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W.P.No.11166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.09.2023

DELIVERED ON: 21.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.No.11166 of 2021

Purnendu Biswas

.. Petitioner

Vs.

1.Union of India,

The Director General of Shipping
Road Transport & Highways and
Ex officio Additional Secretary to
The Government of India,
BETA Building, 9th Floor,
Mumbai-400 042.

2.The Assistant Director General of Shipping,

O/o. the Directorate General of Shipping,
BETA Building, 9th Floor, I-Think Techno Campus,
Kanjur Village Road, Mumbai 400 042.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in O.A.No.1492 of 2016 dated 19.12.2019 passed by the Central Administrative Tribunal, Madras, confirming the order dated 27.10.2014 (with enclosed order dated 03.12.2008), quash the same and issue suitable direction to the respondents to treat the period of service of



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petitioner as Engineer Ship Surveyor under the respondents from 29.07.1992 to 13.01.2003 with all consequential service benefits.

For Petitioner : Mr.M.V.Venkateseshan, Senior Counsel
for Mr.V.V.Sathya

For Respondents : Mr.R.Rajesh Vivekanandan for R1 & R2

ORDER

D.KRISHNAKUMAR, J.

The petitioner, aggrieved by the dismissal of the original application in O.A.No.310/01429/2016 dated 19.12.2019, which was filed for challenging the order of the respondents denying the period of suspension from 29.07.1992 to 13.01.2003 as duty period with all consequential benefits, has filed the instant writ petition.

2. **Brief facts:** The applicant /writ petitioner, who is serving as Engineer and Ship Surveyor from 27.11.1986 in the services of the respondent Department was charged under Section 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988. On 29.07.1992 he was placed under suspension. The criminal case filed against him had ended in conviction, against which he preferred an appeal before this Court in C.A.No.308 of 1996, which came to be allowed, vide judgment dated



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14.01.2003 on the ground of benefit of doubt. Special Leave Petition filed by CBI as against the same was also dismissed, vide order dated 07.10.2005 in Crl.Appeal No.471 of 2004, confirming the judgment of acquittal passed by the High Court. Based on his acquittal in the criminal case, the suspension order dated 29.07.1992 was revoked by the respondent on 16.10.2003.

2.2. By proceedings dated 21.06.2005, the respondents issued a charge memo. It is challenged by the writ petitioner before the Central Administrative Tribunal, Chennai in O.A.No.552 of 2007 and vide order dated 09.11.2006, the Central Administrative Tribunal quashed the charge memo relating to corruption charges, as it had already become final by virtue of the judgment of the Hon'ble Apex Court dated 07.10.2005.

2.3. The petitioner was again placed under suspension on 01.03.2005 for the same charges of charges and challenging the same he filed O.A.No.553 of 2006 and vide order dated 29.11.2006, the order of suspension was set aside and further direction was issued to the



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respondents to regularize that period. Thereafter, the suspension order dated 01.03.2005 was revoked on 02.01.2007 and the suspension period from 01.03.2005 to 02.01.2007 was regularised in compliance of the order passed by the Tribunal dated 29.11.2006.

2.4. The petitioner submitted a representation dated 30.09.2013 seeking settlement of salary and other dues and since it was not considered, he filed O.A.No.1263 of 2014 before the Central Administrative Tribunal, wherein direction was passed to consider his representation, by order dated 26.08.2014. Subsequently, the respondents vide order dated 27.10.2014 stating that the respondents acted on the Vigilance Branch order dated 03.12.2008, by which the period of suspension cannot be treated as duty period and on that ground, the suspension period could not be regularized.

2.5. According to the petitioner, once he was exonerated from the charges, as confirmed by the Apex Court, the entire period of suspension from 29.07.1992 to 13.01.2003 should be regularized as duty period. Therefore, challenging the order of the respondents 1 and 2 dated



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03.12.2008 and 27.10.2014, the writ petitioner has filed O.A.No.1429 of 2016, which came to be dismissed, against which the instant writ petition is filed.

3. Mr.M.V.Venkataseshan, learned Senior Counsel for the petitioner would contend that the order dated 03.12.2008, which was enclosed in the order of the first respondent dated 27.10.2004 was passed behind the back of the petitioner and no opportunity was offered to the petitioner and therefore, on the ground of violation of principles of natural justice, the impugned order is liable to be quashed. It is further contended that impugned order refusing to treat the suspension period from 29.07.19992 to 13.01.2003 is contrary to Rule 54-B of the Fundamental Rules and therefore, prays for setting aside the order of the Tribunal as well as the impugned order passed by the respondents.

