

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE (CIVIL) NO. 6393 OF 2012

VIJAY KUMAR AGARWALAPPELLANT(S)
VERSUS
UNION OF INDIA AND ANR.RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Though, the issue raised in this Special Leave Petition is very short and in a narrow campus, it has a chequered history. The question is only as to whether the petitioner is entitled to full salary from June 05, 1996. However, the background facts under which the issues have cropped up for discussion need to be recapitulated.

- 2) Eschewing the unnecessary details, we confine the narration to only those facts which are absolutely essential and relevant to decide the controversy at hand.
- 3) The petitioner herein, after emerging as a successful candidate in the Civil Services Examination, was selected in the Indian Administrative Service ('IAS') and was allocated to Maharashtra cadre, where he joined

on September 01, 1982. There were certain jerks and upheavals in the service career of the petitioner from the very beginning which need not be mentioned. Suffice it to state that the petitioner was denied senior time scale and he challenged the same by filing writ petition in the High Court of Bombay claiming that he was entitled to the senior time scale with effect from January 01, 1986. With the constitution of Central Administrative Tribunal (hereinafter referred to as the 'Tribunal'), on passing of the Administrative Tribunal Act, 1986, this writ petition was transferred to the Tribunal bearing Transfer Application No. 283 of 1986 and the Tribunal ultimately dismissed the aforesaid transfer application of the petitioner on January 19, 1987. The petitioner assailed the order of the Tribunal by filing Special Leave Petition in this Court in which leave was granted and the case was registered as Civil Appeal No. 3446 of 1987.

- 4) During the pendency of the Civil Appeal, the petitioner was suspended vide orders dated May 26, 1988 and a charge sheet was served upon him for major penalty proceedings on July 06, 1988. This order of suspension as well as validity of the charge-sheet was challenged by the petitioner by filing Writ Petition (C) No. 1037 of 1988 under Article 32 of the Constitution, in this Court. In this writ petition, interim orders dated November 02, 1988 were passed staying the proceedings in the charge-sheet which was served upon the petitioner on July 06, 1988.

Significantly, the prayer of the petitioner in the writ petition for staying the order of suspension was not allowed and, therefore, the petitioner remained under suspension since May 26, 1988.

- 5) Civil Appeal No. 3464 of 1987, against the non-denial of the senior time-scale to the petitioner, was also allowed by this Court vide order dated August 30, 1988, i.e., two months before the stay of charge-sheet was granted. The petitioner, thus, became entitled to be placed in the senior time-scale.
- 6) In the meantime, since direction of this Court to grant him senior time-scale was to be complied with by the Government, the Collector, Kolhapur sent a bill to be signed by the petitioner so that subsistence allowance could be paid. However, notwithstanding various communications written to him in this behalf he did not sign the same nor submitted non-employment certificate. On the other hand, the petitioner resorted to multiple litigation before the Tribunal and also in this Court directly. It may not be necessary to give the details of these proceedings except to mention that virtually all these proceedings were decided against the petitioner, with the exception of one case where the Tribunal granted him relief directing the Authorities to issue 'No Objection Certificate' to enable him to obtain a passport for going abroad.
- 7) We would, however, like to mention that in a Criminal Appeal No. 605 of

1991, this Court passed the orders dated October 31, 1991 requesting the Attorney General to look into his representation as he wanted change of allocation of Maharashtra cadre to any other State. This was done with a view to put an end to various cases which were initiated by the petitioner and were found to be unnecessary or without any merit. Be that as it may, in deference to the wishes of this Court expressed in the aforesaid order, the Central Government informed the Court on December 16, 1993 that State of Punjab was willing to take the petitioner on deputation for one year. In order to enable the petitioner to join there, the suspension of the petitioner was also withdrawn vide orders dated May 13, 1996. However, in the application submitted by the petitioner to the Central Government for his being transferred on deputation to the State of Punjab he put certain conditions which were not acceptable to the State of Maharashtra. Vide another order dated June 07, 1996, he was directed to take charge as Deputy Secretary, Social Welfare, Cultural Affairs and Sports Department, Government of Maharashtra to finalize the procedural formalities required to be completed for the State of Punjab to take him on deputation. The petitioner, however, did not join the said posting because of which his joining State of Punjab on deputation also could not materialize.

