IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.5319 of 2022

Mr. Gopal S/o Sitaram Bairisal,
Aged about 71 years,
Occupation – Retired,
R/o Gaddigodam,
Gautam Nagar,
Nagpur. … Petitioner

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
D(FY-2), Sena Bhawan,
New Delhi-110001.

2. The D.G.O.F./Chairman,
Ordnance Factory Board,
10/A, Shaheed K. Bose Road,
Kolkata,

3. The General Manager,
Ordnance Factory,
Ambazari, Nagpur. … Respondents

Mr. M.I. Mourya, Advocate for Petitioner.
Mr. N.S. Deshpande, Assistant Solicitor General of India, along with Mrs. S.N. Deshpande, Advocate for Respondents.

CORAM : DIPANKAR DATTA, CJ., &
NITIN W. SAMBRE, J.

DATE : SEPTEMBER 5, 2022

ORAL JUDGMENT (Per Chief Justice**):**

1. The challenge in this writ petition dated 16th November 2021 to the order dated 13th April 2015 of the Central Administrative Tribunal, Bombay Bench, Mumbai, Camp at Nagpur, dismissing

Original Application No.2121 of 2011, is at the instance of the now septuagenarian original applicant (hereafter 'the petitioner', for short).

2. At the material time, the petitioner was posted as a Labourer (unskilled) at the Ordnance Factory, Ambazari. He, along with others, was accused of commission of offences punishable under sections 147, 148, 149 and 302 of the Indian Penal Code. Upon registration of an FIR, the petitioner was detained in custody for a period exceeding 48 hours. This resulted in deemed suspension of the petitioner from 2nd March 1999. The petitioner was enlarged on bail on 26th May 1999. However, the order of suspension was not revoked and the same continued to remain in operation till 11th February 2009, when such order came to be finally revoked upon an order of acquittal dated 18th September 2008 being recorded by the Court of Additional Sessions Judge in Sessions Trial No.319 of 2001. The petitioner was reinstated and ultimately retired on superannuation with effect from 30th November 2010.

3. While revoking the order of suspension, by an order dated 11th February 2009, the General Manager, Ordnance Factory, Ambazari, issued a further order dated 17th February 2009 observing that the period of deemed suspension from 2nd March 1999 to 25th May 1999 and continued suspension from 28th May 1999 to 11th February 2009 cannot be treated as period spent on duty. However, an option was given to the petitioner in the following terms:

> *"… The fact and circumstances of the case thus amply justified the suspension of the said Shri G.S. Bairisal, Labourer 'Semi-Skilled', T.No. FS/691/3074. Under the circumstances, it is considered that the period of deemed suspension from 02/03/1999 to 25/05/1999 and continued suspension from 28/05/1999 to 11/02/2009, cannot be treated as period spent on duty. Shri G.S. Bairisal, Labourer 'Semi-Skilled',*

> *T.No.FS/691/3074, is however hereby given an option to convert the period of suspension and dismissal into leave due and admissible. It may however be informed that in such an event, if it is found that the total amount of subsistence and other allowances that the said Shri G.S. Bairisal, Labourer 'Semi-Skilled', T.No.FS/691/3074, had received during the period of suspension exceeds the amount of leave salary/wages and allowances, the excess amount paid will have to be refunded. Shri G.S. Bairisal, Labourer 'Semi-Skilled', T.No. FS/691/3074, should submit his representation, if any, against this memorandum within 15 days of receipt hereof."*

4. The petitioner had addressed a representation dated 8th March 2009 to the said General Manager, wherein he pointed out that he was implicated in the criminal case owing to personal rivalry and conspiracy of the complainants. Since the trial continued for several years without any fault of the petitioner, he prayed that the period spent on suspension be treated as on duty. The said representation of the petitioner was considered and disposed of by the General Manager by an order dated 29th April 2009. It was observed therein that having regard to the totality of the facts and circumstances relating to the petitioner's suspension, the same was fully justified and warranted. The order concluded with the following remark:

> *"7. NOW, THEREFORE, the Disciplinary Authority further decides that Shri G.S. Bairisal, Labourer 'Semi-Skilled', T.No.FS/691/3074, shall not be entitled for any pay and allowances beyond the subsistence allowance already paid during the entire period of his suspension and the intervening period from 02/03/1999 to 25/05/1999 and 28/05/1999 to 11/02/2009 will be treated as period not spent on duty i.e. 'DIES NON' (i.e. the period shall neither be treated as period spent on duty nor constitutes a break in service)."*

