
(2021) 03 CAT CK 0047

In the Central Administrative Tribunal

Case No : Original Application No. 372 Of 2021, Miscellaneous Application No. 502 Of 2021

Basant

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9

Citation : (2021) 03 CAT CK 0047

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : V.S.R. Krishna, Krishna Kant Sharma

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J

MA No. 502/2021

This Application is filed with a prayer to condone the delay of 1316 days in filing the OA. For the reasons mentioned in the MA, the delay is condoned. MA stands disposed of.

OA No. 372/2021

1. The applicant was working as Manager (Printing & Stationary) Northern Railway in the year 2001. He was issued a charge memo dated 04.05.2001 with certain allegations. He submitted his explanation to the charge memo, and not satisfied with that, the Disciplinary Authority (DA) appointed an Inquiry Officer (IO). In his report, the IO held that all the charges as proved. Taking the same into account, the DA passed an order dated 01.06.2004 imposing the penalty of reduction in the Grade of 10000-325-15200 by four stages below his current pay of Rs. 14550/- i.e., at Rs. 13250/- with immediate effect till the date of his retirement, i.e., 31.07.2004. Feeling aggrieved by that, the applicant preferred

an appeal. The President who is the Appellate Authority (AA) felt it appropriate to obtain the advice of the UPSC at that stage, since the applicant retired from service. The advice was received and taking the same into account, the President rejected the appeal through order dated 27.06.2006.

2. The applicant filed OA No. 23/2007 before the Lucknow Bench of the Tribunal. Through its order dated 22.05.2013, the Tribunal has set aside the order of the AA on the sole ground that the copy of the advice of the UPSC was not furnished to the applicant before the order was passed. The respondents filed a Writ Petition in the Hon'ble Allahabad High Court challenging the order in the OA and not being successful there, they have also filed SLP. The SLP was dismissed by stating that it is in the peculiar facts of the case.

3. Thereafter, the applicant was issued a notice dated 13.01.2017 requiring him to submit his objections to the advice of the UPSC. In his representation dated 30.01.2017 the applicant did not address the issue on merits, but found fault with the respondents for pursuing the remedy of Writ Petition and SLP, against the order in the OA. Ultimately, the appeal was rejected through order dated 29.06.2017. This OA is filed challenging the same.

4. The applicant contends that the impugned order does not accord with the adjudication undertaken by this Tribunal in the earlier OA. It is also stated that the respondents have caused extensive damage and harm to him.

5. We heard the applicant, who argued his case in person and Sh. V.S.R. Krishna with Sh. Krishna Kant Sharma, learned counsel for the respondents, at the stage of admission.

6. This case demonstrates as to how the applicant, in his over confidence and over anxiety, has not realised his actual grievance, but concentrated upon finding fault with the respondents, for every small and simple aspect.

7. The disciplinary proceedings were initiated against the applicant by issuing a charge memo. The Articles of charge were in relation to purchase of some materials and other related activities of the press. The Articles of charge do not appear to be grave. Obviously, for that reason, the punishment of reduction by four stages, which was to be in force just for about two months was imposed upon him. However, the wording of the punishment has caused extensive damage to the applicant. Once the punishment was upto the date of retirement, his earlier pay scale before reduction ought to have been revived on the date of his retirement; and that should have been treated as the last pay drawn. There would not have been any grievance to the applicant, since the reduction would be only for a period of two months; and in terms of money, it would have been few thousands. However, the reduction in the last pay drawn, had its own impact upon pension and other retiral benefits of the applicant.

8. The applicant preferred an appeal. Maybe, because the applicant stood retired by the time it was preferred, the President thought it appropriate to seek the

advice of the UPSC on the analogy of Rule 9 of CCS (Pension) Rules, 1972. After taking the same into account, the appeal was rejected. In the O.A. filed before the Lucknow Bench of the Tribunal, the applicant did not concentrate on the real impact of the order of punishment, but found fault with the order of the AA. It was also not argued by the respondents before the Hon'ble Bench that the Rules did not warrant or mandate the obtaining of the advice of the UPSC at the stage of disciplinary proceedings and that the order in appeal was not vitiated in any manner.

