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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: .08.04.2024

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W.P.(C) 10592/2017

UNION OF INDIA AND ANR

..... Petitioners

Through: Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Varun Rajawat, Mr. Aryan,
Mr. Varun Pratap, Ms. Vidhi Jain and
Ms. Shreya V. Mehra, and Mr. Kartik
Baijal, Advocates.

versus

SYED SAJID ALI

..... Respondent

Through: Mr. Ankur Chhibber, Amicus Curiae.
Respondent in person.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE MANOJ JAIN

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 16.03.2017 passed by the learned Central Administrative Tribunal in O.A. No.3855/2014. Vide the impugned order, the learned Tribunal has allowed the Original Application (O.A.) filed by the respondent by directing the petitioners to treat the period of his suspension between 29.09.2000 to 08.12.2004 as on duty and grant him full pay and



allowances for the said period.

2. The brief factual matrix as emerging from the record may be noted at the outset.

3. The respondent joined the CBI as a Direct Recruit Sub-Inspector on 30.03.1978 and was, during the course of his service, promoted as an Inspector and thereafter as a Deputy Superintendent of Police (DSP). While working as a DySP, a CBI case was registered on 25.08.2000 against the respondent under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Soon thereafter, vide an order dated 08.09.2000, the respondent was placed under suspension w.e.f 29.09.2000. As per the said order, the respondent was being suspended in contemplation of disciplinary proceedings against him as per the Rule 10 (1)(a) of the CCS (CCA) Rules, 1965 (hereinafter referred as 'the Rules'). Even though a chargesheet had already been filed against the respondent on 30.08.2000 in the criminal proceedings initiated by the CBI, the petitioners chose to revoke his suspension on 16.11.2004, pursuant whereeto, the respondent resumed his duty on 09.12.2004.

4. While the criminal proceedings continued to remain pending, the respondent was found guilty in the disciplinary proceedings, and was awarded penalty on 08.06.2006. Upon the said penalty order being assailed before the learned Tribunal by way of O.A. No. 728/2009, the matter was remanded back to the petitioners, who passed a fresh penalty order on 31.05.2013, thereby imposing a minor penalty of reduction of pay by one stage till December 2014, without cumulative effect so as to not adversely affect his pensionary benefits.



Immediately after the imposition of the said minor penalty on him, the respondent approached the petitioners with a representation to treat his period of suspension between 29.09.2000 till 08.12.2004 as duty period under Rule 54-B of the Fundamental Rules. In his representation, the respondent also relied on the DoPT's O.M dated 03.12.1985. Upon not receiving any favourable response from the petitioners, the respondent approached the learned Tribunal by way of the aforesaid O.A, being O.A.No.3855/2014.

5. We may, at this stage, note that during the period when the penalty under the departmental proceedings was being revisited by the petitioners, the respondent was convicted by the Court of Special Judge, PC Act on 27.08.2012 in the aforesaid criminal proceedings. However, since the said conviction is not the subject matter of the present petition, we are not referring to the subsequent events which we may note are the subject matter of the different W.P. (C) 9911/2017.

6. Before the learned Tribunal, the only plea of the respondent was that the disciplinary proceedings initiated against him, though contemplated to be major penalty proceedings had ultimately culminated in a minor penalty and, therefore, in terms of the DoPT O.M. dated 03.12.1985 read with Rule 54 B of the Fundamental Rules, he was entitled to full back wages for this period of suspension. Vide the impugned order, the learned Tribunal has accepted the aforesaid plea of the respondent and has consequently directed the petitioner to release the full back wages to the respondent for the period between 29.09.2000 to 08.12.2004. Being aggrieved, the



present petition has been filed.

7. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that the chargesheet in the ongoing criminal proceedings against the respondent had already been filed on the date when the suspension order was issued and, therefore, merely because a minor penalty was imposed on him in the disciplinary proceedings, it cannot be said that his suspension was unjustified. He, therefore, contends that since the petitioners were entitled to suspend the respondent under 10(1)(b) of the Rules on account of the pendency of criminal proceedings against him, it could not be said that his suspension for the period between 29.09.2000 to 08.12.2004 was in any manner unjustified, so as to warrant the payment of full back wages to him. He, therefore, prays that the impugned order be set aside.

8. On the other hand, learned counsel for the respondent supports the impugned order and submits that the petitioners having suspended the respondent in contemplation of disciplinary proceedings by resort to Rule 10 (1)(a) which proceedings resulted in imposition of minor penalty, cannot now be permitted to take shelter of Rule 10(1)(b). He, therefore, contends that the learned Tribunal was justified in holding that the respondent was entitled to receive full pay and allowances for the period between 29.09.2000 to 08.12.2004 during which he remained suspended on account of the ongoing disciplinary proceedings. His plea thus being that once the disciplinary proceedings had culminated in a minor penalty, the petitioners were



bound to abide by the DoPT's O.M. 03.12.1985 and pay him full wages for the period of his wrongful suspension. He, therefore, prays that writ petition be dismissed.