- 8) On the other hand, as the petitioner had not joined the services in spite of revocation of suspension on May 13, 1996, another charge-sheet

dated May 04, 1998 was issued to the petitioner on the ground that he remained unauthorisedly absent from duty and had also left the headquarters without permission of the Competent Authority. The petitioner, promptly, filed contempt petition in Civil Appeal No. 3464 of 1987 alleging that service of such a charge-sheet amounted to contempt of court. This contempt petition was, however, dismissed by this Court.

- 9) In the meantime, third charge-sheet dated October 05, 1998 was also served upon him.
- 10) Finally, the request of the petitioner to send him on deputation to the State of Punjab was also turned down by the Government of India on February 27, 1997, going by the aforesaid subsequent events which have taken place.
- 11) The petitioner once again filed another contempt petition in Civil Appeal No. 3464 of 1987 and raised many other grievances therein as well including non-grant of subsistence allowance. The State of Maharashtra informed the Court that his suspension had been revoked but he was not joining the duties. It was also pointed out that subsistence allowance could not be paid as he had not signed the bills sent to him. Orders were passed on September 19, 2001 by the Court for payment of complete salary to the petitioner from May 01, 1988 to May 13, 1996. The amount was calculated and salary for this period, which was in the sum of

₹6,82,290/-, was tendered to the petitioner in the Court, however, he refused to accept the same on the ground that this salary was calculated as per the senior time-scale but in the meantime persons junior to him had been promoted and, therefore, he should be given the salary of promotional post. The Court, taking note of the obstinate stand of the petitioner, dismissed the contempt petition as well as all pending applications of October 18, 2001. In the process, this Court observed that the issue of payment of salary at higher scale could not be decided in the contempt petition. Pertinently, the petitioner received the amount of ₹6,82,290/- later on.

- 12) There were yet various writ petitions, contempt petitions and criminal appeals filed by the petitioner in this Court, all of which were dismissed in default on October 07, 2002. The order dated October 07, 2002 passed in Writ Petition (C) No. 1037 of 1988 records : “Despite the service of notice of hearing to the petitioner for remaining present the petitioner has not remained present. In spite of that petitioner who appears in person has filed an application for transfer of the matter to another Bench. In our view, enough indulgence is shown to the petitioner and he has misused the same. The petition therefore does not require any further consideration. The writ petitions, contempt petitions, criminal appeal and the I.A. are dismissed for default. Interim order stands vacated.” Thereafter, on an application filed, the writ petition was

restored. Rather than arguing the writ petition, the petitioner filed another writ petition No. 75 of 2003 claiming multifarious reliefs pertaining to his service which was dismissed on June 16, 2003. Thereafter, vide order dated December 09, 2005, Writ Petition (C) No. 1037 of 1988 was also dismissed with a direction that the petitioner may avail the alternative remedy of approaching the Central Administrative Tribunal.

- 13) After the aforesaid order, the petitioner filed O.A. No. 1714 of 2003 before the Central Administrative Tribunal, Principal Bench, New Delhi. He challenged order dated May 13, 1996, revoking his suspension and prayed that it be set aside on the ground that composite order of revocation of suspension should have been passed which should have included pay and allowances that are to be paid during the period of suspension ending with reinstatement and also whether or not the period of suspension is to be treated as period on duty. In this O.A., he also justified his non-joining the duty in terms of orders dated June 07, 1996 on the ground that the post of Deputy Secretary was below his entitlement as the persons immediately junior to him had earned a promotion. The petitioner, thus, also challenged his posting as Deputy Secretary, he also questioned the validity of two charge-sheets dated May 04, 1998 and October 05, 1998 and sought quashing thereof including quashing of the order dated September 18, 2002 whereby an enquiry officer was appointed. He also challenged orders dated March

27, 2003 wherein he was intimated that salary could not be paid to him as he was not reporting for duty.

- 14) This OA was decided by the Tribunal on November 18, 2003 quashing the orders dated May 13, 1996. The said order was quashed on the ground that a composite order contemplated by Rule 5B had to be passed with respect to the manner in which suspension period was to be reckoned or the entitlement of payment of salary. At the same time, liberty was granted to the State of Maharashtra to pass a fresh order on issue of revocation of suspension. However, salary for the period after June, 1996 was declined with the observation that if the petitioner joins service as Deputy Secretary, the salary shall be paid. No other relief was granted to the petitioner on the ground that in one OA, the petitioner had joined multifarious causes. It was observed that qua other reliefs, the petitioner was free to take resort to necessary action. The petitioner filed review application in the said OA on the ground that once the order of revocation of suspension was quashed, the Tribunal could not have granted permission to the State Government to pass a fresh order. This application for review was dismissed. He filed one more application for review which was also dismissed. Challenging the orders of the Tribunal, the petitioner filed Writ Petition (Civil) No. 916 of 2007 in the High Court of Delhi.

