
(2013) 04 AP CK 0101

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13790 of 2004

Y. Subba Rao

APPELLANT

Vs

The Chief Postmaster General, The Postmaster General, The
Director of Postal Services and The Senior Superintendent of
Post Offices

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 14, 16, 226, 311
Penal Code, 1860 (IPC) — Section 409

Citation : (2013) 6 ALD 38 : (2013) 4 ALT 731

Hon'ble Judges : R. Subhash Reddy, J;A.V. Sessa Sai, J

Bench : Division Bench

**Advocate : Siva, for the Appellant; Ponnam Ashok Goud, Asst Sol Gen, for the
Respondent**

Final Decision : Dismissed

Judgement

1. This writ petition is filed against the order of the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 1530 of 2001 dated 27.9.2002. The Tribunal, by virtue of the impugned order dated 27.9.2002 dismissed the said Original Application. The petitioner herein filed the said O.A. No. 1530 of 2001 seeking the following reliefs:

(a) To set aside the impugned order No. F6-1/82-83 dated 7.3.2001 of R-4 ordering that the period of suspension of the applicant from 24.11.1982 to 5.3.1990 and the intervening period from 6.3.1990 to 28.11.1996 to be treated as duty for qualifying service for the purpose of pension only with proportionate pay and allowances limited to subsistence allowances, denying the benefit of treating the said period as duty for all purposes, consequent on acquittal in criminal case, declaring the same as arbitrary, illegal, unwarranted and in violation of Articles 14 and 16 of the Constitution of India;

(b) To direct R-4 to treat the period from 24.11.1982 to 28.11.1996 as period spent on duty for all purpose duly granting full pay and allowances for the said period, following the rules enunciated under FR 54, with all the consequential benefits.

2. The factual matrix that arises for adjudication of the present writ petition is as follows:

3. Petitioner herein joined in the postal services as a Postal Assistant in February, 1970 and while he was working as Sub-Post Master at Kaligiri, the Senior Superintendent of Post Offices visited the petitioner's office on 23.9.1982 and found discrepancy of Rs. 2,381-93 ps. in a day's account and that as the discrepancy could not be settled, an amount equal to the said discrepancy was made good by the petitioner in settlement of the same.

4. Petitioner herein was placed under suspension by the fourth respondent herein on 24.11.1982 following a complaint lodged with the police, Kaligiri Police Station and the Judicial Magistrate of First Class, Kavali convicted the petitioner herein in C.C. No. 52 of 1983 and the same was confirmed in appeal in CrI.A. No. 91 of 1989 on the file of the Additional Sessions Judge, Nellore and the said conviction was set aside by this Court in judgment dated 29.11.1996 in CrI.Rc. No. 425 of 1995. The petitioner herein was placed under suspension during the period from 24.11.1982 to 5.3.1990 on account of the said criminal prosecution.

5. The fourth respondent herein dismissed the petitioner from service by way of an order dated 6.3.1990, following the conviction in the above mentioned criminal case in exercise of the powers conferred under Rule 19(1) of the Central Civil Services (CCA) Rules, 1965 and he was reinstated into service vide Memo No. F6-1/82-83 dated 1.7.1997 issued by the Senior Superintendent of Post Offices, Nellore Division, Nellore (fourth respondent) in pursuance of the order of acquittal. Subsequently the Senior Superintendent of Post Offices, Nellore Division, Nellore issued an order dated 21.10.1997, treating the entire period from 24.11.1982 to 5.3.1990 (suspension period) and from 6.3.1990 to 30.6.1997 (dismissal period) as on duty for all purposes including pay and allowances. Subsequently on 7.3.2001 in Memo No. F6-1/82-83 dated 7.3.2001 the Senior Superintendent of Post Offices, Nellore Division, Nellore, fourth respondent herein issued an order and the last two paragraphs of the said order read as under:

Accordingly Sri B. Veerabhadram, SSPOs, Nellore after considering the representation of official hereby order that under the provisions of FR 54-A(2)(i) and (ii) and sub-para 3 of G.O.I. Instruction No. 8 below Rule 19 of CCS (CCA) Rules, 1965 the period of suspension of Sri Y. Subba Rao, P.A. Vinjamoor S.O. from 24.11.1982 to 5.3.1990 and the intervening period from 6.3.1990 to 28.11.1996 (date of dismissal to the date immediately preceding the date of acquittal) be treated as duty for qualifying service for the purpose of only pension with proportionate pay and allowances limited to the subsistence

allowances and other allowances as admissible under FR 53 with a further direction to allow full pay and allowances for the period from the date of his acquittal i.e. 29.11.1996 to the date immediately preceding the date of rejoining duty i.e. 30.6.1997 treating the said period (29.11.1996 to 30.6.1997) as spent on duty for all purposes.

