

(2019) 08 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 4357 Of 2017

Sarju Prasad

APPELLANT

Vs

Union Of India Through The General Manager Anr

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13, 13(1)(d)
Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 5(6), 5(7), 14(i)
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 10
Conduct, Discipline And Appeal Rules, 1977 — Rule 20(3)

Citation : (2019) 08 CAT CK 0028

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, Shailendra Tiwari, Vikas Kumar

Final Decision : Dismissed

Judgement

1. By filing this OA, the applicant is seeking the following reliefs:-

"(i) That the Hon"ble Tribunal may graciously be pleased to pass an declaring to the effect that placing the applicant under suspension continuously from 11.7.2013 till his retirement i.e. upto 31.1.2017 without any reason and justification and without passing any order of extension of suspension is totally illegal, unjust, arbitrary and against the rules and law of the land and consequently pass an order directing the respondents to regularized the entire suspension period as on duty with all the purposes and with all the consequential benefits including pay and allowances with arrears of difference of pay and allowances with interest.

(ii) That the Hon"ble Tribunal may graciously be pleased to pass an directing the respondents to release the leave encashment amount of the applicant with interest @ 18% PA, as the same has been withheld due to suspension of the applicant as on the date of retirement.

(iii) Any other relief which the Hon"ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. When this matter was taken up for hearing, at the outset, learned counsel for the respondents produced a copy of Leave payment bill is produced and submitted that the relief in clause (ii) above has not become infructuous. Although counsel for the applicant did not dispute this fact of payment of leave encashment, however, he submitted that in the said leave bill dated 28.9.2018, the respondents have made recoveries illegally without giving any justification for the same. As such he sought a liberty to agitate the said grievance in a separate proceeding in accordance with rules on the subject. Permission is granted. Accordingly, in view of the above the clause (ii) of the relief clause has become infructuous, as already noted above in this para, the applicant has sought liberty to agitate his grievance with regard to payment of leave encashment in separate proceedings in accordance with rules on the subject and sought permission is granted.

3. So far as clause (i) of relief clause, as quoted above, is concerned, counsel for the applicant's main contention is that applicant while holding the post of Accounts Officer was placed under suspension vide order dated 11.7.2013. However, after his suspension, neither the applicant was allowed to perform his duties nor the suspension of the applicant was extended by any order and therefore, after 90 days the suspension of the applicant became invalid. Counsel further submitted that against the suspension order, the applicant submitted his appeal vide order dated 25.7.2013, 12. 8.2013, 17.10.2013, 07.02.2017, 23.05.2017, 03.08.2017 and 20.09.2017 but no reply has been received by him. In the meantime, the applicant stood retired on 31.1.2017. Counsel further submitted that as per Rule 5(6) of the Railway Servants (D&A) Rules, 1968, a suspension is not valid after a period of 90 days unless it is extended after review for further period before the expiry of 90 days and present case the applicant was placed under suspension vide order dated 11. 7.2013 and after that neither the applicant was allowed to perform his duties nor the suspension of the applicant was extended by any order and, therefore, after 90 days the suspension of the applicant became invalid. In support of his contention, counsel for the applicant placed reliance on the decisions of this Tribunal in OA No.217/2011 dated 12. 8.2011, OA 1322/2012 dated 24.5.2013 and OA No.3628/2012 dated 27.2.2013 and contended that this Tribunal clearly held that "reviewing the suspension order within the 90 days is not sufficient but the order reviewing and extending the period of suspension has to be communicated to the concerned employee before the expiry of 90 days period. When the Government's order and the judicial orders on the subject are very clear and the impugned orders have not been passed by the respondents in consonance with Rule 10 of the CCS Rules, 1965, they are to be treated invalid and deserve to be set aside."

4. On the other hand, counsel for the respondents by referring to their counter

affidavit submitted that the applicant has not come with clean hand before the Court and concealed the important fact that he was convicted by Special Judge, CBI/Panchkula, Haryana vide judgment dated 18. 10.2012 and 20.12.2012 in CBI Case No.RC CHG2008 A 0033 dated 12.12.2008 under Section 7&13 r/w 13(1) (d) of PC Act, 1988 as he was sentenced to undergo one year rigorous imprisonment and fine of Rs.5000/-. However, the said sentence has been suspended by the Hon"ble High Court of Punjab & Haryana in an appeal filed by the applicant and the said appeal is still pending in the High Court.

4.1 Counsel further submitted that the case was sent to Railway Board vide Office letter dated 18.4.2013 for action under Rule 14(i) of D&AR Rules, 1968. The Railway Board vide their letter dated 14.5.2013 returned the case for certain information/documents. One of the points was regarding suspension. After due consultations, FA&CAO placed the applicant under suspension w.e.f 11.7.2013. The representations of the applicant dated 25.7.2013 and 12.8.2013 was put up to GM/NR who decided to continue the suspension.

