
(2018) 01 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 510 Of 2017

Dr. P. C. Kashyap

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 311

Citation : (2018) 01 CAT CK 0029

Hon'ble Judges : Permod Kohli, J;K.N Shrivastava, Member (A)

Bench : Division Bench

Advocate : Vidya Sagar, Nupur Singhal

Final Decision : Allowed

Judgement

Permod Kohli, J

1. This OA has been filed seeking following reliefs:-

"(a) Riders (a) and (b) in the impugned order dated 29.03.2016 (Annexure A-1) may be struck down.

(b) As a result of the above relief, impugned orders dated 4.07.2016 and 24.10.2016 (Annexures A-2 and A-3) may also be struck down;

(c) The respondents may be directed to pay salary to the applicant for the period 9.9.2014 to 31.12.2014 and re-work applicant's terminal benefits, including leave salary, keeping in view the applicant retired on superannuation on 31.12.2014;

(d) The respondents may be directed to re-calculate applicant's leave encashment taking into account applicant's superannuation w.e.f. 31.12.2014;

(e) The respondents may also be directed to allow the applicant to avail LTC which he intended to avail before his superannuation on 31.12.2014.

(f) Award costs in applicant's favour;

(e) Any other relief or order in applicant's favour which this Hon'ble Tribunal considers appropriate in applicant's favour, in the facts and circumstances of this case."

2. The brief facts giving rise to the present OA are that the applicant while working as Director in Sports Authority of India (SAI) was subjected to disciplinary proceedings which culminated into passing of order dated 09.09.2014 imposing penalty of compulsory retirement from service upon the applicant. An appeal dated 01.10.2014 followed with supplementary appeal dated 05.11.2014 against the aforesaid order of compulsory retirement were turned down vide order dated 24/31.03.2015. Not being satisfied, the applicant preferred a review with the Chairman of the Governing Body, SI, New Delhi (ex-officio Sports Minister) vide representation dated 14.05.2015 supplemented by another representation dated 09.07.2015. This review petition was allowed by the reviewing authority vide order dated 29.03.2016 and the penalty of compulsory retirement was withdrawn allowing the applicant to superannuate on his due date of retirement, i.e., 31.12.2014 subject to the conditions incorporated therein. The relevant extract of the order passed by the reviewing authority is reproduced hereunder:-

"And now, therefore, the Hon'ble Minister of Youth Affairs & Sports (I/C)/ Chairman, SAI as Reviewing Authority has reviewed all aspects relating to conduct of the inquiry and the circumstances under which the decision was taken by the then Disciplinary Authority to impose the major penalty of compulsory retirement on him and consider that taking into account the long services rendered by Dr. P. C. Kashyap in the organization and the fact that he was due to superannuate within a period of three months and twenty days, the Reviewing Authority has come to the conclusion that the ends of the justice would be met by withdrawing the penalty order dated 09.09.2014 of compulsory retirement and allowing him to superannuate on his date of retirement, i.e. 31st December, 2014, subject to the following conditions:-

- (a) The period between date of compulsory retirement and date of superannuation would be treated as leave as available and due to the officer; and
- (b) He will not be entitled to claim any benefit from retrospective date by virtue of issue of this order.

This issues with the approval of Reviewing Authority.

The Review Petition filed by Dr. P. C. Kashyap thus stands disposed off."

Aggrieved of the riders (a) & (b) hereinabove, as incorporated in the order of the reviewing authority, the applicant made a representation dated 23.05.2016. This representation has been rejected vide letter dated 04.07.2016 (Annexure A/2). Consequent upon the rejection of representation, the respondents issued order dated 24.10.2016 for recovery of Rs.4,52,783/- from the amount of leave encashment payable to the applicant. Both these orders are also under challenge

in the present OA.

3. The respondents in their detailed and lengthy counter affidavit justified riders (a) & (b) in the order dated 29.03.2016 taking refuge under Fundamental Rule 54-A (2) (ii) read with FR-54 (5). It is further case of the respondents that the penalty of compulsory retirement has been set aside for non compliance of the statutory provisions and the exoneration of the applicant being not on merit, the competent authority was entitled to impose conditions impugned in the order dated 29.03.2016.

4. We have heard learned counsel for the parties and perused the record.

5. From the perusal of the order dated 29.03.2016, it appears that the reviewing authority formulated the opinion to withdraw the penalty order dated 09.09.2014 of compulsory retirement and allowed the applicant to retire on his due date of retirement, i.e., 31.12.2014. After having arrived at such a conclusion, the reviewing authority imposed two conditions; the first being, treating the period between the date of compulsory retirement and date of actual superannuation as leave of the kind due to the officer, and the second that the applicant would not be entitled to claim any benefit from retrospective date by virtue of issue of the order withdrawing the penalty of compulsory retirement, meaning thereby, that the applicant would not be entitled to any financial benefits from the date of compulsory retirement till the date of superannuation. The subsequent two orders dated 04.07.2016 rejecting the representation of the applicant to withdraw the conditions imposed in the impugned order dated 29.03.2016, and the order of recovery dated 24.10.2016 are consequence of the impugned order. The respondents in their counter affidavit and also during the course of arguments relied upon provisions of Fundamental Rule 54-A as also sub-rule (5) of Rule 54. Fundamental Rule 54-A (1) & (2) are reproduced hereunder:-

"F.R.54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is re-instated without holding any further enquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of the clause (1) of Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal, or compulsory retirement, as the case may be, 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:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.]