5. An appeal preferred by the petitioner against the said order dated 29-4-2009 did not yield any fruit. Such appeal was rejected by

the Appellate Authority, being the Additional DGOF & Member, Appellate Authority. The reasons for such rejection, found in the penultimate paragraph of the appellate order, are reproduced hereunder:

> *"… Further, in the criminal case, the prosecution did not go full way to prove the case beyond doubt. As such, the acquittal is construed to be on benefit of doubt. The Disciplinary Authority, after due application of mind, had rightly ordered that since the appellant did not render any service to the Govt. due to his involvement in the criminal case and conviction, the period of suspension from 02.03.1999 to 25.5.1999 and 28.5.1999 to 11.02.2009 can not be treated as period spent on duty for any purpose and as such, the appellant was not entitled to any back wages other than the Subsistence Allowance already paid during the period of suspension. The period of suspension had been accordingly marked as DIES-NON. The order of the Disciplinary Authority being based on evidences on record is just and proper and therefore warrants no interference."*

6. Aggrieved by the appellate order dated 25th October 2010, wherein the original order dated 29th April 2009 merged, the petitioner had invoked the jurisdiction of the Tribunal by instituting Original Application No.2121 of 2011. The said original application was dismissed by the Tribunal by an order dated 3rd May 2012. The petitioner had challenged such order of dismissal before this Court by instituting Writ Petition No.4466 of 2012. By an order dated 19th March 2013, this Court set aside the impugned order and remanded the matter to the Tribunal with the following observations:

> *"7] In the present situation, the consideration of facts having bearing on exercise of discretion are not very apparent. Whether the offence in relation to which the petitioner was tried had any relevance with his employment and whether during said period he made representation against his suspension, are some of the relevant facts. We have not been shown any assertion*

either by petitioner or by employer about the possibility or absence of gainful employment in the meantime. We note that period of suspension is about 10 years and the amount to be paid to the petitioner from public funds.

8] In this back ground the judgment of Central Administrative Tribunal is looked into. The Central Administrative Tribunal in its judgment in para 14 proceeded under the impression that the petitioner was in jail for about five years. Thus the length put it by the petitioner in jail may also have some relevance.

9] Only to enable the petitioner to demonstrate norms relevant under Rule 54-B of the Fundamental Rules, while exercising discretion conferred thereunder, we set aside the impugned order dated 3rd May 2012 and restore OA No.2121/11 to the file of Central Administrative Tribunal for its adjudication in accordance with law.

10] The petition is thus partly allowed and disposed of accordingly. No costs."

7. On remand, the Tribunal passed the order under challenge dated 13th April 2015 noted at the beginning of this judgment. The Tribunal noted the decision of the Supreme Court in **The Greater Hyderabad Municipal Corporation** Vs. **M. Prabhakar Rao**, AIR 2011 SC 3173, and was of the opinion that the ratio thereof squarely applied to the facts at hand. The Tribunal was of the further opinion that a possible view taken by the Competent Authority with regard to justification of placing an employee under suspension ought not to be lightly interfered with by the Tribunal, particularly since the petitioner did not work for nearly 10 years but had received the subsistence allowance as per the extant rules. The Tribunal also concluded that there was no error on the part of the Disciplinary Authority or the Appellate Authority not to treat the period spent by the petitioner under suspension on duty. After all, if the period spent

by the petitioner were to be regarded as 'on duty', he would be entitled to claim the balance of pay and allowances which had to be paid from the public exchequer. Resting on such reasons, the original application came to be dismissed.

8. We have heard Mr. Mourya, learned counsel for the petitioner. We did not consider it necessary to call upon Mr. Deshpande, learned Assistant Solicitor General of India for the respondents to answer the contentions of Mr. Mourya.