4.2 Counsel for the respondents has also produced the department records and also give a copy of the notings in the file pertaining to review of suspension of the applicant's case to this Tribunal as well as counsel for the applicant. First review of suspension which was w.e.f. 11.7.2013, was done on 16.09.2013, vide which suspension was extended for 180 days w.e.f. 9.10.2013. Thereafter it was again reviewed on 25.3.2014, vide which suspension was again extended for 180 days w.e.f. 6.4.2014. Thereafter it was again reviewed on 18.9.2014, vide which suspension was again extended for 180 days w.e.f. 3.10.2014. Thereafter it was again reviewed on 5.3.2015, vide which suspension was again extended for 180 days w.e.f. 1.4.2015. Thereafter it was again reviewed on 21.8.2015, vide which suspension was again extended for 180 days w.e.f. 28.9.2015. Thereafter it was again reviewed on 23.3.2016, vide which suspension was again extended for 180 days w.e.f. 27.3.2016. Thereafter it was again reviewed on 14.9.2016, vide which suspension was again extended for 131 days w.e.f. 23.9.2016 till his date of retirement on 31.1.2017. Counsel further submitted that it is evidently clear that before expiry of the prescribed period, suspension was reviewed over and again under the extant rules and further extended time to time till his retirement on superannuation, i.e. 31.1.2017.

4.3 Counsel further submitted that applicant was granted subsistence allowance @ 50% of basic pay plus dearness allowance by the competent authority. The applicant submitted his representation dated 4.11.2013 for enhancing the subsistence allowance from 50% to 75%. The matter was put up to the competent authority and the competent authority sanctioned subsistence allowance @ 75% of basic pay and dearness allowance as applicable for the period beyond three months. The applicant was paid subsistence allowance @ 75% of basic pay and dearness allowance as applicable beyond the period of 90 days till the date of his retirement i.e. 31.1.2017.

4.4 Counsel also submitted that the case of the applicant was again sent to

Railway Board on 29.7.2013 for action under Rule 14(i) of D&A Rules and the Railway Board sent a Memorandum No.E(O)I-2013/PU-2/NR/23 dated 29.2.2016 proposing dismissal of applicant. The representation of the applicant dated 22.3.2016 was also sent to the Railway Board on 28.3.2016 for further action. The Railway Board vide letter dated 4.1.2017 issued a withdrawal Memorandum and a Memorandum of show cause notice dated 4.1.2017 proposing dismissal from service after giving him an opportunity to make representation within 15 days which was served to the applicant personally on 16.1.2017. Reply dated 31.1.2017 of the applicant to the said Memorandum, which was received by the respondents, was sent to the Railway Board. As the case of the applicant was already under consideration of Railway Board, the representation dated 7.2.2017 was also sent to the Railway Board. As the applicant retired on 31.1.2017, the proceedings regarding dismissal could not be completed. Thereafter Railway Board issued Memorandum dated 24.5.2017 for withdrawal of the earlier Memorandum dated 4.1.2017 proposing penalty of dismissal already issued to the applicant and fresh Memorandum of Show Cause Notice dated 24.5.2017 proposing penalty of withholding of entire pension. The Railway Board vide their letter dated 18.7.2017 had requested to send the order of suspension and orders of review of suspension. Accordingly, applicant's representation dated 23.6.2017 alongwith suspension orders, review of suspension papers were sent to Railway Board vide letter dated 21.7.2017.

4.5 Counsel further submitted that the Railway Board vide letter dated 11.7.2018 has intimated that President in consultation with UPSC has decided to impose the penalty of withholding of 100% pension and gratuity on permanent basis after considering the judgment dated 18.10.2012 and 29.10.2012 of Hon"ble Special Judge of CBI Court, Panchkula and further stated that the period of suspension may be regularized in terms of para 4 of Master Circular No.64, if required in consultation with finance at level of FA&CAO as he was placed on suspension by FA&CAO. Para 4 of Master Circular 64 provides as under:-

"In cases where suspension was not wholly unjustified, the railway servant shall be paid such amount (not being the whole) of such pay and allowances as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection but this amount shall not be less than the subsistence allowance and other allowance admissible under Rule 1342 - RII and the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose, provided that if the Railway servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Railway Servant.

