

(2008) 07 MP CK 0036
In the Madhya Pradesh High Court

Gurmit Singh

APPELLANT

Vs

The Zonal Manager, Punjab and Sindh Bank and Another

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(3), 10(4)

Citation : (2008) 119 FLR 557 : (2008) ILR (MP) 3049 : (2008) ILR (MP) 3045 : (2009) 1 LLJ 800 : (2008) 5 MPHT 311 : (2008) 3 MPLJ 642

Hon'ble Judges : A.K. Patnaik, C.J;R.S. Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Jha, J.

The applicant, who was the original petitioner in W.P. No. 2515 of 1997 and respondent in W.A. No. 901 of 2006, has filed this application for review of order dated 25-1-2007 passed in W.A. No. 901/2006 and has prayed for a direction to the non-applicant/appellants to pay subsistence allowance to the applicant for the period commencing 1-3-1996 till the disciplinary proceedings are finally concluded by the non-applicants.

The facts in brief necessary for the adjudication of the present application are that on 25-6-1990 the applicant was placed under suspension vide order dated 23-6-1990 pursuant to a report lodged by the non-applicant No. 1 dated 26-5-1990 with the State Bureau of Economic Offences, Bhopal. Subsistence allowance was also ordered to be paid to the applicant as per Clauses of the bipartite settlement and norms prevalent in the non-applicant/Bank. The Economic Offences Bureau vide its letter dated 9-1-1991 informed the non-applicant that no offence was found to have been committed in the investigation conducted by it in spite of which the non-applicants lodged a fresh FIR against the applicant on 5-2-1991. The non-applicants also informed the applicant vide their letter dated 13-5-1991 that he would be entitled to subsistence allowance

equal to full pay with effect from 25-6-1991 as per the bipartite settlement. On 22-2-1993 during the pendency of the criminal case a charge-sheet was issued to the applicant and a departmental proceeding was initiated against him which ultimately resulted in imposition of a punishment of dismissal of the applicant from service vide order dated 29-2-1996. The appeal filed by the applicant was dismissed by the Appellate Authority vide order dated 6-2-1997 and, therefore, the applicant filed a writ petition before this Court assailing his dismissal from service which was registered as W.P. No. 2515 of 1997 and was ultimately allowed vide order dated 21-6-2005 and the impugned orders of the Appellate Authority, dated 6-2-1997 and of the Disciplinary Authority, dated 29-2-1996 were quashed and the applicant was directed to be reinstated in service.

As the non-applicant failed to comply with the orders passed by this Court in W.P. No. 2515/97, the applicant was constrained to file an application for review which was also disposed of vide order dated 26-9-2005 passed in MCC No. 1422 of 2005 with a direction to the non-applicants to comply with the order passed in the writ petition regarding reinstatement within two months. The non-applicants thereafter filed a SLP (Civil) No. 19790/2005 and the Supreme Court, vide interim order dated 3-10-2005 granted ad interim stay of the orders passed by this Court in W.P. No. 2515/97, dated 21-6-2005, however, as intra Court appeal in the State of M.P. was revived, the SLP was disposed of permitting the non-applicants to file an intra Court appeal and the interim protection granted to them was extended for a further period of two months.

Being aggrieved by the order of the learned Single Judge the non-applicants filed Writ Appeal No. 901 of 2006 which was ultimately disposed of vide order dated 25-1-2007 after setting aside the order dated 21-6-2005 passed by the learned Single Judge in W.P. No. 2515/2007, quashing the order dated 29-2-1996 of the Disciplinary Authority as well as the order dated 6-2-1997 of the Appellate Authority with a direction to the Disciplinary Authority in the following terms:

For the aforesaid reasons, we set aside the impugned order dated 21-6-2005 of the learned Single Judge in W.P. No. 2515/97 and quash the order dated 29-2-1996 of the Disciplinary Authority and the order dated 6-2-1997 of the Appellate Authority and remit the matter to the Disciplinary Authority to record a finding on the charges against the respondent after excluding the opinion of the handwriting expert and after affording an opportunity to the respondent to make further representation against the findings of the Inquiry Officer in the enquiry. Since the respondent has remained out of service since 1996, this exercise will be completed by the Disciplinary Authority within a period of three months from the date of receipt of the certified copy of this order from the respondent. The appeal is accordingly disposed of.

