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

+ **W.P.(C) 9277/2018**

SANJEEV KUMAR JHA Petitioner

Through: Mr. Prateek Tushar Mohanti, Ms.
Payal Mohanty, Mr. Tushar Ranjan
Mohanty, Advocates.

versus

**PENSION FUND REGULATORY AND DEVELOPMENT
AUTHORITY** Respondent

Through: Mr. Pratap Venugopal, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **29.01.2020**

C.M.No.35847/2018, 35849/2019 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 9277/2018 and C. M. No. 35848/2019 (Interim Relief)

2. By way of present petition, the Petitioner has challenged the order/judgment dated 25th July, 2018 of Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi in O.A.No.2581/2018.

3. In brief the case of the Petitioner is that he was employed with the Respondent Authority and he was issued a major penalty charge-sheet on 28th August, 2015 and a suspension order on 1st September, 2015. Thereafter another charge-sheet was issued on 4th December, 2015 and the suspension period continued till 17th March, 2016, when suspension of the Petitioner was revoked. The Petitioner contends that the period of suspension beyond

90 days is against the law as there was no review of the suspension and the charge-sheet was not issued to him within the mandatory period of three months from the date of suspension.

4. According to the Petitioner, he was governed by Pension Fund Regulation and Development Authority Employees Service Regulations, 2015 ('PFRDA Employees Services Regulations, 2015'), Fundamental Rules (FR) and Supplementary Rules (SR) of the Central Government. No order regarding treatment of suspension period was passed for the reasons best known to the Respondent; however, penalty was imposed by the order dated 17th March, 2016.

5. The Petitioner has relied upon on FR-54B in support of his contention that specific order is to be passed as to whether the said period is to be treated as the period spent on duty. The Petitioner submitted two representations to the Respondent Authority but the same were not put to the Board of the Respondent Authority. The Petitioner then filed O. A. No.2440/2018 in the CAT on the same issue but the same was withdrawn on 4th July, 2018 to file a better application. Thereafter O. A. No.2581/2018 was filed by the Petitioner. This was dismissed in *limine* by the CAT vide impugned order.

6. The Petitioner has made the following prayers in writ petition:

“In view of the facts and circumstances mentioned herein above and the submissions made, the Petitioner prays that the Hon'ble High Court may be graciously pleased:

(i) to call for the records of the case;

- (ii) to allow this Writ Petition;
- (iii) to quash and set aside the impugned Judgment/order dated 25.07.2018 of the Hon'ble Central Administrative Tribunal in O.A. No. 2581 of 2018 (Annexure: P-1) as being bad in law;
- (iv) to declare that the Period of Suspension of the Petitioner [01.09.2015 to 17.03.2017] be treated as Duty for All Purposes;
- (v) to direct the Respondent to pay exemplary costs of litigation to the Petitioner all through; and
- (vi) to pass any such further order or direction which this Hon'ble Court thinks and feels fit and proper in the facts and circumstances of the present case”.

7. Notice of the petition was issued on 30th October, 2018. Counter affidavit has been filed by the Respondent Authority. No rejoinder was filed by the Petitioner.

8. The stand of the Respondent Authority in counter affidavit is that Fundamental Rules (FR) do not apply to the employees of the Respondent Authority as the said employees are only governed by PFRDA Employees Services Regulations, 2015 and amendments made thereto. The Respondents contend that the Petitioner has an alternative remedy of filing a review before the CAT against the impugned order dated 25th July, 2018 passed in O.A.2581/2018 which was erroneously passed on an assumption that the Respondent was yet to take a decision on the representation made by the Petitioner whereas the Competent Authority had finally decided the representation of the Petitioner dated 9th October, 2017 in accordance with Regulations 90(3) of PFRDA Employees Services Regulations, 2015 as

being barred by the limitation and the same was communicated to the Petitioner vide letter dated 7th December, 2017 and the second appeal dated 11th January, 2018 was not entertained by the Authority as there is no such power of review with the Competent Authority. It was duly communicated to the Petitioner vide letter dated 1st March 2018. It has been submitted that the Petitioner had concealed these material facts from this Court.

9. The Respondent Authority points out that during service many complaints were received against the Petitioner like refusing to discharge his official duties, remaining absent from duty without prior sanction of leave, passing derogatory caste based remarks against a fellow employee, threatening a superior official with physical violence and abusing and preventing another officer from discharging his duties etc.

