

Unreportable
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 8042/2002**

Decided on : January 30, 2009

% V.S.Tyagi

. . . Petitioner

Through : Petitioner in person

VERSUS

The Central Administrative Tribunal & Ors. . . . Respondents

Through Mr. Kumar Rajesh Singh Adv. for
the Respondent.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The petitioner herein was placed under suspension on 29.7.1990. Charge sheet dated 16/17.8.1982 was served upon him and after holding the enquiry he was dismissed from service vide order dated 12.6.1989. The petitioner challenged the aforesaid enquiry and the punishment imposed upon him by filing O.A No.2126/1990. This was allowed by the Tribunal vide order dated 24.1.1992 and the punishment of dismissal was set aside. He was directed to be reinstated in service. Ultimately, he was taken back in service on 18.12.1992. The respondents herein challenged

the order of the Tribunal by filing Special Leave Petition and after grant of leave, the said SLP, was allowed and matter remanded back to the tribunal for fresh consideration. The Tribunal, after hearing the parties again allowed the O.A and set aside the dismissal order as well as order of the appellate authority vide its judgment dated 29.5.1997. It is the implementation of this judgment which has given rise to various proceedings as would be noted hereafter. We first reproduce the relevant directions contained in the said judgment while allowing the O.A of the petitioner herein:

- “(i) The impugned orders of disciplinary authority as well as the appellate authority are quashed.
- (ii) Since the petitioner has already been reinstated by order dated 18.12.1992, the petitioner is entitled to consequential benefits including arrears, if not paid, for the period between 12.6.1989 to 18.12.1992.
- (iii) Respondents shall comply with this order within three months from today”.

2. Since the petitioner was not given consequential benefits and the arrears of salary as per directions given in para-ii (quoted above and extracted above), the petitioner filed C.P.No.168/1998. In this contempt petition respondent appeared and sought time to deposit the amount and orders dated 24.12.1998 were passed granting 10 days time for this purpose. While this contempt petition was still pending, the petitioner filed another C.P.No.66/1999 which was dismissed vide orders dated 9.3.1999 on the ground that second contempt petition was not permissible

when earlier contempt petition No.168/1998 was still pending. Thereafter, first contempt petition i.e. C.P.No.168/1998 came up for hearing on 8.4.1999 and was dismissed by passing following order:

“CP 66/99 already stands rejected vide order dated 9.3.1999 and should have been deleted from the cause list.

2. In regard to CP 168/98, the respondents have filed MA 85/99, in para 3 of which, list of various payments to be made to the applicant has been mentioned.
3. If any grievance still survives in respect of payments, it will be open to applicant to agitate the same through appropriate original proceedings if so advised in accordance with law.
4. CP 168/98 is rejected, and notice issued to the alleged contemnors are discharged”.

3. It is clear from the above that after taking note of the various payments which were made by the respondents to the petitioner, the notice in the contempt petition was discharged and while doing so, the tribunal specifically mentioned that if any grievance still survives in respect of payments it would be open to the petitioner to agitate the same (“through appropriate proceedings”). The petitioner did not challenge this order. He did not even file fresh OA. Instead the petitioner filed Review Application No.118/99 and another Contempt Petition No.90/2000. The review application was dismissed vide orders dated 25.9.2001 along with Contempt Petition No.90/2000. The petitioner at that stage did not challenge orders dated 25.9.2001 instead he filed another Review Application namely R.A.No.380/2001 which was also dismissed vide orders dated 24.12.2001 and inter alia observing as under:-

“It is quite interesting to note that the applicant has been filing application-after-application either in the form of OAs or CPs or RAs on one pretext or another which tantamount to abuse of process of law and such a practice is highly condemnable. Applicant’s last CP No.90/2000, along with RA NO. 118/1999, was dismissed by our order dated 25.9.2001 as we found nothing survived to initiate action for contempt against the respondents. Since we do not find any error apparent on the face of the record in our judgment dated 25.9.2001 in CP No.90/2000 we have no valid ground to entertain the present RA and the same is summarily rejected. However, we would like to warn the applicant to approach the appropriate judicial forum, if so advised, only if he has got any fresh cause of action”.

4. After getting the aforesaid dismissal order, the petitioner has filed the present writ petition in which he has challenged orders dated 25.9.2001 in CP NO.90/2000 and RA No.118/99 and orders dated 6.12.2001 in RA No.380/2001.

5. In so far as orders dated 6.12.2001 in RA No. 380/2001 are concerned, we do not find any fault with the same. The learned Tribunal rightly observed that it was not open to the petitioner to keep on filing one review application after other. As far as order in CP No.90/2000 are concerned, the same was not maintainable in view of the orders passed in CP No.168/98. If the petitioner was aggrieved by the orders dated 8.4.1999 in CP No.168/98, the remedy for him was to challenge those orders and not to file fresh Contempt Petition. Therefore, contempt petition No.90/2000 was rightly dismissed.