As the matter was remitted back to the Disciplinary Authority, the applicant filed an application dated 17/24-2-2007 before the non-applicants claiming payment of subsistence allowance as per the provisions of the bipartite settlement but no orders thereon were passed by the non-applicants and subsistence allowance

was not paid to him, therefore, he has filed the present application before this Court for review/directions to the non-applicants for payment of subsistence allowance to him.

It is pertinent to note that during the pendency of the present application the non-applicants have again completed the enquiry and have issued an order dated 16-4-2007 dismissing the applicant from service against which it is stated by the learned Counsel for the applicant that he has filed an appeal before the Appellate Authority. In the circumstances, the sole question before this Court in the present application is as to whether the applicant is entitled to subsistence allowance from the date of his first dismissal from service, Le., 29-2-1996 till the date of his second dismissal from service pursuant to directions issued by this Court dated 16-4-2007.

The applicant, in support of his contention, submits that once the initial order of dismissal from service dated 29-2-1996 was quashed by this Court in W.P. No. 2151/97 which was further affirmed by this Court in W.A. No. 901/2006, the applicant should be deemed to be under suspension and is entitled to payment of subsistence allowance as per the bipartite settlement.

Per contra, learned Counsel appearing for the non-applicants, submits that the applicant is not entitled to any subsistence allowance as quashment of the order of dismissal does not mean that the applicant would revert back to the status of a suspended employee in all circumstances and in support of the aforesaid contention has relied upon the judgment of the Supreme Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar and Ors.* (1993) 4 SCC 721.

To appreciate the rival submissions in the proper perspective it is relevant to take into consideration certain facts, namely, that the first order of dismissal of the applicant dated 29-2-1996 was quashed by this Court in W.P. No. 2515/97 and the applicant was directed to be reinstated, however, in the writ appeal filed by the non-applicants while that part of the direction relating to reinstatement passed by the learned Single Judge was set aside, the order of the learned Single Judge as far as it related to quashing of order of dismissal was affirmed with a direction to the Disciplinary Authority to reopen the departmental enquiry and record a fresh finding on the charges against the applicant after excluding the opinion of the handwriting expert and after affording an opportunity to him to make further representation against the findings of the Enquiry Officer in the enquiry. In other words, the finding and the order of the Disciplinary Authority was set aside and the Disciplinary Authority was directed to re-decide the issue after affording adequate opportunity to the applicant and, therefore, the position of the applicant as it existed prior to his dismissal from service as a charged officer under suspension was restored.

In the aforesaid facts and circumstances, we are of the considered opinion that the contention of the learned Counsel for the applicant deserves to be accepted and the applicant should be deemed to be under suspension till the date of

issuance of the subsequent order of termination dated 16-4-2007 and consequently, he is entitled to payment of subsistence allowance for the period commencing from 1-3-1996 to 16-4-2007.

We find support of the view taken by us from the judgment of the Supreme Court in the case of *Ranjit Singh Vs. Union of India (UOI) and Others*, wherein in similar circumstances when an order of dismissal was set aside and the matter was remitted back to the Disciplinary Authority for fresh consideration, the delinquent employee was directed to be deemed to be under suspension till the disposal of the matter by the Disciplinary Authority in the following terms in Paragraph 24 of the judgment:

...We make it clear that although we are setting aside the order of Disciplinary Authority and consequently all other orders, we direct that the appellant shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority....

Similar directions were issued by the Supreme Court in the case of 1996 VII AD 821 (SC), where on the matter being remitted back to the Disciplinary Authority for proper adjudication by setting aside the order of dismissal the employee was directed to be deemed under suspension. Yet again in the case of *State of Punjab and Others Vs. Dr Harbhajan Singh Greasy*, the Supreme Court observed in Paragraph 3 of the judgment that the law was now well settled that in cases where an enquiry is found to be faulty the matter should be remitted back to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out instead of directing reinstatement and pending such enquiry the delinquent must be deemed to be under suspension, in the following terms:

...It is now a well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the Disciplinary Authority to follow the procedure from the stage at which the fault was pointed out and to take action in accordance to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction....

