

CONSTITUTIONAL WRIT

Present: The Hon'ble Mr. Justice Pranab Kumar Chattopadhyay
and

The Hon'ble Mr. Justice Pranab Kumar Deb

W.P.C.T.58 of 2010.

POINTS:

Suspension----Petitioner in custody for more than 48 hours-----Suspended by the authorities -----
Suspension revoked after bail was granted----- Retired from service----Criminal case pending----
No decision taken with regard to time spent under suspension----BSNL Conduct, Discipline and
Appeal Rules, 2006 , R R 32&33

FACTS:

Petitioner being involved in a criminal case and detained in custody for more than 48 hours was suspended from service on 25th July, 2007. After enlargement of the petitioner on bail pursuant to the order of the Criminal Court, the said order of suspension was revoked by the respondent authorities. Ultimately, the said petitioner retired from service on attaining the age of superannuation. No disciplinary proceedings have been initiated against the petitioner by the respondents.

Although there was no Disciplinary Proceeding pending against the Petitioner, the authorities could not take any final decisions with regard to the period spent by him under suspension in view of the pendency of the Criminal case against him. The Petitioner filed an application before the Tribunal which was dismissed.

The Learned Tribunal specifically observed that since the criminal case is still pending for consideration, Rule 32 of the of the B.S.N.L. Conduct, Discipline and Appeal Rules, 2006 does not permit the Respondents to grant full pay and allowances for the period of suspension and accordingly, the Learned Tribunal directed the Petitioner to produce the Judgment of the Criminal Court in which the said Petitioner was facing trial. The Learned Tribunal further observed that if such Judgment is produced by the Petitioner herein, then the Respondents will consider the same and take decision upon exercising their power vested under Rule 32 of the said Rules, 2006.

HELD:

In the facts of the present case, question of imposition of any penalty under Rule 33 cannot and does not arise since no Disciplinary Proceeding was initiated against the Petitioner by the Disciplinary Authority and the Petitioner herein was suspended having been involved in a criminal case and was detained in police custody for more than 48 hours.

PARA---8

In terms of Rule 32 sub-rule (2), the period of absence from duty while the said Petitioner was under suspension cannot be treated as period spent on duty even if the said Petitioner is ultimately exonerated by the Criminal Court. On the other hand, the suspension of the said Petitioner cannot be treated as punishment by the Disciplinary Authority since no Disciplinary Proceeding was initiated against the Petitioner by issuing a separate charge sheet.

PARA-----9

The Petitioner has admittedly retired from service on attaining the age of superannuation and, therefore, question of initiating any Disciplinary Proceeding at this stage cannot and does not arise.

PARA---10

In the aforesaid circumstances, the Respondent authorities should take an appropriate decision in respect of the aforesaid period of absence of the Petitioner from duty during the period of suspension by adjusting the said period from the admissible leave available with the said Petitioner.

PARA----11

In the event, sufficient leave was not due and available to the Petitioner, then the Respondent Authority will adjust the remaining period by sanctioning special leave without pay. With the aforesaid observations and directions, we dispose of this petition and set aside the impugned order passed by the Learned Tribunal.

PARA----12

Mr. Dilip Kr. Maiti,
Mr. Uttam Kr. Kamila....For the Petitioner.

Mr. Dhruva Mukherjee....For the RespondentNos.2 to 5.

THE COURT:

1.This writ petition has been filed challenging the order dated 8th February, 2010 passed by the learned Central Administrative Tribunal, Calcutta Bench in case number O.A.343 of 2009 whereby and whereunder the said learned Tribunal finally disposed of the application filed by the petitioner on merits.

2.From the records, we find that the petitioner herein was involved in a criminal case and was detained in police custody for more than 48 hours. In view of the aforesaid detention of the petitioner in the police custody for more than 48 hours, the said petitioner was placed under suspension with effect from 25th July, 2007 to 16th January, 2008.

3.After enlargement of the petitioner on bail pursuant to the order of the Criminal Court, the said

order of suspension was revoked by the respondent authorities. Ultimately, the said petitioner retired from service on attaining the age of superannuation. Since no final decision was taken by the respondent authorities with regard to the period spent by the employee concerned under suspension, an application was filed before the learned Tribunal which was finally disposed of by the impugned judgment and order dated 8th February, 2010.

4. While deciding the said application, the learned Tribunal specifically observed that since the criminal case is still pending for consideration, Rule 32 of the of the B.S.N.L. Conduct, Discipline and Appeal Rules, 2006 does not permit the respondents to grant full pay and allowances for the period of suspension and accordingly, the learned Tribunal directed the petitioner to produce the judgment of the Criminal Court in which the said petitioner was facing trial. The learned Tribunal further observed that if such judgment is produced by the petitioner herein, then the respondents will consider the same and take decision upon exercising their power vested under Rule 32 of the said Rules, 2006.

5. We, however, do not understand how Rule 32 of the said B.S.N.L. Conduct, Disciplinary and Service Rules, 2006 can be made applicable in the facts of the present case. The aforesaid Rule 32 is set out hereunder;

“Rule 32. TREATMENT OF THE PERIOD OF SUSPENSION:

(1) When the employee under suspension is reinstated, the competent authority may grant him the following pay and allowance for the period of suspension;

(a) If the employee is exonerated and not awarded any of the penalties mentioned in Rule 33, the full pay and allowances which he would have been entitled to if he had not been suspended, less the subsistence allowance already paid to him; and

(b) If otherwise, such proportion of pay and allowances as the competent authority may prescribe.

(2) In a case falling under sub-clause (a), the period of absence from duty will be treated as a period spent on duty. In case falling under sub-clause (b) it will not be treated as a period spent on duty unless the competent authority so directs.”

6. Rule 32 (1) (a) specifically refers to Rule 33 where the penalties have been prescribed. The aforesaid penalties under Rule 33 can be imposed only in relation to a disciplinary proceedings initiated by the disciplinary authority.

7. In the present case, the petitioner herein was admittedly not placed under suspension in relation to any disciplinary proceedings initiated by the disciplinary authority and the said petitioner was placed under suspension since he was detained in police custody for a period exceeding 48 hours on a criminal charge.

8. Therefore, in the facts of the present case, question of imposition of any penalty under Rule 33 cannot and does not arise since no disciplinary proceeding was initiated against the petitioner by the disciplinary authority.

9. Furthermore, in terms of Rule 32 sub-rule (2), the period of absence from duty while the said petitioner was under suspension cannot be treated as period spent on duty even if the said petitioner is ultimately exonerated by the Criminal Court. On the other hand, the suspension of the said petitioner cannot be treated as punishment by the disciplinary authority since no disciplinary proceeding was initiated against the petitioner by issuing a separate charge sheet.

10. The petitioner has admittedly retired from service on attaining the age of superannuation and, therefore, question of initiating any disciplinary proceeding at this stage cannot and does not arise.

11. In the aforesaid circumstances, the respondent authorities should take an appropriate decision in respect of the aforesaid period of absence of the petitioner from duty during the period of suspension by adjusting the said period from the admissible leave available with the said petitioner.

12. In the event, sufficient leave was not due and available to the petitioner, then the respondent authority will adjust the remaining period by sanctioning special leave without pay. With the aforesaid observations and directions, we dispose of this petition and set aside the impugned order passed by the learned Tribunal.

There will be no order as to costs. Urgent xerox certified copy of this order, if applied for, shall be given to the appearing parties, as early as possible.

(Pranab Kumar Chattopadhyay, J.)
(Pranab Kumar Deb, J.)