10. A charge-sheet was issued to the Petitioner on 28th August, 2015. He was immediately placed under suspension on 1st September, 2015. A supplementary charge-sheet was issued on 4th December, 2015. The Petitioner replied to the charge sheet vide reply dated 10th December, 2015 wherein he had not disputed the charges in fact had admitted all the charges levelled against him.

11. On 12th January, 2018 an enquiry under Regulations 82 of PFRDA Employees Services Regulations, 2015 was got conducted by the competent authority against Petitioner in which charges levelled against the Petitioner were established. On 17th March, 2016, the Disciplinary Authority imposed penalty on the Petitioner of reduction to the lower post of Manager for a

period of two years and a restoration to the present post of DGM will be subject to satisfactory performance.

12. On 26th April, 2016, Petitioner preferred an appeal to the Appellant Authority under Regulation 90 of PFRDA Employees Services Regulations, 2015 before the Board. The Appellate authority, i.e., the Board on 2nd November, 2017 decided the appeal dated 26th April, 2016 and reviewed the penalty awarded vide order dated 17th March, 2016 and was pleased to amend the penalty levelled upon the Petitioner by re-installing him in the DGM cadre at the lower stage in the time scale pay for a period of two years with a condition that he shall not earn increments during the period of such reduction and it will have the effect of postponing the future increments of his pay.

13. The Petitioner's appeal against the suspension order was placed before the Competent Authority i.e. Chairman and it was declined in accordance with Regulation 90 (3) of PFRDA Employees Services Regulations, 2015 as the said appeal was preferred after limitation period of 45 days and it was duly communicated to Petitioner vide a letter dated 7th December, 2017.

14. On 11th January, 2018, Petitioner submitted another appeal stating that his appeal dated 9th October, 2017 was merely a representation and not an appeal. There was no power of review with the Competent Authority and this was conveyed to the Petitioner on 1st March, 2018.

15. The Respondent submits that undue reliance has been placed by

Petitioner on the FRs which are not applicable to the employees of the Respondent Authority. It is further submitted on behalf of the Respondent that Petitioner has nowhere stated that his appeal against the order of suspension was declined by Competent Authority as the same was barred by limitation. The misconduct and unlawful actions of Petitioner are of grievous nature and if duration of suspension is treated as period spent on duty, then it would set a bad precedent in the organisation. In the present case charge-sheet was issued to the Petitioner well before the suspension order so contentions of the Petitioner that suspension period cannot continue beyond 90 days is misplaced. Accordingly, it is prayed that writ petition deserves to be dismissed.

16. We have heard the arguments. In the OA filed before the CAT, the following reliefs were claimed:

“8.1. to allow the present application;

8.2. to quash and set aside the impugned Letter of Rejection dated 01.03.2018 of the Respondent Authority [Annexure: A-1] as bad and non-est in law;

8.3. to declare that the impugned Order of Suspension dated 01.09.2015 of the Applicant [Annexure: A-3] did not subsist after the initial ninety days, as there was no Review of the Suspension and as no Charge Sheet was issued within three months of such Suspension;

8.4. to declare that the impugned Order of Revocation of Suspension dated 17.03.2016 of the Applicant [Annexure: A-3] as bad in law inasmuch as it does not decide as to how the period spent by the Applicant on suspension (01.09.2015 to 17.03.2016) should be treated;

8.5. to declare that the period spent by the Applicant on

suspension (01.09.2015 to 17.03.2016) should be treated as duty for all purposes;

8.6. to direct the Respondent Ministry to pay the Applicant full salary and all allowances for the periods spent by the Applicant on suspension (01.09.2015 to 17.03.2016) within a specified period;

8.7. to direct the Respondent Ministry to pay the Applicant interest @ 18% per annum, compounded monthly, on the arrears of pay and allowances that is due to the Applicant from the date the amount was due;

8.8. to direct the Respondent to pay suitable compensation to the Applicant as this Hon'ble Tribunal deems fit and proper in the circumstances of the case;

8.9. to, issue any such and further order/directors this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

8.10. to allow exemplary costs of the application”.

17. The learned CAT dismissed the said OA in limine vide impugned order dated 25th July, 2018. The relevant portion of the said order is reproduced herein:

“7. The suspension ordered against the applicant on 01.09.2015 was revoked on 17.03.2016. The contention of the applicant is that the suspension lapsed on expiry of three months, in view of the law laid down by the Hon'ble Supreme Court, and for the subsequent period, he is entitled to be paid full salary. In this regard, he made a representation, but wanted that to be placed before the Board of the respondent organization. The only communication given in this behalf is that the request cannot be acceded to. The respondent is yet to take a decision on the representation made by the applicant, placing reliance upon the judgment of the

court, and the relevant provisions of the Fundamental Rules. Mere refusal to place a representation before the Board, cannot give rise to any cause of action. The applicant is not able to point out any provision of law which places an obligation on the Board to entertain applications of the type submitted by the applicant. The affairs of the Board are governed by its own procedure. The applicant cannot compel the respondent to act in a particular manner. He has to await the reply on his representation by the appropriate authority.