We may also profitably draw support from the fact that the provisions of Rules 10(3) and (4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which have statutorily incorporated provisions for treating a delinquent employee under deemed suspension in cases where an order of dismissal is set aside or declared or rendered void by a Court or Tribunal, have been given the stamp of approval by the Supreme Court in the case of *Nelson Motis Vs. Union of India* and another, .

The reliance placed by the learned Counsel for the non-applicants on Paragraphs 30(v) and 31 of the judgment of the Supreme Court in the case of *Managing Director, ECIL, Hyderabad v. B. Karunakar and Ors.* (supra), is, in our considered

opinion, misplaced and misconceived as the observations relied upon by the learned Counsel for the non-applicants made in that judgment relate to the discretion vested in the authority regarding grant of consequential benefits pursuant to setting aside of the order of termination and to decide as to the manner in which the period between the order of dismissal and the subsequent order of reinstatement on remand should be treated, i.e., regarding grant of full or reduced back wages and counting of the intervening period for the purposes of seniority, pension, etc. and, therefore, has no applicability to the issue involved in the present case as the issue in the present case relates to the entitlement of suspension allowance and not back wages.

The parties have also strenuously opposed each other regarding the quantum of subsistence allowance to be paid to the applicant, however, as is evident from Annexure P-14, filed by the applicant, which is a letter issued by the Regional Manager of the non-applicant/Bank to the Manager of the Manarajpur Branch of Punjab and Sindh Bank filed along with the reply to the application for modification, that Chapter XXXI of the bipartite settlement dated 8-9-1983 as well as Paragraph 557 of the Shastri Award read with Paragraph 17.14 of the Desai Award are applicable to the case of the applicant for grant of subsistence allowance during the period of suspension. Clause 1 of Chapter XXXI (at some place referred to as Chapter 5) of the bipartite settlement reads as under:

1. Subsistence allowance during the period of suspension should be granted on the following scale:

(A) Where the enquiry is departmental by the bank:

(1) Where the investigation is not entrusted to, or taken up by an outside agency (i.e., Police/CBI):

(a) for the first three months of suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

(2) Where the investigation is done by an outside agency (Le., Police/CBI), and such investigation is followed by a departmental enquiry by the bank and not by prosecution:

(a) for the first three months of the suspension one third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one half of the pay and allowances which the workman would have got but for the suspension:

Provided that full pay and allowances will be payable after six months from the

date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension, whichever is later:

And provided further that the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

(B) Where the enquiry is held by an outside agency including a trial in a Criminal Court (irrespective of whether the enquiry/trial is preceded by an investigation by an outside agency, Le., Police/CBI) or not:

(a) for the first six months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over.

(Paragraph 557 Sastry Award, Paragraph 17.14 Desai Award and Paragraph 5 Bipartite Settlement 8-9-1983).

In the instant case though initially the matter was handed over to the Economic Offences Bureau for investigation, the Bureau recorded a conclusion not to prosecute the applicant vide its letter dated 9-1-1991. The non-applicant again lodged a fresh FIR with the police on 5-2-1991 which ultimately culminated in his acquittal on 30-10-2001. However, the non-applicant/Bank without waiting the decision of the Criminal Court initiated departmental proceedings by issuance of the charge-sheet dated 22-2-1993 which resulted in the dismissal of the applicant and is in fact, the subject-matter of the present case and, therefore, the case of the applicant falls under Clause 1-A(2) of the aforementioned Rules relating to payment of subsistence allowance as the departmental enquiry was conducted by the non-applicant/bank itself and as per the proviso appended to Clause 1-A(2) the applicant is entitled to full pay and allowances as subsistence allowance after six months from the date of the receipt of the report of the investigating agency that it has come to the conclusion not to prosecute the employee which, in the instance case, was communicated by Economic Offences Bureau to the non-applicant vide letter dated 9-1-1991.

In view of the aforesaid facts and circumstances we are of the considered opinion that the applicant is entitled to full pay and allowance as subsistence allowance for the period commencing from 1-3-1996 till 16-4-2007 after deducting the amount already paid to the applicant, if any, by way of subsistence allowance including the amount paid to him pursuant to the interim orders passed by this Court in the present MCC. The outstanding amount is directed to be paid to the applicant within a period of two months from today.

The application is accordingly allowed.

In the peculiar facts and circumstances of the case there shall be no order as to

costs.