(2016) 11 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No. 25519 of 2016 (S-CAT)

H.C. Vijaykeerthi APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10(6), Rule 14

Citation : (2017) 1 KantLJ 465

Hon'ble Judges : Jayant Patel and Aravind Kumar, JJ.

Bench : Division Bench

Advocate : Sri A.R. Holla, Advocate, for the Petitioner; Sri Chinmay J. Mirji, Central Government Counsel, for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Petitioner has called in question order dated 17-2-2016 passed by the Central Administrative Tribunal, Bangalore Bench (for short ''Tribunal''), in O.A. No. 170/01604/2015 where under O.A. filed by the petitioner for quashing of the order dated 1-9-2015 (Annexure-A14) and consequential direction to the respondents to make payment of subsistence allowance at 75% of the salary came to be rejected.

2. We have heard the arguments of Sri A.R. Holla, learned Counsel appearing for the petitioner and Sri Chinmay J. Mirji, Central Government Counsel for respondents. Perused the records.

3. Brief facts which has lead to filing of this writ petition are as under:

Petitioner came to be appointed as Cameraman, Grade II and was posted at Doordarshan Kendra, Lucknow. He had remained absent between June 1995 to March 2000. He reported to duty during April 2000 along with medical certificates, fitness certificates, etc. and worked till 2003 at Lucknow. Thereafter petitioner was transferred to Bangalore during May 2003 and was issued with a

Memorandum of Charge on 25-10-2004 for unauthorised absence from 16-6-1995 to 25-4-2000. After holding an inquiry, report came to be submitted that charge was proved and petitioner came to be dismissed from service by order dated 8-10-2007. Being aggrieved by the same petitioner filed O.A. No. 435 of 2007 and Tribunal allowed said application by order dated 23-1-2009, which came to be set aside by this Court in W.P. No. 14361 of 2009 with a direction to the respondents to take further disciplinary action against the petitioner within six (6) months.

4. Thereafter third respondent ordered for de novo inquiry in respect of charge and accordingly inquiry was held and concluded in the year 2010 holding that charges are proved. Third respondent passed an order on 9-9-2010 confirming the order of dismissal dated 8-10-2007. Being aggrieved by the same, petitioner filed O.A. No. 415 of 2010 for setting aside the order of [dismissal and for grant of consequential reliefs. Tribunal by order dated 15-3-2012 disposed of O.A. No. 415 of 2010 with a liberty to the petitioner to file an appeal to the President. Accordingly, appeal came to be filed and it was rejected by order dated 31-12-2012. Thereafter, petitioner filed O.A. No. 139 of 2013 for setting aside the order confirming dismissal and order of Appellate Authority dated 31-12-2012. Tribunal by order dated 2-8-2013 set aside the order of dismissal and also that of the Appellate Authority and directed the Disciplinary Authority to pass orders within two (2) months after holding de novo inquiry as provided under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. Same was called in question before this Court in W.P. No. 49152 of 2013 (S-CAT). This Court by order dated 17-12-2013 while confirming the order of the Tribunal, observed that petitioner was deemed to be under suspension from the date of original order of dismissal passed by the Disciplinary Authority until further orders. It was also held that petitioner is entitled for subsistence allowance as per mles. Hence, Disciplinary Authority issued fresh charge-sheet including list of witnesses to the petitioner in compliance of order dated 2-8-2013. Hence, fresh inquiry was commenced.

5. In the light of order dated 17-12-2013 passed in W.P. No. 49152 of 2013 (S-CAT) an order came to be passed by the respondent on dated 12-6-2014 to the effect that petitioner is deemed to have been suspended with effect from the date of original order of dismissal, i.e., 8-10-2007, it was ordered that petitioner is entitled for subsistence allowance as per rules.

6. Since Tribunal while disposing of O.A. No. 139 of 2013 had directed the Disciplinary Authority to conduct the inquiry within a period of two (2) months, seeking extension of time, application had been filed by the third respondent before the Tribunal. By order dated 7-3-2014 Tribunal not only extended time but also clarified that the inquiry is to be conducted in respect of the charge memo dated 25-10-2014. Thereafter, on 5-9-2014 second charge-sheet was issued to the petitioner for submitting fake medical certificate. On account of alleged non-participation of the petitioner in the inquiry proceedings and time granted by the

Tribunal by order dated 7-3-2014 having expired, one more application came to be filed for further extension of time. Tribunal by order dated 20-10-2014 directed the respondent to pay the arrears of subsistence allowance.