This is in supercession of all the previous memos issued and the amounts already paid should be adjusted w.r.t. the orders contained in this memo.

6. Felt aggrieved by the said order in Memo No. F6-1/82-83 dated 7.3.2001, the petitioner herein filed O.A. No. 1530 of 2001 before the Central Administrative Tribunal, Hyderabad Bench u/s 19 of the Administrative Tribunal's Act, 1985. The petitioner herein contended before the Tribunal that since the fourth respondent had set aside the order of dismissal under the powers vested in Rule 117 of Postal Manual Vol. III, the claim of the petitioner for regulating the period during which he was out of service should be considered under FR 54, but not under FR 54-A or 54-B. At this juncture, it is pertinent to extract Rules 54, 54-A and 54-B of Fundamental Rules, which stipulate as follows:

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.

(2) Where the authority competent to order reinstatement is of 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 the 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 representation within sixty 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.

(3) In a case falling under Sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by Sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of noncompliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of Sub-rules (5) and (7), 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.

(5) In a case falling under Sub-rule (4), the period of absence from duty including the period of suspension preceding his 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:

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

(6) The payment of allowances under Sub-rule (2) or Sub-rule (4) shall not be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to Sub-rule (2) or under Sub-rule (4) shall be less than the subsistence allowance and other allowances admissible under Rule 53.

(8) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

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 reinstated without holding any further inquiry, 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 clause (1) or 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 question 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.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, 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 reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period 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.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this Rule to a Government servant on his reinstatement shall be subject to adjustment of the amount if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal or less than those earned during the employment elsewhere, nothing shall be paid to the Government

servant.

F.R. 54-B

(1)-When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, 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 suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

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

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period which he would have been entitled to had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of Sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the 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 representation within sixty 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 be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under Sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under Sub-rules (2) and (3) the Government servant shall, subject to the provisions of Sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, 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.

(6) Where suspension is revoked pending realisation of the disciplinary or the Court proceedings, any order passed under Sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in Sub-rule (1) who shall make an order according to the provisions of Sub-rule (3) or Sub-rule (5), as the case may be.

(7) In a case falling under Sub-rule (5), 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 Government 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 Government servant.

7. The Tribunal by taking into consideration the judgment of Hon"ble Supreme Court in Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, and by taking into consideration the material available on record, declined to grant the relief and accordingly dismissed the Original Application filed by the petitioner herein.

8. Heard the learned counsel for the petitioner, Sri Siva and the learned Assistant Solicitor General of India for the respondents. Perused the records and the counter affidavit filed by the respondents herein.

9. The point that arises for consideration of this Court is whether the petitioner herein is entitled for the relief sought?

10. It is an admitted fact that the very genesis for the present case is the criminal prosecution launched against the petitioner herein, wherein he was convicted by the Court of Additional Judicial Magistrate of First Class, Kavali in C.C. No. 52 of 1983 for the offence u/s 409 IPC. The said Court by virtue of an order dated 8.12.1989 convicted the petitioner and sentenced him to undergo rigorous imprisonment for a period of one year and with fine of Rs. 500/- and in default, simple imprisonment for one month. It is also a fact that the petitioner herein preferred Crl.A. No. 91 of 1989 on the file of Court of Additional Sessions Judge, Nellore and the learned Sessions Judge by virtue of judgment dated 14.7.1995 dismissed the said appeal filed by the petitioner herein, confirming the above said order of conviction. Aggrieved by the said conviction as confirmed in the appeal in Crl.A. No. 91 of 1989, the petitioner herein filed Criminal Revision Case No. 428 of 1995 before this Court. This Court, by virtue of an order dated 29.11.1996 allowed the said Crl.Rc. No. 428 of 1995 and the operative portion of the said order reads as follows:

It has come in the evidence that even prior to the investigation, whatever amount alleged to have been withdrawn by the petitioner has been remitted back. Hence, at best it can be said that it is a temporary misappropriation and

not misappropriation. Further the Courts below erred in coming to the conclusion that the ingredients of u/s 409 IPC are proved. Hence the order under challenge is set aside and the petitioner is acquitted of the charges levelled against him. Fine amount if paid shall be refunded.