8. Therefore, the OA is dismissed as devoid of merits. However, this order cannot be construed as a final pronouncement on the entitlement otherwise of the applicant to seek relief in relation to the period of suspension. He can pursue remedy in that behalf, depending upon the view which the respondent may express on the representation made by him in this behalf. There shall be no order as to costs”.

18. The said order was passed on the premise that the representation/appeal of the Petitioner was not considered on merit by the Respondent Authority but the fact of the matter is that representation/appeal dated 9th October, 2017 was disposed of by the Competent Authority being barred by limitation and it was intimated to the Petitioner vide letter dated 7th December, 2017 and there was no power of review with the Competent Authority as per the regulations so his second representation/appeal dated 11th January, 2018 was not entertained and it was informed to the Petitioner vide letter dated 1st March, 2018.

19. The Petitioner has made no whisper about these facts in para 4.7 of the O.A. filed before the CAT. He states that he had submitted a representation

against his suspension on 9th October, 2017 and the representation in this regard was enclosed as Annexure A-13. The Petitioner has intentionally not mentioned anything about rejection of the representation dated 9th October, 2017, which was intimated to him on 7th December, 2017. The letter dated 7th December, 2017 addressed to Petitioner has been filed by him as Annexure R-4 and reads thus:

“ No.PFRDA/11/20/1

Dated 7th December, 2017

To,

Shri Sanjeev Kumar Jha

Deputy General Manager

Pension Fund Regulatory and Development Authority

Qutab Institutional Area

New Delhi-110070

SUBJECT: Review of Order No.PFRDA/11/20/1 dated 1st September, 2015-reg.

Sir,

We refer to your letter dated 9th October, 2017 on the subject mentioned above. As per Clause 90(3) of the PFRDA (Employees Service) Regulations, 2015, an appeal can be preferred to the appellate authority within 45 days from the date of receipt of order appealed against. However, your aforesaid appeal against the order dated 01.09.2015 has been preferred after more than two years.

2. In view of the above, we inform that your request for review of Order No.PFRDA/11/20/1 dated 1st September, 2015, has not been accepted to by the Competent Authority.

3. This issue with the approval of the Competent Authority.

Yours faithfully

(Manju Bhalla)

Deputy General Manager”

20. The final adjudication of his representation dated 9th October, 2017 took

place and thereafter it was informed to the Petitioner on 7th December, 2017 itself but the Petitioner had intentionally not disclosed this fact before the CAT as well as before this Court.

21. The writ petition is liable to be dismissed only on this ground that the Petitioner has not approached this Court with clean hands. Similarly, the impugned order of the CAT dated 25th July, 2018 has been passed under the impression that the representation filed by the Petitioner was still pending and it has not been disposed of.

22. Since, the Petitioner remained under suspension for the period from 1st September, 2015 to 17th March, 2016 and a major penalty has been imposed upon him on conclusion of the enquiry and he did not challenge his suspension order during the relevant period and the appeal against the order of suspension could have been filed only within 45 days as per the prevailing regulations of the Respondent governing the employees as already stated in the communication dated 7th December, 2017, so no relief can be granted to the Petitioner.

23. It is pertinent to note that his representation dated 9th October, 2017 was filed after about 1½ year from the date on which his suspension was revoked. Even if the date of cause of action is taken of as 17th March, 2016 when the suspension was revoked, from the said date also his representation/appeal was barred by limitation.

24. It is not the case of the Petitioner that he did not receive the subsistence

allowance during the period of suspension. The categorical stand of the Respondent Authority is that it is not governed by the Fundamental Rules or other provisions made for the Central Government employees as it has got its own regulations and the Petitioner was suspended as per the Regulation No. 88(1) of the said Regulations. The enquiry was also conducted on the basis of charge-sheet issued under these regulations; hence the reliance by the Petitioner on the Fundamental Rules or any other OMs issued by the Central Government are misplaced.

25. In view of the above, the writ petition is liable to be dismissed and the same is hereby dismissed. No orders as to cost.

S. MURALIDHAR, J

TALWANT SINGH, J

JANUARY 29, 2020

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