7. In view of second charge-sheet having been issued to the petitioner, same was challenged in O.A. No. 1175 of 2013 before the Tribunal. By order dated 30-6-2015 Tribunal rejected the contention of the applicant/petitioner by dismissing the said application and simultaneously directed the respondent-authority to complete the inquiry proceedings in respect of both charge-sheets within a period of six (6) months and also directed the petitioner to co-operate with the inquiry proceedings.

8. Thereafter, third respondent filed an application for extension of time to complete the inquiry and said application came to be numbered as Misc. Application No. 170/00238/2015 (in O.A. No. 139 of 2013) and said application came to be disposed of by observing that: "There is no need for a full-fledged inquiry in the light of admission by the applicant" vide order dated 1-7-2015.

9. Petitioner in the meanwhile filed O.A. No. 713 of 2014 for payment of subsistence allowance at the rate 50% of salary from 8-10-2007 to 8-1-2008 and at the rate of 75% from 1-1-2008 till the date of reinstatement into service. Tribunal by order dated 19-8-2014 disposed of the said application with certain observations and respondent-Authorities were directed to take steps for payment of admissible subsistence allowance on petitioner submitting requisite documents to evidence the fact of non-employment. Subsequently by order dated 5-9-2014 (Annexure-A8) Disciplinary Authority extended the deemed suspension period by 180 days and subsistence allowance at the rate of 50% of the salary was ordered to be paid to the petitioner. Against this order petitioner filed O.A. No. 1249 of 2014 and sought for quashing of the same and also sought for a direction to pay subsistence allowance at the rate 50% of salary from 8-10-2007 to 8-1-2008 and at the rate of 75% from 8-1-2008 till the date of reinstatement. Tribunal by order dated 24-4-2015 disposed of the said application and as such, directed the Disciplinary Authority to examine the claim of petitioner and pass suitable orders.

10. In view of order passed in Misc. Application No. 170/00238/2015 in O.A. No. 139 of 2013 by the Tribunal on 1-7-2015 to the effect that: "Disciplinary Authority may itself test the merit of the medical certificate and if necessary hear the applicant and examine whether during all these while, cogent evidence will prove that applicant was on special diet and medicines for T.B.", petitioner was directed to produce all the records before Authorities by the Disciplinary Authority. Even thereafter petitioner did not appear in the inquiry and the order dated 7-8-2015 which was challenged by the petitioner before the Appellate Authority also came to be rejected on 15-3-2016.

11. In the meanwhile, on 1-9-2015 third respondent had extended the period of suspension of petitioner by 180 days and had ordered for payment of 50% of salary as subsistence allowance. Being aggrieved by the same, O.A. No.

170/01604/2015 came to be filed wherein petitioner prayed for quashing of the order dated 1-9-2015 passed by third respondent and had also sought for a direction to pay subsistence allowance at the rate of 75% of the salary from 8-1-2008. Tribunal by impugned order dated 17-2-2016 (Annexure-A) dismissed the application with cost of Rs. 1,00,000/-.

12. It is the contention of Sri A.R. Holla, learned Counsel appearing for the petitioner that Tribunal had erred in expanding the scope of the application, inasmuch as, without considering the grounds urged by the petitioner in support of his claim for payment of subsistence allowance at the rate of 75%, had proceeded to direct the petitioner to refund the subsistence allowance already received by him. He would also elaborate his submission by contending that Tribunal committed a serious error in recording a finding with regard to authenticity of medical certificates, since it was not the subject-matter of dispute, which was required to be resolved by the Tribunal in the said proceedings. He would also contend that Tribunal had exceeded its jurisdiction in examining the medical records/certificates to justify the order of dismissal of the petitioner from service, which was not either in the realm of consideration before the Tribunal nor was the scope of the application. Hence, on these grounds he has sought for allowing the writ petition and prays for quashing of impugned order.

13. Per contra, Sri Chinmayi J. Mirji, learned CGC appearing for respondents supported the impugned order and contended that present writ petition has become infructuous, since order of dismissal dated 8-10-2007 has been confirmed by order dated 17-2-2016 and as such, he contends that prayer sought for in the application before the Tribunal for payment of subsistence allowance does not survive for consideration. Hence, he prays for dismissal of the writ petition.

