

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

Judgment Reserved on September 26, 2013

Judgment Delivered on September 30, 2013

+ **W.P.(C) 4098/2013**

PRAMOD KUMAR KYAL

..... Petitioner

Represented by: Ms.Jyoti Singh, Senior Advocate
with Ms.Saahila Lamba and
Ms.Tinu Bajwa, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Represented by: Mr.Rajesh Ranjan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated November 25, 2011 passed by the Central Administrative Tribunal in Original Application No.976/2011 and order dated January 16, 2013 passed by the Tribunal in C.P No.782/2012 in Original Application No.976/2011, whereby the Tribunal partially allowed the Original Application to the extent the Tribunal directed the respondents to count the period under suspension as qualifying service and on that basis make available to the petitioner post retiral dues and further dismissed the contempt petition filed by him for non compliance of order dated November 25, 2011.

2. In the present writ petition the petitioner has made limited prayer for granting him remaining 50% of the salary which he would have earned during the period of suspension including yearly increments with

interest @ 18% per annum and for a direction to pay ₹18,23,040/- with interest @ 18% per annum (which amount includes 50% of the salary of the petitioner during the period of suspension).

3. The facts relevant for the purpose of adjudication of this writ petition are that the petitioner joined the respondent No.4 Indo German Tool Room on April 05, 1999. He was placed under suspension vide order dated July 18, 2003 in contemplation of departmental proceedings. A charge-sheet was issued on January 07, 2004 wherein it was inter-alia alleged against him that (i) he has failed to provide leadership inculcate team spirit among the staff committed financial and administrative irregularities and failed to manage the affairs of the Tool Room; (ii) did not act on the specific directions given to him by the governing council and allow certain employees to draw HRA against the rules etc.

4. The petitioner made a representation dated October 03, 2006 seeking revocation of suspension on the ground that the department is delaying the inquiry. The same was rejected by the respondents vide order dated October 27, 2006. A writ petition was filed before the High Court of Gujarat by the petitioner seeking completion of inquiry before the date of his superannuation on December 31, 2007, which was disposed of with directions that the inquiry be completed as expeditiously as possible in any case before December 31, 2007. The petitioner retired on December 31, 2007. It may be relevant to state here that the service of the petitioner was not a pensionable service. He was governed by the Contributory Provident Fund Scheme. There was no provision in the rules to continue the inquiry after an incumbent superannuates.

5. A memorandum dated September 04, 2008 was issued by the

respondents to the petitioners wherein it is inter-alia stated that the case of the petitioner, who was under suspension from July 18, 2003 to December 31, 2007, (on which date the petitioner retired), was considered and the Competent Authority after careful considering the inquiry report took the view that the petitioner had sought innumerable postponements and raised lot of issues to delay the proceedings and accordingly it had been decided that the period of suspension would not count as qualifying service for retiral benefits, and the matter was closed.

6. Petitioner gave a reply to the said memorandum, which was rejected by the respondents vide order dated October 07, 2008. In that order the Competent Authority concluded that the period of suspension shall not be treated as qualifying service for the purpose of retiral benefits.

7. The appeal filed against order dated October 07, 2008 was also rejected on December 31, 2008.

8. Initially the challenge to the aforesaid orders was made by the petitioner before this Court, which was later withdrawn by him to file an appropriate petition before the Tribunal. The Tribunal quashed the orders dated October 07, 2008 and December 31, 2008 vide its order dated November 25, 2011. The Tribunal has inter-alia concluded that the inquiry being inconclusive without taking into consideration the defence of the petitioner, could not be sustained and the charges which are said to have been proved against the petitioner have to be set aside. The Tribunal went on to set aside the order dated October 07, 2008 as also order dated December 31, 2008.

9. The respondents filed a writ petition in this Court challenging the order dated November 25, 2011 which was dismissed by this Court on

March 05, 2012. The petitioner made a claim through his representation for ₹18,23,040/- relating to the period he remained under suspension. The respondents informed the petitioner vide their letter dated June 05, 2012 that he is entitled to receive a sum of ₹4,61,099/- and nothing more. He filed a contempt petition alleging non compliance of order dated November 25, 2011 which was closed by the Tribunal vide its order dated January 16, 2013.

