

(2011) 12 MAD CK 0112**Madras High Court****Case No:** Writ Petition No"s. 28290 and 18394 of 2011 and M.P. No"s. 1 and 2 of 2011

Union of India

APPELLANT

Vs

T. Subramanian and Petitioner in
W.P. No. 18394/2011 and The
Registrar, Central Administrative
Tribunal, Madras Bench, High
Court Campus, Chennai-104

RESPONDENT

Date of Decision: Dec. 10, 2011**Hon'ble Judges:** R. Subbiah, J; Elipe Dharma Rao, J**Bench:** Division Bench**Advocate:** R. Suresh Kumar W.P. No. 28290/2011 and Respondents 1 to 3 in W.P. No. 18394/2011, for the appearing parties; R. Malaichamy for Respondent No. 1 in W.P. No. 28290/2011 and Petitioner in W.P. No. 18394/2011 Tribunal R-2 in W.P. No. 21657/11 and R-4 in W.P. No. 18394/11, for the Appearing Parties**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Elipe Dharma Rao, J.

W.P. No. 21657 of 2011 is filed against the order, dated 23.11.2010, passed by the Central Administrative Tribunal in O.A. No. 233 of 2010, thereby rejecting the claim made by the first respondent herein for monetary benefits during the period of suspension and directing the petitioners herein to take into account the period of suspension of the first respondent, i.e., from 08.03.1996 to 23.08.2007, for the purpose of continuity of service and for pensionary benefits.

2. Challenging the denial of monetary benefits during the period of suspension, viz., from 08.03.1996 to 23.08.2007 by the Tribunal, W.P. No. 18394 of 2011 is filed by the applicant in O.A. No. 233 of 2010, seeking a direction to the respondents 1 to 3, to pay the back wages for the said period of suspension to the Petitioner.

3. It is the case of the petitioner in W.P. No. 18394 of 2011 that while he was working as a Lower Selection Grade Postal Assistant at Nungambakkam High Road Post Office, he was placed under suspension, as per memo dated 08.03.1996 alleging that criminal proceedings were initiated against him by the C.B.I. authorities before the Court of Additional Sessions Judge for C.B.I. in C.C. Nos. 157 and 158 of 1997. It is also the case of the petitioner in W.P. No. 18394 of 2011 that though he made a representation, dated 09.07.1996 to the Director of Postal Services, Chennai City Region, to reinstate him into service, it was rejected, as per order dated 27.09.1996 and since disposal of the criminal case filed by the C.B.I. was delayed, a decision was taken by the Review Committee, which was constituted by the Department, to revoke the suspension of the petitioner in W.P. No. 18394 of 2011 and accordingly, he was reinstated into service and simultaneously transferred to Tambaram Division, as per memo dated 16.08.2007. It is the further case of the petitioner in W.P. No. 18394 of 2011 that when the criminal case, which was filed against him, was ended in acquittal, he made several representations to the Department to treat the period of suspension from 08.03.1996 to 23.08.2007 as duty period and to pay all attendant benefits, but the Superintendent of Post Offices, Tambaram Division, Chennai, issued a show case notice, dated 18.06.2010, stating that they have proposed to reject the request made by him and calling upon him to submit his reply, against which, the petitioner filed O.A. No. 233 of 2010 before the Central Administrative Tribunal.

4. The Tribunal, on consideration of the facts and circumstances of the case, while rejecting the claim made by the applicant for monetary benefits during the period of suspension, directed the respondents therein to take into account the period of suspension of the applicant i.e., from 08.03.1996 to 23.08.2007 for the purpose of continuity of service and for pensionary benefits. Aggrieved of the said order, the present writ petitions have been filed by the Department and the applicant respectively.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

6. On perusal of the records, it is seen that aggrieved by the order of the Tribunal, dated 23rd November, 2010, made in O.A. No. 233 of 2010, thereby rejecting the claim made by the applicant therein for monetary benefit during the period of suspension and directing the respondents therein to take into account, the period of suspension of the applicant, i.e., 08.03.1996 to 23.08.2007, for the purpose of continuity of his service and for pensionary benefits, the applicant has filed W.P. No. 18394 of 2011 and the respondents therein have filed W.P. No. 21657 of 2011 against the direction issued by the Tribunal.

7. It is also seen from the perusal of the materials that the order, which was impugned in the original application, is not an order, but it was only a show cause notice issued by the Department intimating the employee about the proposed

action to be taken by them to restrict the pay and allowances for the period of suspension from 08.03.1996 A.N. to 23.08.2007 to the extent of subsistence allowance already granted and to treat the period as non-duty for all purposes, and directing him to submit his reply on or before 29.06.2010, failing which, it was also indicated in the said notice that orders would be passed ex parte.

