of the major charge under IPC, the penalty of compulsory retirement imposed on him is unwarranted and very harsh. Further, the proceedings have not been held in accordance with CCS (CCA) Rules. The rules of natural justice have not been followed and reasonable opportunity has not been given to the petitioner to defend his case. The entire proceedings under Rule 19 are therefore, vitiated. I, therefore, set aside the order dated 31.12.2002 of disciplinary authority imposing compulsory retirement on Shri Anil Vats as well as the appellate order upholding the penalty and order that he should be reinstated in service with immediate effect. The pay and allowances as well as period of suspension should be decided by the disciplinary authority in accordance with the rules on the subject".

4. As a result of the aforesaid revisional order, though the punishment imposed on the applicant was set aside completely, however, the Disciplinary Authority vide Annexure A-12, therefore, considered the representation of the applicant in respect of different periods of suspension and passed orders on 28.08.2009 and

the relevant paragraph of the same reads as under:-

"7. The period from 01.01.2003 to 03.10.2004 has already been ordered to be treated as duty for all purposes vide earlier order dated 20.06.2008. During the period from 09.12.1997 to 31.12.2002, the official was under deemed suspension. He has not been acquitted of all the charges in the criminal proceedings. Hence I do not find any reason to allow him pay and allowances for the period during which he was not performing his official duties on the principle of 'no work no pay'. At the same time justice would be served if that period of 09.12.1997 to 31.12.2002 is allowed to be treated as duty for all other purposes except for pay and allowances. Hence I order that period from 09.12.1997 to 31.12.2002 is hereby ordered to be treated as "Duty" for all purposes except for pay and allowances under the provisions of FR-54(4) read with FR 54 (7). It is also observed that while restricting the pay and allowances to the extent of subsistence allowance, the Disciplinary Authority given opportunity of being heard to the appellant.

The appeal is thus disposed of accordingly. This issues in compliance with directions of the CAT contained in order dated 20.05.2009 in OA No.1658/2008".

5. That means, the Disciplinary Authority vide its order dated 28.08.2009 though treated all the different periods of suspension as duty for all purposes, but in respect of period from 09.12.1997 to 31.12.2002, restricted the payment of pay and allowances to the extent of subsistence allowance. The Revision Petition filed by the applicant against the said restriction of the pay and allowances for the period from 09.12.1997 to 31.12.2002 to the extent of subsistence allowance, was dismissed. The final order passed in this regard vide Annexure A-1 dated 07.03.2013, was challenged in the instant OA.

6. Heard Shri S.K. Gupta, the learned counsel for the applicant and Shri Rajinder Nischal, the learned counsel for the respondents and perused the pleadings on record.

7. It is to be noted that the respondents vide Annexure A-12 order dated 28.08.2009 itself treated all the three different suspension periods, i.e., (1) from 28.07.1985 to 02.09.1985, (2) from 18.11.1997 to 31.12.2002 and (3) from 01.01.2003 to 03.10.2004, as duty for all purposes. However, only in respect of the period from 09.12.1997 to 31.12.2002 restricted the pay and allowances to the extent of subsistence allowance. Hence, the only issue before us is whether the applicant is entitled for payment of full pay and allowances for the suspension period from 09.12.1997 to 31.12.2002, or not?

8. It is not in dispute that after the applicant was acquitted by the Criminal Court, he was dismissed from service under Rule 19(1) of CCS (CCA) Rules, 1965, but finally the Revisional Authority vide order dated 27.09.2004 (Annexure A-7) set aside the punishment imposed on the applicant and also categorically held that, the case does not involve moral turpitude and that the applicant was acquitted of the major charge under IPC and that the rules of natural justice

have not been followed and reasonable opportunity has not been given. It is also not in dispute that all the three aforesaid different periods of suspension were the result of the involvement of the applicant in the Criminal Case, which was the basis for imposing punishment of dismissal on the applicant earlier and later the punishment of compulsory retirement, which was also set aside, by the departmental authorities, itself, as not legal. The respondents though declared all the three periods of suspension 'as spent on duty' and held that the applicant is entitled for payment of full pay and allowances in respect of two periods, but restricted the same only in respect of the period from 09.12.1997 to 31.12.2002. They have failed to show any valid reason how the said period is different from the other periods of suspension when all the three periods of suspension were result of the same incident, and the authorities have set aside the punishment orders, on their own, that too by holding that punishing the applicant basing on the said criminal case was not in accordance with law. They came to this finding, i.e., the entire proceedings under Rule 19 are vitiated, after noting that the applicant was convicted under the Arms Act. Hence, they are not justified in not paying full pay and allowances to the applicant in respect of the said period.

9. The respondents failed to show how their action is supported by any of the provisions of law, more so by FR 54 (4) and FR 54 (7).

10. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned order Annexure A-1 dated 07.03.2013 is set aside and the respondents are directed to pay full pay and allowances for the suspension period from 09.12.1997 to 31.12.2002, after adjusting amount already paid for the said period, within 3 months from the date of receipt of a copy of this order. However, the applicant is not entitled for interest or costs.