From a bare perusal of Fundamental Rule 54-A, we find that sub-rule (1) is attracted where the order of dismissal, removal or compulsory retirement is set aside by a Court of Law and such government servant is reinstated into service without holding any further inquiry. Similarly, sub-rule (2) is also attracted where the order of dismissal, removal or compulsory retirement is set aside by the Court solely on the ground of non-compliance of the requirements of clause (1) or clause (2) of Article 311 of the Constitution and the government servant is not exonerated on merits.

6. In the present case, the order of compulsory retirement in respect to the applicant has not been set aside by any Court of law. Nor is it solely on the ground of non compliance with the requirements of clause (1) or clause (2) of Article 311 of Constitution. In the instant case, the order of compulsory retirement has been set aside by the reviewing authority on the representation of the applicant. In such a situation, FR 54 would be attracted. FR 54 is reproduced hereunder:-

"F.R 54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so re-instated but for his retirement on superannuation, while under suspension or not, the authority competent to order re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of 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 representations within 60 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, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

In the case in hand, the order of compulsory retirement has been set aside as a result of review under sub-rule (a) of Rule 54 (1). Under such a situation, the authority competent to order reinstatement has to make a specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding compulsory retirement, and also to order as to whether or not the period shall be treated as period spent on duty. Sub-rule (2) of Rule 54 empowers the competent authority to order payment of full pay and allowances to the government servant where the authority is of the opinion that the government servant has been fully exonerated. However, under proviso to sub-rule (2) where the authority is of the opinion that termination of the proceeding 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 representation within 60 days from the date of communication and after considering the representation, if any, may pass order by recording reasons. Only such emoluments (not being the whole) of pay and allowances as it may determine, meaning thereby, that the government servant can be deprived of full emoluments and pay for the period of such delay. In order to attract proviso to sub-rule (2) of FR-54, the competent authority has to formulate an opinion that there has been a delay attributable to the government servant and once this opinion is formulated then the principles of natural justice are required to be observed before any order is passed depriving the government servant of full emoluments.

7. From the perusal of the order dated 29.03.2016, we find that there is no allegation what to say of proof of delay attributable to the applicant. To the contrary, the reviewing authority itself has recorded few facts which inter alia established delay on the part of the department. The relevant observations are as under:-

"And whereas the issues raised by the petitioner, Dr. P. C. Kashyap have been duly considered in the light of the relevant records and rule position and observed the following:-

(i) It has taken 4 ½ years after the charge sheet was issued to Dr. P.C. Kashyap on 12.03.2010, and the final order compulsory retirement was passed on 09.09.2014. Dr. P. C. Kashyap being an Executive Director in SAI, inquiry was required to be conducted by an officer senior to him who was not available in Sports Authority of India and the request of appointing an Inquiry Officer by the

Ministry was not acceded to. Moreover, it is seen that the delay in conclusion of the Departmental proceedings was on account of numerous factors and not due to any administrative negligence or inaction, which included change of Inquiry Officers either due to their repatriation or due to higher responsibilities assigned to them leaving very little time for them to conduct the inquiry. As such, there is no intentional delay in conduct of the inquiry and completion of the proceedings except the compulsive circumstances. CVC also took time of about 1 ½ years for furnishing 1st stage advice.

(ii) As per CVC guidelines, a copy of CVC's 2nd stage was required to be supplied to the Charged Officer along with the report of Inquiry Officer which was not given to Dr. Kashyap. Dr. Kashyap has contended that by not providing 2nd stage advice of CVC, he has been put under great disadvantage for defending himself before the major penalty imposed on him."

From the above facts noticed by the reviewing authority, it is established beyond doubt that the delay in conduct of disciplinary proceedings is solely administrative in nature and not attributable to the applicant. Thus, the question of depriving the applicant of his full salary does not arise at all. The final conclusion of the reviewing authority also establishes that the reviewing authority considered that the major penalty of compulsory retirement needs to be withdrawn which clearly convey that the reviewing authority did not find merit in the order of disciplinary authority imposing penalty of compulsory retirement. Under such circumstances, the applicant cannot be deprived of his emoluments for the period he was out of service, nor such period can be treated as leave of the kind due as ordered in the impugned order dated 29.03.2016. Conditions (a) & (b) in the aforesaid order have no sanction of law. Such conditions are unwarranted and contrary to the facts on record, and are not permissible under the rules relied upon by the respondents. Both the conditions (a) & (b) in the impugned order are liable to be quashed. The 2nd and 3rd impugned orders dated 04.07.2016 rejecting representation of the applicant and 24.10.2016 making recovery from the applicant being consequential orders to the conditions (a) & (b) quashed hereinabove are also liable to be set aside.

8. This Application is accordingly allowed. Conditions (a) & (b) incorporated in the order dated 29.03.2016 and orders dated 04.07.2016 and 24.10.2016 are hereby quashed. The applicant shall be entitled to full salary and retiral benefits as are admissible in law. Let the retiral benefits be calculated and paid to the applicant within a period of three months from the date of receipt of copy of this order.