8. The facts are not in dispute. While the petitioner in W.P. No. 18394 of 2011, was working as a Lower Selection Grade Postal Assistant at Nungambakkam High Road Post Office, Chennai, a criminal case was registered against him under R.C. No. 28(A)/90 on 16.08.1995 on the file of the Sub Judge (Sessions), Chennai, in connection with his involvement in the case of fraudulent payment of commission to MPKBY Agents by Additional Regional Director, National Savings Organization and after investigation by the C.B.I. Officers, a charge sheet was filed before the Court of Additional Sessions and the same was numbered as C.C.Nos. 157 and 158 of 1997. Based on the criminal case, the petitioner in W.P. No. 18394 of 2011 was placed under suspension with effect from 08.03.1996 by the Department and pending disposal of the said criminal case registered by the C.B.I., suspension continued and based on the recommendation made by the Committee, which was duly constituted by the Department, the suspension was revoked with effect from 24.08.2007 and the order of revocation of suspension was issued on 16.08.2007 without prejudice to the pending C.B.I. case and the disciplinary case, if any, against him. However, as per judgment, dated 30.07.2008, the learned Judge acquitted the petitioner in W.P. No. 18394 of 2011 by holding that the charges levelled against him were not proved beyond reasonable doubt.

9. Therefore, according to the Department/petitioners in W.P. No. 21657 of 2011, the trial in the aforesaid criminal cases was not at the instance of the Department and the acquittal is due to failure on the part of the prosecution to prove the charges beyond reasonable doubt and hence, there is no justification to treat the period of suspension of the petitioner in W.P. No. 18394 of 2011 from 08.03.1996 to 23.08.2007, as duty period for all purposes, since the Department is not responsible for the initiation of the criminal case against him, which was the reason for suspension and accordingly, the Department issued the show cause notice proposing not to regularise the period of suspension and thereby called upon the employee/petitioner in W.P. No. 18394 of 2011 to submit his reply for the said notice.

10. It is seen from the perusal of the records that after the acquittal, the petitioner in W.P. No. 18394 of 2011 has made a representation on 09.07.1996 to the Director of Postal Services, Chennai City Region, to reinstate him into service, but it was denied, as per order dated 27.09.1996 and after accepting the recommendation made by the Committee constituted by the Department, he was reinstated into service and transferred to Tambaram Division, as per order dated 16.08.2007 and he joined duty at the said division on 24.08.2007 and later, when he was acquitted in the criminal

case on 30.07.2008, he has made several representations, dated 28.04.2009 and 05.08.2009 seeking regularisation of the suspension period from 08.03.1996 to 23.08.2007, but the Superintendent of Post Offices, Tambaram Division, Chennai, issued the aforesaid show case notice, dated 18.06.2010, stating that they have proposed to reject the request made by him and calling upon him to submit his reply.

11. But the petitioner in W.P. No. 18394 of 2011, without submitting reply to the aforesaid notice, has approached the Central Administrative Tribunal seeking a direction to the Department to regularise the period of suspension from 08.03.1996 to 23.08.2007 and to treat the said period as duty period and to pay the arrears of pay and allowances and other attendant benefits to him with interest @ 24% per annum, which was denied by the Tribunal, but however, in the interest of justice, directed the Department to take into account the period of suspension, i.e., from 08.03.1996 to 23.08.2007, for the purpose of continuity of service and pensionary benefits, against which both the Department and the delinquent have filed their respective writ petitions.

12. It is the contention of the petitioners in W.P. No. 21657 of 2011 that the Tribunal has not at all considered the stand of the Department and without taking into consideration the factual aspects in this regard and without even referring to the stand of the Department, was pleased to pass a cryptic order, simply giving direction to the Department to give continuity of service benefits to the employee, which is impermissible and cannot be sustained. It is also contended that the criminal case ended in acquittal of the employee for not granting proper sanction is not a ground for treating the suspension period as continuity of service and granting monitory benefit.

13. On the other hand, the employee, who is the writ petitioner in W.P. No. 18394 of 2011, contended that two years after the reinstatement, as per the decision of the Committee constituted by the Department, when the period of suspension was not regularised, even though several representations were made by him, the employee has no other option except to approach the Tribunal for regularisation of the suspension period.

14. After going through the entire materials placed on record, we are of the considered opinion that the order, which was impugned in the original application, dated 18.06.2010, is practically not an order to be set aside. On the other hand, it is a notice issued to the employee by the Department for submission of his reply to the proposed action going to be taken against him with regard to the regularisation of the period of suspension and no right of the employee is either decided in the said notice or any adverse order is passed. Further, it cannot be considered as an adverse order, which was passed against the employee, but it is only a notice. When the authorities have expressed their intention to pass an order, the employee should have submitted his explanation, whatever reasons mentioned in the original

application, for the consideration of the Department and to pass appropriate orders as per law. Therefore, we are unable to agree with the reasons adopted by the Tribunal in passing the order, directing the Department to take into account the period of suspension for continuity of service and for the purpose of calculation of pensionary benefit, while rejecting the monetary benefits for the abovesaid period to the employee.

15. In the light of the discussion made above, the order passed by the Tribunal is set aside. W.P. No. 21657 of 2011 is allowed. Connected M.Ps. are closed.

16. In view of the order passed in the earlier writ petition, there is no further order is necessary in W.P. No. 18394 of 2011, which is filed by the employee not satisfied with the order rejecting the payment of monetary benefit for the aforesaid suspension period, on the ground that the original application itself, which was filed against the show cause notice, in our considered opinion, is not maintainable. Accordingly, W.P. No. 18394 of 2011 is closed. However, the petitioner in W.P. No. 18394 of 2011 is granted two weeks time from the date of receipt of a copy of this order to submit his explanation to the show cause notice dated 18.06.2010 for passing appropriate orders on merits and in accordance with law by the Department. However, there will be no order as to costs.