- 15) The petitioner thereafter filed another OA but confined his relief insofar as it related to charge-sheet dated May 04, 1998 and penalty imposed on him vide orders dated April 02, 2007. This OA is still pending before the Tribunal.
- 16) After the Tribunal had decided OA No. 1714 of 2003 and permitted the Department to pass an order pertaining to the period the petitioner remained under suspension, the Government passed the orders dated July 29, 2004 declining to pay full pay and allowances to the petitioner for the period May 26, 1988 to May 12, 1996, viz., the period during which he remained under suspension. This order was challenged by the petitioner by filing OA No. 2507 of 2005. In this OA, he also filed six miscellaneous applications seeking various other reliefs. The said OA No. 2507 of 2005 as well as miscellaneous applications were disposed of by the Tribunal holding that order dated July 29, 2004 was repugnant to the directions issued by the Supreme Court to pay full salary for the aforesaid period. At the same time, the Tribunal also noted that in any case the petitioner had already received full salary for this period, that is, some of ₹6,82,290/-.
- 17) The petitioner had filed three more OAs, namely, OA No. 2947 of 2003, OA No. 3092 of 2003 and OA No. 3141 of 2003 which were disposed of by the Tribunal by common order dated May 18, 2004. In OA No. 2947 of

2003, the petitioner sought quashing of inquiry report dated November 01, 2003 pertaining to the second charge-sheet in which he was charged with the misconduct of unauthorisedly remaining absent from duty.

- 18) In O.A. No. 3092/2003, the petitioner had challenged third charge-sheet dated October 05, 1998 wherein the charge was that he had not filed annual returns. Vide O.A. No. 3141 of 2003, the petitioner prayed for quashing of orders dated June 07, 1996 vide which he was directed to report for duty as Deputy Secretary in the Social Welfare Department. Vide orders dated May 18, 2004, all these three OAs were dismissed by the Tribunal. Challenging the said order, the petitioner filed writ petition no. 2768 of 2007 in the High Court of Delhi.
- 19) Few more OAs were also filed by the petitioner in CAT which were dismissed by the Tribunal. Against those orders, writ petitions were also preferred. These writ petitions were also dismissed by the same common judgment. However, for the purpose of present special leave petition, it is necessary to refer to those writ petitions.
- 20) With this background, we revert back to writ petition Nos.916/2007 and 2768/2007. As far as writ petition No.916/2007 is concerned, let it be recapitulated that it arises out of OA No.1714/2003 wherein the petitioner had challenged the order dated May 13, 1996 by which his suspension was revoked. This OA was allowed by the Tribunal on the ground that it

was necessary for the Government to pass composite order which was the requirement of Rule 5B of the Rules and since the Government had not indicated in the order as to how the suspension period would be reckoned and the decision for payment of salary during the suspension period was also not taken, the order was bad in law. The liberty, however, was granted to the State Government to pass fresh order regarding salary of suspension period. This part of the order granting liberty to the State Government was sought to be reviewed by the petitioner by filing review petition which was dismissed and this dismissal was challenged by the petitioner in the said writ petition No.916/2007.

- 21) The High Court while dealing with this writ petition took the view that in case order revoking the suspension did not deal with the suspension period or payment of the salary for suspension period, order revoking suspension cannot be treated as void or *non est*. The only effect thereof would be that the competent authority is precluded from exercising its power under FR 54B and the legal position was that if while revoking the suspension or within a reasonable time thereof no order is passed pertaining to pay and allowances for the period of suspension, the authority is denuded from passing such an order. The necessary consequences thereof would be that the Government servant, in such a situation, is entitled to full salary for the period he remained under suspension. Therefore, High Court held that the petitioner was entitled

to full pay and allowances for the period he remained under suspension and in the present case, the Supreme Court had already passed the order for grant of full salary for the period May 01, 1988 to May 13, 1996 and this amount had also been received by the petitioner though initially he had refused to accept the same when it was tendered to him in the Court. Moreover, the State of Maharashtra had not revoked the suspension on its own but to facilitate petitioner's inter-cadre transfer from Maharashtra cadre to Punjab cadre and, therefore, the order of revocation of suspension was not in exercise of power to revoke the suspension on the ground that the petitioner was no longer required to kept under suspension and these peculiar circumstances were not kept in mind by the Tribunal.