4. Mr.R.Rajesh Vivekanandan, learned Assistant Solicitor General appearing for the respondents has drawn the attention of this Court to the



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counter affidavit filed by the respondents and would submit that the first respondent has examined the petitioner's representation dated 12.11.2007 regarding payment of salary and consequential benefits for the period of suspension and issued a speaking order dated 03.12.2008 ordering that the period of suspension of the petitioner from 29.07.1992 to 13.01.2003 be treated as "Period not spent on duty" and he was not entitled for back wages and other consequential benefits, taking into consideration the entire facts and circumstances, including his suspension on involvement in a criminal case and his subsequent conviction by the Sessions Court and therefore, the first respondent was of the opinion that the suspension of the petitioner was justified and accordingly his period of suspension was considered as "period not spent on duty" in accordance with Rule 54B(3), (5) & (7) of the Fundamental Rules and prayed for dismissal of this writ petition. The learned Assistant Solicitor General, in support of his submissions, has placed reliance upon the following decisions:

(i) Baldev Singh v. Union of India and Others [(2005) 8 SCC 747]

(ii) Chairman cum Managing Director, Coal India Limited and



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Others v. Ananta Saha and Others [(2011) 2 SCC 142].

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5. This Court has considered the rival submissions and also perused the entire materials on record.

6. The point for consideration is whether the period of suspension should be counted as duty period, if the delinquent is acquitted from the criminal charges?

7. It is not in dispute that the petitioner was placed under suspension on 29.07.1992 on account of his involvement in criminal case for the charge under Section 13(1)(d) r/w. Section 13(2) of the Prevention of Corruption Act, 1988. The criminal case initiated against him had initially ended in conviction, vide judgment dated 12.04.1996 in C.C.No.7/1995, on the file of the Special Court for CBI, Madurai. On appeal, the judgment of conviction was set aside by this court, vide judgment dated 14.01.2003 in C.A.No.308 of 1996, on the ground of benefit of doubt and affirmed by the Hon'ble Apex Court in C.A.No.471



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of 2004 dated 07.10.2005. His suspension order was revoked by the respondent on 16.10.2003. Pending the criminal cases, the respondents did not initiate any departmental proceedings as against the petitioner and the first charge memo came to be issued on 21.06.2005.

8. Before going into the veracity of the charges levelled against the petitioner and the acquittal order in the criminal case, there is delay caused in initiating disciplinary proceedings by the respondents and the respondents has never chose to explain the same either in the impugned order or before the Tribunal. In this context, it is pertinent to rely upon the decision of the Hon'ble Supreme Court in ***Noida Entrepreneurs Association vs. Noida and others*** reported in 2007 (5) AIC 37 as well as the Hon'ble Division Bench of this Court in the case of ***V.Boopathy vs. Union of India (W.P.No.26664 of 2014 dated 01.04.2015)***, wherein the Hon'ble Division Bench of this Court at paragraph No.17 held as follows:-

“17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner



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leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactory explained, will result in serious prejudice to the petitioner leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings.”

9. In the instant case, the respondent had issued charge memo to the petitioner on 21.06.2005 and commenced the disciplinary proceedings after 13 years. The delay in initiating and proceeding with the departmental proceedings prejudicially affects the delinquent employee. There can be now doubt that criminal proceedings and departmental proceedings operate in different fields. Even though a person may have been acquitted in a criminal trial, there is no embargo on his being departmentally proceeded against. Further, in the counter affidavit filed by the 1st respondent, no valid reasons are mentioned for the inordinate delay of 13 years in commencing the disciplinary proceedings against the petitioner.



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10. The charge memo was quashed by the Central Administrative Tribunal, Chennai in O.A.No.552 of 2006 dated 09.11.2006, on account of finality reached by the Supreme Court with regard to same corruption charge. The petitioner was once again placed under suspension on 01.03.2005 for the very same corruption charge and again original application came to be filed by him in O.A.No.553 of 2006, which was also allowed in favour of the petitioner on 29.11.2006 and he was directed to be reinstated. Accordingly, the suspension order dated 01.03.2005 was revoked on 02.01.2007 and the suspension period between 01.03.2005 and 02.01.2007 was regularised in compliance of the orders passed by the Tribunal in 553 of 2006. The applicant/writ petitioner was reinstated and he admittedly retired on 31.03.2009.