6. In so far as orders dated 8.4.1999 in CP No.168/1998 are concerned, no doubt the petitioner did not challenge that order by filing a writ petition. Instead he filed Review Application No.118/1999 which was dismissed by orders dated 25.9.2001 and that order is impugned in the present writ petition. When vide orders dated 8.4.1999, petitioner was granted liberty to file substantive OA if any grievance was still left, appropriate cause of action for the petitioner was to file a fresh OA. However, since orders dated 25.9.2001 passed in review application are on merits whereby the grievance of the petitioner for non-implementation of judgment dated 29.5.1997 is considered and rejected and the said order is under challenge before us, we would like to deal with the question on merits.

7. With this background we revert back to the directions which were issued while allowing the OA of the petitioner and setting aside the dismissal orders vide judgment dated 29.5.1997. The controversy raised and the interpretation on the direction No.2, we may recapitulate that the petitioner was initially suspended on 29.7.1980. He was dismissed from service w.e.f 12.6.1989 and was reinstated on 18.12.1992. The petitioner claims that when the order of dismissal is set aside he could be entitled to salary for the entire period from 29.7.1980 to 18.12.1992. On the other hand the case of the respondent is that as per the directions given by the tribunal in its judgment dated 29.5.1997, the respondent would be entitled to arrears of salary only w.e.f. 12.6.1989 to 18.12.1992 as pointed above,

both the parties are making their respective arguments on the basis of direction No.2 given in the said order and the outcome of the case would depend upon the interpretation thereafter. We are, therefore, reproduced that directions once again for ready reference and findings:

“Since the petitioner has already been reinstated by order dated 18.12.1992, the petitioner is entitled to consequential benefits including arrears, if not paid, for the period between 12.6.1989 to 18.12.1992”.

8. It is clear that the tribunal directed that the petitioner would be entitled to “consequential benefits including arrears, if not paid, for the period between 12.6.1989 to 18.12.1992”, whereas the petitioner contends that the expression ‘consequential benefits’ would include all the benefits and therefore when the order of dismissal is set aside, the petitioner should be held entitled to the salary w.e.f. 29.7.1980. On the other hand counsel for the respondent submits that no doubt petitioner would be entitled to all other consequential benefits which were even given to him but so far as arrears of salary are concerned, the tribunal specifically limited the period from 12.6.1989 to 18.12.1992 and therefore, the petitioner shall not be entitled to arrears of salary for the period prior to 12.6.1989.

9. The aforesaid directions shall have to be read keeping in view the context in which they were made. As noted above, OA filed by the petitioner was allowed for the first time vide orders dated 24.1.1992 and

implementing those orders, the petitioner had filed contempt petition, petitioner was reinstated in service on 18.12.1992 though in the meantime, the respondents had filed Special Leave Petition challenging the orders dated 24.1.1992. Thus, the petitioner was taken back in service in pursuance to the first judgment dated 24.1.1992 though it was set aside by the Supreme Court and matter was remanded back to the tribunal for fresh consideration. It is in this backdrop when the OA was decided and allowed vide judgment dated 25.9.2001, with the aforesaid directions came to be passed. Since the petitioner was already reinstated in service w.e.f.18.12.1992 and was not thrown out from service even after Supreme Court had allowed the appeal of the respondent against the first judgment, the tribunal had not mentioned the period between 12.6.1989 to 18.12.1992 i.e., from the date of dismissal till the reinstatement. It appears that only because of this reason and by way of abundant caution in the order dated 29.5.1997 the period of 12.6.1989 to 18.12.1992 was also specifically mentioned otherwise the order is clear while setting aside the dismissal, the tribunal has held that the petitioner shall be entitled to “consequential benefits.” If the said expression is to be given its fullest meaning, the petitioner would be entitled to full salary for the period from 29.7.1980 to 12.6.1989 as well otherwise a period when the petitioner remained under suspension on the setting aside of the dismissal. Even the normal consequence is to allow full salary for the intervening period. Therefore, we are of the opinion that merely because the period from

12.6.1989 to 18.12.1992 is mentioned, the intention was not to limit the arrears of pay only of that period are confirmed as fortified by the expression “include the use” would not mean that the arrears would be only for the period mentioned thereafter and the expression ‘consequential benefits’ is to be interpreted to mean all benefits to which the petitioner would be entitled to. According to us, this can be the only intention of the directions given in the impugned judgment dated 25.9.2001, the tribunal has considered the directions without keeping in mind the expression of words ‘consequential benefits’. We are, therefore, set aside order dated 25.9.2001 and hold that the petitioner shall be entitled to full salary for the period from 29.7.1980 to 12.6.1989. Arrears of salary shall be computed and given to the petitioner within two months from the date of the receipt of copy of this judgment.

No costs.

A.K.SIKRI
(JUDGE)

SURESH KAIT
(JUDGE)

JANUARY 30, 2009
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