9. It is not in dispute that rule 54-B of the Fundamental Rules (hereafter "FR", for short) is one of the relevant rules that applies to the petitioner. Sub-rule (3) of rule 54-B of the FR has been held by the Supreme Court in **M. Prabhakar Rao** (supra) to vest power on the authority competent to order reinstatement to form an opinion whether the suspension of a Government servant was wholly unjustified and if, in his opinion, the suspension of such a servant is wholly unjustified, to decide on payment of full pay and allowances to which he would have been entitled but for such suspension. According to the Supreme Court, the rationale on which sub-rule (3) of rule 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. The Supreme Court was of the further opinion that sub-rule (3) of rule 54-B does not say that in a case of acquittal, the employee would be entitled to his salary and allowances for the period of suspension. Also, such sub-rule (3) vests power on the competent authority to order that the employee will be paid full pay and allowances for the period of suspension if he is of the opinion that the suspension was wholly unjustified; hence, even where the employee is acquitted of the charges in 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 him, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.

10. Mr. Mourya has sought to distinguish the decision in **M. Prabhakar Rao** (supra) by contending that the same arose out of a case where the employee was alleged to have indulged in commission of acts resulting in penal offences while discharging his official duties. Such a case is distinctly dissimilar to the case at hand, where the petitioner was alleged to have committed acts not having any relation to official discharge of his duties. This is one reason as to why the decision in **M. Prabhakar Rao** (supra) was not applicable and, according to Mr. Mourya, the Tribunal fell in error in applying the ratio of such decision to the case presented by the petitioner.

11. It was next contended by Mr. Mourya that the criminal court acquitted the petitioner not on the ground of benefit of doubt, as incorrectly perceived by the Appellate Authority. Drawing our attention to paragraphs 39 and 40 of the order of acquittal, he sought to contend that the petitioner was honourably acquitted. The observation of the learned Additional Sessions Judge, that he had no hesitation to conclude that "the prosecution failed to establish their case much-less beyond reasonable doubt", was highlighted to drive home the point of a patent error in the reasoning of the Appellate Authority.

12. Finally, it was contended by Mr. Mourya that it is not a case where the petitioner was to be faulted for the delay in conclusion of the trial. The petitioner was willing to work, but was disabled from doing so because of the order of suspension. In such circumstances, the petitioner ought not to be victimized for the fault of the Court in

concluding the trial expeditiously.

13. None of the contentions raised on behalf of the petitioner has impressed us.

14. We could have dismissed the writ petition on the ground of delay and laches. However, we are of the view that justice is better administered if the rival claims of the parties are considered on merits and in the proper perspective. With this mind, we have looked into the petitioner's grievance in some detail in the light of guidance provided by the statutory rules.

15. The power to suspend a Government servant is traceable in rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter "CCS CCA Rules", for short). Sub-rule (2) of rule 10 encapsulates provisions relating to deemed suspension. While considering whether an employee upon revocation of the order of suspension is entitled to pay and allowances minus the subsistence allowance already received, and whether the period of suspension is to be treated as period spent on duty, it is rule 54-B of the FR that would require consideration. It is noticed from sub-rule (3) of rule 54-B that a duty is cast on the authority competent to order reinstatement to consider and make a specific order in respect of the said two factors referred to above. It is also found from sub-rule (4) of rule 54-B of the FR that it is only in a case falling under sub-rule (3) that the period of suspension shall be treated as a period spent on duty for all purposes. The issue, therefore, requiring consideration is whether placing the petitioner under suspension, in the first place, was justified or unjustified.

16. When suspension is ordered invoking rule 10(1) of the CCS CCA Rules as an interim suspension, i.e., in contemplation of a disciplinary proceeding or during such proceeding, it is largely within the discretion of the Disciplinary Authority. He may or may not order a suspension. Here, however, the case is different. In view of

rule 10(2) of the CCS CCA Rules, exercise of discretion was not involved at all. The petitioner was deemed to have been placed under suspension on the expiry of 48 hours since the time he was taken into custody. For a deemed suspension to take effect, even no immediate order in writing is necessary. Such suspension takes effect by operation of law. There can, therefore, be no dispute that in placing the petitioner under suspension, his Disciplinary Authority did not have to exercise discretion in any measure. The suspension of the petitioner, brought about by operation of law, had the effect infusing life into a law and the same can hardly be impeached as unjustified. We, therefore, see no reason to hold that the order of suspension, at the inception, was unjustified on facts and in the circumstances.