11. The grievance of the petitioner is that the period of his suspension from 29.07.1992 to 13.01.2003, i.e., acquittal from the criminal case, was not counted as duty period, despite the fact that he being exonerated from the charges by acquittal in the criminal case by this Court and confirmed by the Hon'ble Apex Court.



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12. A perusal of the impugned order of the second respondent dated 27.10.2014 would disclose that Rule 53B of the Fundamental Rule 53B has been mainly harped upon to reject the claim of the writ petitioner and a vague reference has been made to the order of the first respondent dated 03.12.2008, based on which the period of suspension of the writ petitioner from 29.07.1992 to 13.01.2003 is treated as "period not spent on duty" and accordingly, rejected the representation of the petitioner dated 30.09.2013. The order of the second respondent at best be treated as a non-speaking order.

13. Rule 54-B of the Fundamental Rules deals with Reinstatement in view of Retirement of a Government servant under suspension. Sub-rule (3) of FR 54-B reads as under:

“54-B. (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



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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].”

14. Sub-rule (3) of FR 54-B extracted above, thus, vests power on the competent authority to order reinstatement to form an opinion whether suspension of a government servant was wholly unjustified and if, in its opinion, the suspension of such government servant is wholly unjustified, such government servant will be paid the full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of FR 54-B, however, states 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 then 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



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determine. In other words, even where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant may still not be entitled to be paid the whole pay and allowances, but may be paid such pay and allowances as may be determined by the competent authority.

15. The rationale, on which sub-rule (3) of FR 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in *Union of India v. K.V. Jankiraman* [(1991) 4 SCC 109 : 1991 SCC (L&S) 387 : (1993) 23 ATC 322]. In the said judgment, it was observed as under:

“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



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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.”

16. It will be clear from the aforesaid decision of the Hon'ble Supreme Court 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, the Apex 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



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competent authority on the facts and circumstances of each case.

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17. Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings, the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible 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 the Court.



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18. Be that as it may, when the subsequent suspension period was counted as duty period i.e., 01.03.2005 to 02.01.2007, vide order of the first respondent dated 13.04.2019, it is not known why the earlier suspension order period between 29.07.1992 and 13.01.2003 has been declared as "period not spent on duty" with full backwages and other consequential benefits. In the case on hand, the respondents have chosen to issue the charge memo only after conclusion of criminal proceedings and revoked the order of suspension based on his acquittal in criminal case. However, in respect of very same corruption charge, the respondents have kept the petitioner under suspension for the second time and on challenge before the Tribunal, the second suspension order was revoked and the period of such suspension period was taken into account for duty period. But as regards the period of first suspension order till the date of acquittal, the respondents rejected the claim of the petitioner.

19. It is pertinent to point out at this juncture that the petitioner had challenged every proceedings at appropriate stage right from initiation of earlier suspension order, issuance of charge memo, subsequently



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suspension order and charge memo, till the final impugned order passed by the respondents. The impugned order has been passed by the authorities in exercise of its powers under FR 53(B) and the opinion of the authorities cannot be found fault with. However taking into consideration of the fact that the writ petitioner has retired on 31.03.2009 and the impugned order rejecting the claim of the petitioner was passed on 27.10.2014, which was the subject matter of challenge in O.A.No.1429 of 2016 and the reason for the delay in initiating departmental proceedings or conducting simultaneous departmental proceedings along with criminal proceedings was neither been mentioned nor explained/justified in the order of the first respondent dated 03.12.2008 or in the order dated 27.10.2014 passed by the second respondent. Therefore, this Court is of the view that the order of the respondents dated 27.10.2014 requires modification.

20. In the light of the above, this Court is inclined to pass the following order:

(i) The order dated 19.12.2019 in O.A.No.1429 of 2016, passed by the Central Administrative Tribunal,



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Chennai is set aside.

(ii) The period of suspension of the petitioner from 29.07.1992 till 13.01.2003 shall be counted as duty period only for calculation of pensionary benefits and the petitioner is not entitled for backwages or other monetary benefits for the said period.

(iii) The respondents shall revise the pensionary benefits, based on the notional fixation of pay for the period of suspension from 29.07.1992 till 13.01.2003 and pay the same to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

21. With the above directions, the writ petition stands partly allowed. No costs.

[D.K.K., J.,] [P.B.B., J.]
21.09.2023

Index :yes
Internet:yes
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To

1. Union of India,
The Director General of Shipping
Road Transport & Highways and
Ex officio Additional Secretary to
The Government of India,
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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Order in
W.P.No.11166 of 2021**

21.09.2023