9. Be that as it may, the order of AA was set aside and the applicant was permitted to make a representation vis-a-vis the advice of the UPSC. A copy of the advice was very much with the applicant since it was forwarded to him along with the order of the AA. It seems that the respondents wanted the principle to be settled in this behalf and availed the remedies of Writ Petition and thereafter SLP. In those proceedings also, it was observed that the matter needs to be addressed at appropriate stage.

10. After the legal battle came to a halt, the respondents issued a notice dated 13.01.2017 to the applicant requiring him to submit his objections to the advice of the UPSC. The approach and tendency of the applicant can be gauged from the content of his representation. It reads as under:

Most humbly certain points of objection are raised for your kind consideration as under:

1. That a representation has been invited on the advice of UPSC forwarded vide your letter as referred to above, whereas, the said representation was fruitful only at the time of liberty allowed by the CAT vide order dated 22.5.2013 but the respondents (Authority concerned) did not prefer it, instead, they went to the High Court and, thereafter, Supreme Court. Thus, the then allowed liberty was lost by not utilising it.

2. That now there are orders of the Hon'ble High Court and Supreme Court in favour of Shri Basant to the effect of putting a full stop in the matter.

3. That the action of asking for representation, thus, is violative of the intention of the CAT, High Court and Supreme Court expressed in their orders. This attitude of the Authorities concerned is full of malice, vexatious, unjustifiable, uncalled for, illegal and an attempt to annul the above mentioned orders giving relief to Shri Basant.

4. That the Hon'ble CAT passed the order dated 22.5.2013 whereby the Original Application filed was allowed and Appellate Order was quashed, thereby the status and position of 18.6.2004 relating to Shri Basant was automatically restored.

5. That by inviting a representation, the Authorities concerned are bent upon to flout and circumvent these orders by not heeding to the substantial observations of Supreme Court in its Judgment and Order dated 28.9.2016, "In the larger

interest of justice, we do not want the respondents in these appeals to suffer agony of further delay..... It is clarified that this order has been rendered in peculiar facts of the case." (Para 8). Thus, it leaves no doubt finally about controversy involved in the matter.

6. That it is noteworthy that the case has assumed a peculiar complexion as per considered opinion of Apex Court, restricting to suffer agony of further delay. Thus, all consequential benefits should be granted straightway without any further delay in the interest of justice on both the sides.

It is, therefore, earnestly requested to proceed for doing the needful in view of the points of objection raised above."

11. No employee, particularly the one who felt any impact of the punishment would adopt such a course. For all practical purposes, he felt that he can give lectures to the administration and exhibited his skills in the representation. In the process, he did not concentrate on the financial loss he was suffering on account of the punishment. We only pity the applicant and hope that he would not resort to such tendencies and inflict injuries upon himself.

12. Strictly speaking, the OA deserves to be dismissed without any further discussion, particularly when the applicant did not choose to challenge the order of punishment, in any manner whatever. However, we do not want the suffering of the applicant to continue because of his peculiar tendencies. Suffering will be to his family also.

13. Though the order of punishment is not challenged specifically, we take a view that it merged in the order of the AA and, it is available for adjudication. It has already been observed that the punishment was to be in force till the date of retirement and thereafter the pay, which stood before the order of punishment imposed, must revive.

14. In the result, we partly allow the OA upholding the order of AA but modifying the order of punishment to the effect that on the date of retirement, the pay of the applicant shall stand restored to the one, that existed before the order of punishment. In other words, the last pay of the applicant shall be without any reduction whatever. His retiral benefits and pension shall be worked out accordingly within a period of two months from the date of receipt of a copy of this order. The resultant amount as well as the revised pension shall be paid to the applicant within two months thereafter. If it is done within that period, the arrears shall not carry any interest. If not paid, the amount shall carry interest of 6% from the due date, till the date of payment.

There shall be no order as to costs.