17. However, even though we hold the suspension as justified, the other question that has engaged our consideration in the circumstances is, whether the continuance of such suspension for such a prolonged period was also justified. Though no argument has been advanced by Mr. Mourya by referring to the statutory rules, we have looked into this aspect as well.

18. Rule 10(5)(a) of the CCS CCA Rules ordains that subject to the provisions of sub-rule (7) of rule 10, any order of suspension made or deemed to have been made under rule 10 shall continue to remain in force until it is modified or revoked by the authority competent to do so. Clause (c) of sub-rule (5) of rule 10 authorizes modification or revocation of an order of suspension made or deemed to have been made under rule 10 at any time by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

19. Sub-rule (7) of rule 10, which was inserted by a gazette notification dated 16th June 2007, lays down as follows :

> *"(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.*
>
> *Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days' period in such case will count from the date of the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority whichever is later."*

20. It is, therefore, the mandate of rule 10(7) that the authority shall review from time to time whether the suspension warrants modification/revocation, even in respect of a case of deemed suspension. It is true that the Disciplinary Authority of the petitioner might have been remiss in not embarking upon a periodical exercise of ascertainment whether continuance of the suspension is justified or not. After all, without extracting any work from the petitioner but paying him subsistence allowance for more than a decade, howsoever meagre be the quantum, was in fact a drainage of the public exchequer. The situation could well have been avoided if an informed decision were taken by the Disciplinary Authority bearing in mind the fact that the petitioner was facing trial in respect of commission of alleged offences quite unrelated to his official discharge of duty. However, does such remissness warrant a declaration that continuance of the suspension was unjustified and that the period spent by the petitioner under suspension upon release on bail should have been treated to be on duty and hence, he is entitled to financial benefits? We do not think so.

21. Admittedly, the petitioner continued to remain under suspension for a little less than 10 years. Although it has been

contended on his behalf that he was ready and willing to discharge his duties, we do not find any document on record to support such a contention. True it is, the petitioner faced a criminal trial in respect of offences which did not relate to his official discharge of duties. While the petitioner's employer might have been remiss in not reviewing the order of suspension in terms of rule 10(5) and (7) of the CCS CCA Rules, one cannot also overlook the fact that the petitioner never prayed that the order of suspension be revoked on a review of the prevailing facts and circumstances. He rested content with drawing subsistence allowance without putting in any work. A genuine desire to work ought to have manifested itself in a written request made by the petitioner to resume duty upon reinstatement. It is in such circumstances that we are inclined to disbelieve the contention of the petitioner that although he had the genuine desire to work, he was not permitted by his Disciplinary Authority.

22. Much has been argued by Mr. Mourya based on the observations contained in the order of the criminal court recording acquittal of the petitioner and misreading of the same by the Appellate Authority. Although Mr. Mourya could be right in his contention, we do not feel persuaded to consider such argument worthy enough to upset the final order of the Disciplinary Authority and the appellate order for the reasons assigned above upon our understanding of rule 10 of the CCS CCA Rules read with rule 54-B of the FR.

23. Insofar as delayed conclusion of the criminal trial is concerned, it could be so that the petitioner was not at fault. Equally, the Disciplinary Authority too cannot be faulted for such delay. It was not within the power or competence of the Disciplinary Authority to urge that the trial be expedited. The related contention, therefore, lacks merit and stands rejected.

24. The distinction that was sought to be drawn by Mr. Mourya for inapplicability of the ratio of the decision in **M. Prabhakar Rao** (supra) appears to us to be tenuous. It matters little whether an employee faces criminal proceedings for acts/commission while discharging his official duties or in other spheres. Once the employee is detained in custody and continues to be in custody for more than 48 hours, rule 10(2) of the CCS CCA Rules would straight away be attracted. It is in the light of the relevant circumstances that the rationale for inserting rule 54-B in the FR needs to be considered. As has been held in **M. Prabhakar Rao** (supra), the pay and allowances in full may be denied and the period spent under suspension treated as not on duty if the Disciplinary Authority is of the opinion that the suspension was justified. Having held the suspension to have been justified, we see no reason to accept the argument of Mr. Mourya in this regard.

25. We, therefore, uphold the impugned order though for reasons different from the one assigned by the Tribunal therein.

26. The writ petition stands dismissed. No costs.

[NITIN W. SAMBRE, J.] **[CHIEF JUSTICE]**

Lanjewar

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