22) According to us, the aforesaid approach of the High Court, under the given circumstances, is without blemish. The High Court has relied upon certain judgments of this Court including the decision in the case of ***Basant Ram Jaiswal v. Area Manager (North) MTNL Bombay***¹ which held that in such a situation, the competent authority cannot exercise the power under FR 54B.

23) When the order of suspension is revoked and the suspended employee is asked to join the duty, he is required to do so. How the period of

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suspension is to be treated is another aspect. At the most, such an employee would be entitled to full salary during the suspension period if no order is passed as to how the suspension period would be governed. That would not mean that order revoking suspension itself becomes bad in law. It is pertinent to mention that even the Tribunal did not say that order revoking suspension was bad in law (In fact that part of the order was favourable to the petitioner). What it held was that in terms of Rule 5(b), the Government should have also decided how the period of suspension is to be treated and, therefore, directed the Government to pass necessary order to that effect.

- 24) An employee who is suspended generally feels aggrieved by such suspension order and would like his suspension to be revoked. Curiously, in the present case, when such an order was passed in the case of the petitioner, instead of joining the duties, he started questioning the validity of the order of revocation on hyper-technical grounds claiming that he would not join the duties unless his period of suspension is also dealt with. This speaks volumes about the conduct of the petitioner depicting that he was not interested in joining the duties. Had the petitioner joined the duties, it would have even facilitated his change of cadre as well by allowing him Punjab cadre. He did not allow it to happen and he himself is responsible for this state of affair.

- 25) Otherwise also, in any case, we feel that once the entire salary for suspension period is received by the petitioner, there was no question of making any grievance in respect of order revoking suspension.
- 26) Insofar as writ petition No.2768/2007 is concerned, this pertains to challenge to the second as well as third chargesheets and orders dated June 07, 1996 by which he was directed to report for duty as Deputy Secretary in the Social Welfare Department. The High Court dismissed this writ petition with the reason that the petitioner had made repeated attempts and re-agitated this issue time and again. We do not find any fault in dismissing this writ petition as well.
- 27) With this, we come to the real issue that is agitated by the petitioner and, in fact, no grievance was made by the petitioner insofar as dismissal of the aforesaid writ petitions are concerned. The petitioner is claiming pay and allowances from June 05, 1996 onwards till date. This was also one of the prayers in OA No.1714/2003 before the Tribunal. The Tribunal had, however, rejected this prayer in the following manner:

“26. As regards claim of the applicant for grant of pay and allowances from 5.6.1996 is concerned, as the applicant, without express permission of the competent authority, has failed to bring on record any credible material showing that he has joined the post of Deputy Secretary in Social Welfare Department, having not worked on the post by the applicant, at present he is not entitled for the relief of grant of salary for the aforesaid period. However, the aforesaid period shall remain subject to pending finalisation of the disciplinary proceedings and on culmination, the law shall take its own course. However, we observe that in the

event, the applicant joins the post of Deputy Secretary in the Social Welfare Department, respondents shall start paying him the salary as per rules. We, at present, are not inclined to allow the prayer of the applicant for grant of salary for the period from 1996 till date.”

- 28) Significantly, the petitioner did not challenge this part of the order. As pointed out above, though he filed two review petitions seeking review of that portion of the order by which Tribunal had given liberty to the State Government to pass fresh order of suspension but did not even ask for review of the order denying him salary for the period after June 05, 1996. The order of the Tribunal was not even challenged before the High Court and, thus, it became final. That apart, the petitioner never joined the duties and, therefore, he cannot claim salary on the principle of 'no work no pay' as well.
- 29) We may point out that the claim for salary for the period after June 05, 1996 till date is on the ground that the order revoking the suspension itself was illegal and, therefore, he was not supposed to join the duty. It is stated at the cost of repetition that the petitioner could have claimed salary for the period of suspension but that was no ground not to join the duties once the suspension order was revoked. The excuse for not joining the duties has also been negated. It may be recalled in this behalf that he was asked to join the duties as Deputy Secretary and his plea was that he was asked to join inferior post. His OA in this behalf was also dismissed.

30) As a result, present special leave petition is dismissed in *limine*.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI;
OCTOBER 06, 2015



JUDGMENT