
(2014) 05 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 207/2009

Rasheed Ahmad

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 07-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 05 MP CK 0042

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

Advocate : Akash Choudhary, Advocate for the Appellant; Anoop Nair, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, C.J.—This writ petition under Article 226 of the Constitution of India takes exception to the judgment of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, dated 4th April, 2008, in Original Application No. 812/2006. The said original application was filed by the petitioner against the order dated 7.6.2006, whereby his request for grant of financial upgradation under the Assured Career Progression Scheme (for short "ACP") was rejected. The Tribunal relying on the fact that the Appellate Authority vide order dated 9.5.2002 imposed additional punishment that the period between removal from service to the date of reinstatement shall not be counted as on duty, negated the claim of the petitioner and refused to grant any relief to the petitioner on the finding that the decision of the Appellate Authority has become final.

2. For considering the grievance of the petitioner, we would refer to the operative order of the Appellate Authority dated 9.5.2002, which reads thus:

And therefore, in the light of preceding paragraphs & having regard to the facts & circumstances of the case, the undersigned decides to moderate the penalty of "Removal from Service" to that of "reduction of pay by two stages in the time

scale of pay of Fitter (skilled) for a period of 3 years with cumulative effect".

It is further ordered that the period between Removal from Service to date of reinstatement shall not count as on duty. He shall be entitled to pay & allowances restricted to subsistence allowance which would have been payable to him had he been placed under suspension between the date of removal from service and the date of reinstatement.

3. From the plain language of this order, it is evident that the punishment which has become final against the petitioner was one of not to count the period between removal from service to the date of his reinstatement as on duty and nothing more. Whereas, the Assistant Works Manager/Administration in the impugned decision dated 7th June, 2006, proceeded on the basis that the petitioner's service period from 25/6/1988 cannot be reckoned for the purpose of grant of ACP to the petitioner. The operative part of the impugned communication dated 8.6.2006 reads thus:

Thus it is amply clear that though you have joined the GIF on 21/1/1976, intervening period from 25/6/88 to 08/05/02 cannot be considered as regular service for grant of ACP, as the period of absence from duty including the period of suspension preceding your dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose. Therefore, the Competent Authority after due consideration of the case in its entirety is of the conclusion that Shri Rasheed Ahmed, T. No. 2503/710/PM is not entitled for grant of ACP-2.

4. Keeping in mind the order passed by the Appellate Authority, it is unfathomable that the service period from 25/6/1988 until 2/5/1992, when the petitioner was placed under suspension during the pendency of departmental enquiry until the removal order was passed on 2/5/1992, can be excluded for computing the period of service rendered by the petitioner. This is a palpable error committed by the Assistant Works Manager/Administration in the impugned judgment. To that extent the petition ought to succeed. In other words, the said intervening period until order of removal was passed cannot be excluded from computing the period of service rendered by the petitioner in terms of the decision of the Appellate Authority which has been allowed to become final by the parties. To that extent, this petition succeeds.

5. Counsel for the respondents relying on the third paragraph of the order would contend that the suspension period cannot be treated as regular service. We are afraid, it is not open to the respondents to contend contrary to the provisions in F.R. 54. Reliance was placed on clause (b) of sub-rule (1) of Rule 54. Rule 54(1) reads thus:

F.R. 54(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under

suspension or not, the authority competent to order reinstatement 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.

On plain language of this provision, it is obvious that the competent Authority has to pass a specific order as to whether or not any period should be treated as a period spent on duty. In the present case, the Appellate Authority has passed a specific order that only the period between removal from service of the petitioner to the date of his reinstatement shall not be computed and taken into account as on duty. The converse of that finding, is that, the remaining period (except the period from removal from service to date of reinstatement) will have to be reckoned as period of service rendered by the petitioner but without relief of back wages and limited to subsistence allowance. Accordingly, even this contention ought to fail.

6. We, therefore, direct the appropriate Authority to reckon the suspension period from 25/6/1988 till 2/5/1992, namely, till the date of passing order of removal, for the purpose of computing the period of service rendered by the petitioner in addition to the other period already taken into account for grant or non-grant of Second ACP.

7. The petition succeeds on the above terms.