As the applicant has been awarded penalty, the suspension is not wholly unjustified. Accordingly, competent authority has proposed to treat the period of suspension as period spent on suspension. Since a notice was required to be sent

to the applicant, it was sent asking for representation on the matter within 15 days. The said notice was delivered to the applicant on 11.8.2018. Representation to the show cause notice has also been received on 23.8.2018. Accordingly, on receipt of reply, the competent authority passed an order dated 7.9.2018 by which it has been decided that the suspension is not unjustified as penalty has been imposed vide Railway Board order dated 11.7.2018.

4.6 Lastly counsel for the respondents submitted that in view of the above facts and circumstances of the present case, the OA is liable to be dismissed by this Tribunal.

5. Heard learned counsel for the parties and perused the pleadings as well as departmental file pertaining to review of the case of the applicant. From the departmental file, it is evidently clear that review of suspension of the applicant's case was done from time to time in accordance with the relevant provisions on the subject, as the suspension of the applicant was extended for 180 days before expiry of previous order of suspension and lastly the suspension was extended for 131 days, i.e., with effect from 23.9.2016 till his date of retirement on 31.1.2017, as is evident from the copies of the file pertaining to the applicant's case produced by the respondents during the course of the hearing. But the fact is that review of his case of suspension has evidently done in accordance with the provisions of Rule 5(7) of the D&A Rules, 1968.

6. The case of the applicant as projected by him is that no review has been done in his case as no order of extension of his suspension was ever communicated to the applicant and in support of this contention, counsel placed reliance on the decision of this Tribunal (supra) as well as decision of the Apex Court in the case of Ajay Kumar Choudhary vs. Union of India in Civil Appeal No.1912/2015 vide judgment dated 16.2.2015.

7. It is to be noted that recently the Hon"ble Delhi High Court in the case of Kulamani Biswal vs. Union of India and another in WP. (C) No.6859/2018 vide judgment dated 31.10.2018 elaborately adjudicated the similar issue involved in the present case and observed as under:-

"31. A conjoint reading of the authorities examined hereinabove i.e. the judgments of the Supreme Court in Ajay Kumar Choudhary (supra) and Pramod Kumar (supra) and the judgments of this Court in Dr. Rishi Anand (supra) and Vijay Kumar Jha (supra), make it clear, in any event, that suspension cannot continue indefinitely and that periodical review of the order of suspension is essential. Continuous suspension, in the absence of such review, is antithetical both to the mandate of the statute as well as to the general principles relating to suspension themselves.

32. Thus viewed, I am of the opinion that the suspension of the petitioner Kulamani Biswal cannot be allowed to continue any further. It is a matter of record that, till date, no charge-sheet has been filed, against the petitioner in the criminal court, and no disciplinary proceedings have been initiated, against him,

either. As already observed by me in detail hereinabove, no review of the suspension of the petitioner, has taken place, on six monthly basis, as mandated by Rule 20(3) of the CDA Rules of the NTPC. No order, communicating the decision of any such review, passed by Hon"ble President of India or by order and in the name of the Hon"ble President of India, stands communicated to the petitioner till date.

33. The file noting, dated 7th June, 2018, on which the case propounded by Mr. Bhardwaj rests, is in my view, too weak to function as a crutch, using which the case of the respondent could stand upright.

34. Resultantly, I am of the view that the suspension of the petitioner from service, as effected by the order dated 14th December, 2017 (supra), cannot be allowed to continue any further.

35. The impugned orders dated 14th December, 2017, 18th May, 2018 and 15th June, 2018 are, accordingly quashed and set aside. The petitioner is entitled to be reinstated in service.

36. The respondent is directed to take a decision on how to treat the period of suspension of the petitioner and communicate the decision, to him, within a period of six months."

8. However, in the present case, respondents" quite clearly show that suspension of the applicant was reviewed by the competent authority from time to time and the instant OA has been filed by the applicant on 8.12.2017, i.e., much after expiry of about 10 months of his retirement on 31.1.2017 although initial order placing him under suspension was w.e.f. 11.7.2013. Meaning thereby, the applicant was well aware of the fact that he was still under suspension. It is also to be noted that respondents have clearly stated that as the applicant has been awarded aforesaid penalty, the suspension is not wholly unjustified. Accordingly, competent authority has proposed to treat the period of suspension as period spent on suspension. Since a notice was required to be sent to the applicant, it was sent asking for representation on the matter within 15 days. The said notice was delivered to the applicant on 11.8.2018. Representation to the show cause notice has also been received on 23.8.2018. Accordingly, on receipt of reply, the competent authority passed an order dated 7.9.2018 by which it has been decided that the suspension is not unjustified as penalty has been imposed vide Railway Board order dated 11.7.2018.

9. In view of the above facts and circumstances of this case and for the reasons stated hereinabove, we do not find any merit in the contention of the learned counsel for the applicant at this stage of this matter. Accordingly, the present OA is dismissed. There shall be no order as to costs.