9. Before dealing with the rival submissions of the parties, we may begin by noting the relevant extracts of the impugned order, as contained in para 7-9 thereof. The same read as under:-

“7. It is admitted case of the respondents that till date no order under FR 54-B has been passed. This OA was filed on 27.10.2014. In the relief clause (b) the applicant has mentioned that he is retiring on 31.01.2015. He has since retired, but no order has been passed by the competent authority treating the period of suspension under FR 54-B. The case of the respondents is that since the applicant has suffered conviction and awarded sentence, he is not entitled to any amount during the period of suspension otherwise than the subsistence allowance already paid. This contention is not sustainable in law. Once the suspension of a Government servant is revoked pending finalization of the disciplinary proceedings, it is the bounden duty of the competent authority to pass specific order in regard to the pay and allowances to be paid to be Government servant for the period of suspension ending with his reinstatement under FR 54-B (1) read with sub-rule (6). At the time of revocation, the applicant had not suffered any punishment under the disciplinary proceedings. Thus, he is deemed to be reinstated without any condition. His suspension period was required to be treated under FR 54-B(1), as also sub-rule (6). Sub-rule (6) further empowers the competent authority to review on its own motion any order passed earlier under sub-rule (1) after conclusion of the disciplinary proceedings in accordance with sub-rule (3) or sub-rule (5), as the case may be. Sub-rule (3) provides that where the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant shall be paid full pay and allowance subject to provisions of sub-rule (8). Sub-rule (8) merely deals with compliance of other conditions whereunder allowances are admissible, and thus the mandate of sub-rule (3) is where the suspension is found to be unjustified, the Government servant would be entitled to full pay and allowances. Such right of the Government servant is, however, further subjected to the



condition that where the delay in conclusion of the proceedings is attributable to the Government servant, the competent authority may order such pay and allowances as may be determined by it. In the present case, admittedly no opinion has been formulated that there has been delay in conclusion of the disciplinary proceedings attributable to the applicant. To the contrary, the two orders passed by the Tribunal indicate that the delay in completion of the disciplinary proceedings was not attributable to the applicant, but was due to administrative or other reasons, which are entirely attributable to the respondents. Under such circumstances, the applicant was entitled to full pay and allowances. Such pay and allowances were, however, subject to review on conclusion of the disciplinary proceedings under sub-rule (6). Neither any opinion under sub-rule (3) nor under sub-rule (5) has been formulated by the competent authority. At the same time, the applicant having suffered minor penalty, his suspension cannot be said to be unjustified.

8. There is one important aspect which needs to be considered and which should weigh in considering the entitlement of the applicant for grant of full pay and allowances. Initially, the charge memo was issued for major penalty, and a major penalty was imposed, which was set aside by the Tribunal. The authority, on consideration of the inquiry report, itself imposed a minor penalty as the inquiry could not be completed within the prescribed time. Thus, the applicant cannot be held responsible for any delay. He was kept under suspension for a period of four years two months and ten days. Such a long suspension is absolutely unjustified. Since delay is attributable to the respondents, the applicant cannot be punished for the same. We are of the considered opinion that the applicant is entitled to full pay and allowances in the present circumstances, notwithstanding the minor penalty imposed upon him. His conviction in the criminal case is totally unrelated to the disciplinary proceedings. The suspension order dated 08.09.2000 (Annexure A- 24) clearly demonstrates that the suspension was on account of contemplated disciplinary proceedings, and not on account of registration or pendency of the criminal proceedings. Thus conviction of the applicant in the year 2012 has nothing to do with his suspension.

9. For the above reasons, this OA is allowed. The respondents are directed to treat the period of suspension from



29.09.2000 to 08.09.2004 as on duty and grant full pay and allowances admissible to the applicant as if he was not placed under suspension.”

10. From a perusal of the aforesaid, it emerges that the learned Tribunal after examining the suspension order opined that the same was issued in contemplation of disciplinary proceedings against the respondent and not on account of the pendency of the criminal proceedings against him. We may, therefore, refer to the relevant extract of the suspension order which reads as under:-

“ORDER

Whereas as disciplinary proceeding against Shri.S.S.Ali DySP/CBI is contemplated.

Now, therefore, the President in exercise of the powers conferred by sub-rule (1) of Rule 10 of the Central Civil Services(Classification, Control and Appeal) of Rules, 1965, hereby places the said Shri.S.S.Ali Dy SP/CBI under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri.S.S.Ali Dy SP/CBI should be New Delhi and the said Shri Ali shall not leave the headquarters without obtaining the previous permission of the undersigned.”

11. Upon a perusal of the aforesaid suspension order, we have no hesitation in agreeing with the learned Tribunal that the suspension of the respondent was unconnected with his involvement in the criminal proceedings and was only issued in contemplation of disciplinary proceedings against him. It is an admitted case of the parties that the said disciplinary proceedings has resulted in a minor penalty of



reduction of pay by one stage till December 2014, without cumulative effect and would, therefore, be covered by the DoPT's O.M. dated 03.12.1985, the relevant extract whereof reads as under:-

"Accordingly, where departmental proceedings against a suspended employee for the imposition of a Major Penalty finally end with the imposition of a Minor Penalty, the suspension can be said to be wholly unjustified in terms of FR-54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under FR-54 B."

12. In the light of the aforesaid, even though the learned counsel for the petitioner is justified in urging that even if no disciplinary proceedings had been contemplated or held against the respondent, he could have very well been suspended on account of criminal proceedings pending against him by resort to Rule 10(1)(b), the fact remains that he was suspended specifically in contemplation of disciplinary proceedings. Once the petitioners chose to suspend the respondent only on account of the disciplinary proceedings, they cannot now be permitted to urge that he could have been also suspended on account of pendency of the criminal proceedings.

13. We may also observe that the suspension order noted hereinabove does not even refer to pendency of the criminal proceedings and, therefore, the petitioners could not justify the same by reference to the criminal proceedings then pending against the respondent. Furthermore, the criminal proceedings continued to remain pending against the respondent till 27.08.2012 and ultimately led to his conviction, but the petitioners voluntarily decided to revoke the said suspension on 16.11.2004 thereby making it evident that the



said suspension was in no way connected with the criminal proceedings pending against him.

14. For the aforesaid reasons, we find no ground to interfere with the impugned order. The writ petition being meritless is accordingly dismissed.

(REKHA PALLI)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 8, 2024/ib