The CrI.R.C. is allowed.

11. In the above said order, this Court observed that at best it can be said that it is a temporary misappropriation and not misappropriation.

12. In the present case, the petitioner herein placed reliance on Rule 117 of Postal Manual Vol. III, which deals with the courses open for disciplinary authority after the conviction is set aside and the same reads as under:

(i) The respondent in consultation with prosecution agency can take the case to a higher court.

(ii) The respondent can start within his powers departmental action if there are grounds for such action and if he decides on taking departmental action, simultaneously place the applicant under deemed suspension under Rule 10(4) of CCS (CCA) Rules, 1965 from the date of dismissal.

(iii) When the course of action shown in (i) or (ii) is not taken, Respondent has to issue a formal order setting aside the previous order of dismissal and reinstating the official into service with appropriate orders on regulation of the period of suspension and absence.

13. The fourth respondent herein passed the impugned order vide Memo No. F6-1/82-83 dated 7.3.2001 taking into consideration the relevant provisions of Fundamental Rules more particularly FR 54 and FR 53 and the 4th respondent-disciplinary authority also categorically and clearly and specifically considered all the issues starting from the date of suspension till the date of order of acquittal and the observations of this Hon''ble Court in CrI.Rc. No. 428 of 1995.

14. The learned Assistant Solicitor General appearing for the respondents placed reliance on the judgment of the Hon''ble Supreme Court in The Greater Hyderabad Municipal Corporation Vs. M. Prabhakar Rao, , wherein the Hon''ble Supreme Court at paragraph 15 categorically held that even where the employee is acquitted of the charges in criminal trial for lack of evidence or otherwise, it is for the competent authority to confirm its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a plausible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or Court. In the said judgment, the Hon''ble Supreme Court also referred to its earlier judgment in the case of Union of India Vs. K.V. Jankiraman, etc. etc., In the said judgment at paragraph 26, it was held as follows:

26. ...However, there may be cases where the proceedings, whether disciplinary

or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests.

15. While extracting the above paragraph, the Hon''ble Supreme Court in Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao (supra) held as follows:

It will be clear from what this Court has held in Union of India Vs. K.V. Jankiraman, etc. etc., that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which he deserves it. In the aforesaid case, this Court has also held that this power is vested in the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardised and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of the case.

16. From a reading of the above referred judgments of the Hon''ble Apex Court and the ratio laid down therein, it would be very much manifest that mere exoneration and acquittal would not automatically entitle an employee to claim all the benefits on reinstatement as a consequence of acquittal. It is a settled and a well established proposition of law that while passing an order, regulating the period during which an employee is out of service, it is always open for the disciplinary authority to take into consideration the vital and indispensable factors, such as conduct of delinquent involving in crime (in the instant case the charge is criminal breach of trust u/s 409 of IPC), the gravity of the allegations, the findings of the courts and the justification of keeping an employee out of service (either by way of suspension or dismissal) during the relevant period and the principle of "no work no pay". In the instant case, the material available on record manifestly discloses that the disciplinary authority scrupulously adhered to all these aspects and passed the order impugned in the original application and the Tribunal also meticulously considered the same and the relevant provisions of law and dismissed the original application, confirming the order of

the disciplinary authority.

17. In view of the above facts and circumstances and the relevant provisions of law and the principles laid down by the Hon"ble Supreme Court in the above mentioned judgments, we are of the opinion that the petitioner herein has failed in making out a case warranting any interference with the impugned order passed by the Tribunal by way of judicial review under Article 226 of the Constitution of India. As such the present writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, stand closed. There shall be no order as to costs.