10. Ms.Jyoti Singh, learned Senior Advocate would contend that the Tribunal having set aside the orders dated October 07, 2008 and December 31, 2008, the respondents could not have granted pay only to the extent of 50% for the period when the petitioner was under suspension. She would also contend that when there is no finding of guilt against the petitioner, it must be presumed that the petitioner is innocent and the period of the suspension must be treated as on duty for all purpose.

11. Learned counsel for the respondents on the other hand would reiterate the submissions which the respondents had made before the Tribunal that the petitioner was responsible for delaying the inquiry.

12. We are not in agreement with the stand taken by the respondents for the reason that there is no finding of guilt against the petitioner. In the absence of any finding of the guilt it must be presumed, rightly so, that the petitioner is innocent, which is, as good as not proving the charges against him. Further, the very plea of the respondents that the petitioner was responsible for delaying the proceedings was negated by the Tribunal. We reproduced the relevant part of the impugned order dated November 25, 2011 as under:

“ The impugned order dated 07.10.2008 inter alia recites that the enquiry officer fixed six hearings after the

judgment dated 08.10.2007 of the Hon'ble High Court, and in the last hearing on 19.12.2007 no defence witness appeared before the enquiry officer, and, therefore, the enquiry regarding two charges remained inconclusive. It is not in dispute that the applicant could not examine his defence, for which the respondents would blame the applicant. It does not appear from the records of the case as if the report of the enquiry officer was also made available to the applicant giving him chance to represent against the same. There would be no need whatsoever to go into the allegations as regards contradictory stands taken by the parties with regard to delay in conclusion of the enquiry proceedings. The fact that stares everyone in the face is that the enquiry remained inconclusive, so specifically recorded by the disciplinary authority in the impugned order itself. If the applicant was to be blamed for causing delay in conclusion of the enquiry, we are sanguine that the enquiry officer was competent to close his defence. No such order has been passed by the enquiry officer, and it appears that the enquiry officer sent report on an enquiry which was never completed. The respondents may be right in stating that since the CCS (Pension) Rules, 1972 would not apply to the applicant, it may not be permissible to hold an enquiry after retirement, but surely, no punitive orders could be passed against the applicant till such time the enquiry was to be completed and a finding of guilt returned against him. The finding of guilt as regards some of the charges that may have been held as established is sans giving chance to the applicant to project his defence which he sought by making request to summon number of witnesses referred to in the pleadings made in the OA. The impugned order, in our considered view, for the enquiry to be inconclusive, without taking into consideration the defence of the applicant, would not sustain, and in view of the findings as regards some of the charges that are said to have been proved against the applicant, shall have to be set aside. The natural consequence of the same would be to set aside the order dated 07.10.2008 as also the order dated 31.12.2008 vide which representation of the applicant against the order aforesaid was rejected."

13. If the aforesaid conclusion is the basis for the Tribunal to allow the Original Application, there is no reason for the respondents to invoke the very grounds which were not accepted by the Tribunal to deny the balance 50% of the pay for the period of suspension between July 18, 2003 to December 31, 2007. In fact the benefit denied by the respondents is inbuilt in the order of the Tribunal itself inasmuch as the Tribunal has in clear terms held that the period of service should be treated as qualifying service for the purpose of retiral benefits. It appears to be a case of a deliberate attempt made by the respondents to deny benefits because of their failure to conclusively conclude inquiry initiated against the petitioner.

14. During the course of submissions, we have been informed that if the petitioner is granted the relief of 50% of the balance pay for the period of suspension then the same would also be taken into consideration for the purpose of computing terminal dues.

15. Further we find that the petitioner was paid gratuity and leave encashment only on April 23, 2012 after the dismissal of the writ petition by this Court. We are also informed that for the period of suspension the employee and employer contribution to the CPF scheme has been made at 50% of the pay given. In view of this order, the employee and employer contribution shall also be at the full pay, he would draw.

16. In view of the above discussion, we allow the writ petition and direct the respondents to (i) grant the balance of 50% of the pay to the petitioner during the period between July 18, 2003 to December 31, 2007 with interest @ 10% per annum from the time it became due till the payment is actually made; (ii) the petitioner would also be entitled to the computation of gratuity and leave encashment on the aforesaid basis;

(iii) the employee and employer contribution in the CPF account shall also be made on the basis of full salary for the period between July 18, 2003 to December 31, 2007.

17. The petitioner would also be entitled to the interest @ 10% per annum on the benefit granted by us at (ii)& (iii) above.

18. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 30, 2013
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