14. Having heard the learned Advocates appearing for the parties and on perusal of the entire material on record and after bestowing our careful and anxious consideration to the rival contentions raised at the bar, we notice that petitioner being aggrieved by the order dated 30-6-2015 passed by the Tribunal dismissing the application had preferred Writ Petition No. 19094 of 2016 and this Court by order dated 20-4-2016 had stayed all further proceedings pursuant thereto. However, on account of order dated 17-2-2016 passed by the Tribunal recalling enmass all its earlier order this writ petition would not survive for being considered on merits since the orders impugned before the Tribunal has merged in the order dated 25-5-2016 now passed by the Disciplinary Authority by restoring the order of dismissal dated 8-10-2007. This Court accordingly has disposed off the said W.P. No. 19094 of 2016 without prejudice to the right and contentions of the petitioner in the present petition as well as with liberty to the present petitioner to challenge the latter order of dismissal dated 25-2-2016.

15. The records would also disclose that Co-ordinate Bench of this Court in W.P. No. 49152 of 2013 by order dated 17-5-2013 had opined as under:

"6. From the aforementioned rule, it is amply dear that where the penalty of dismissal is set aside in consequence of the decision of the Tribunal, with a direction to hold further enquiry against the Government servant, the Government servant shall be deemed to have been suspended from the date of original order of dismissal. Therefore, the petitioner is deemed to have been under suspension from the date of original order of dismissal passed by the Disciplinary Authority'' until further orders. Since the petitioner is deemed to be under suspension he is entitled to subsistence allowance as per rules."

16. In the light of said observation made, the Competent Authority had from time-to-time extended the period of deemed suspension of petitioner under Rule 10(6) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and had paid the subsistence allowance at the rate of 50% of his salary. Even at earlier point of time also the petitioner was paid subsistence allowance. When this was the factual position, petitioner had pursued his grievance for payment of subsistence allowance at the rate of 75% of his salary and as such, had approached the respondent-Authorities and on their refusal to grant the relief had approached the Tribunal by filing O.A. No. 170/01604/2015 for the said relief. As already noticed herein above. Thus, it can be safely concluded that the scope of consideration in O.A. No. 170/01604/2015, which arose before the Tribunal was: "Whether the petitioner was entitled for subsistence allowance @ 75% of his salary from 8-1-2008 or not?" As to whether petitioner had produced the medical records relating to his absence from duty during the period 1995 to 2000 and whether they were fabricated or not, was not the subject-matter which was required to be examined by the Tribunal. Likewise, as to whether the petitioner ought to have produced appropriate evidence to prove that he was on special diet and on medication for Tuberculosis during the said period were also not within the scope of the said application. Hence, we are of the considered view that Tribunal had exceeded in its jurisdiction by calling upon the petitioner to produce the alleged list of medicines, the medical certificates relating to said period and adjudication of said issue. In other words, Tribunal had assumed the jurisdiction of the Inquiring Authority and has proceeded to express its opinion with regard to the charges alleged against the petitioner as though it was the Inquiring Authority or the Appellate Authority and had erroneously proceeded to record its finding thereon, which we have to observe at the cost of repetition that same was not within its jurisdiction or its purview. In that view of the matter, we are of the considered view that order of Tribunal directing recovery of subsistence allowance paid to the petitioner and also imposing a cost of Rs. 1,00,000/-, cannot be sustained.

17. In the normal course, we would have remanded the matter back to Tribunal with a direction to examine the claim of petitioner for payment of subsistence allowance, which we desist from doing so for the simple reason that the Competent Authority has now passed an order on 25-2-2016 confirming the order of dismissal dated 8-10-2007.

18. As such, we are of the considered view that if liberty is reserved to the petitioner to challenge the said order (dated 25-2-2016) and also permitting the petitioner to urge all grounds including the grounds urged in O.A. No. 170/01604/2015, without expressing any opinion, it would suffice and meet the ends of justice. Accordingly, we grant the liberty to the petitioner to challenge the order dated 25-2-2016 and of course by setting aside the order of the Tribunal dated 17-2-2016 - Annexure-A.

19. For reasons afore stated. We proceed to pass the following:

ORDER

(i) Writ petition is hereby allowed in part.

(ii) Order dated 17-2-2016 passed in O.A. No. 170/01604/2015 (Annexure-A) to the extent of ordering recovery of subsistence allowance paid thereto and imposing of cost of Rs. 1,00,000/- is hereby set aside.

(iii) Petitioner is granted liberty to challenge the order dated 25-2-2016 before the appropriate forum for appropriate relief and all grounds urged by the petitioner in O.A. No. 170/01604/2015 and also in the present writ petition are permitted to be urged in the proposed proceedings challenging the order dated 25-2-2016 and it is also made clear that no opinion has been expressed by us in that regard. In the event of same being challenged, Tribunal shall consider the same on merits without being influenced by any of its observations made earlier.

20. Costs made easy.