

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2706/2002

This the 17th day of September, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Mukesh
S/o Sh. Parmanand
R/o D-627, JJ Colony,
Wazirpur, Delhi.
(By Advocate: Sh. M.K. Bhardwaj)

Versus

- G.N.C.T. of Delhi through
1. The Secretary Home (General) Department,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Old Secretariat, Delhi.
 2. The Director General of Prisons,
Prisons Head Quarter,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64.
 3. The Deputy Secretary Home (EN),
Govt. of Delhi Home (General),
Department, 5, Sham Nath Marg,
Delhi-110054.

(By Advocate: Sh. Vijay Pandita)

O R D E R (ORAL)

Applicant has filed this OA whereby he is impugning the order dated 29.5.2001 (Annexure A-1) vide which applicant was reinstated in service by the order of this Tribunal in OA-1548/98. The Addl. Director General (Prisons) passed an order being the competent authority to treat the termination period from 12.3.97 to 14.9.2000 as "No Work No Pay".

2. Applicant has a grievance that this order has been passed at the back of the applicant without issuing show cause notice. Applicant has also alleged that this act of denying the applicant of backwages is violative of Article 14 & 16 of the Constitution of India.



3. OA was contested by the respondents. Respondents gave a reply that OA is barred by principle of res judicata. Since the applicant had claimed for back wages in the earlier OA and the same has not been allowed, so the OA is barred by principle of res judicata.

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4. Applicant in his rejoinder submits that since the termination of the applicant has been quashed and set aside because of the non-following of the mandatory provision of law, so competent authority is supposed to pass an order under FR 54 following the procedure as enshrined in FR 54. Since the same has not been done, so applicant is entitled to protection of FR 54. Impugned order is liable to be quashed.

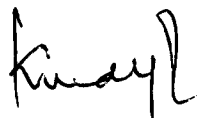
5. I have heard the learned counsel for the parties and gone through the record.

6. The perusal of the order in the earlier OA shows that the applicant was appointed in a temporary capacity to the post of Warden and his services were terminated by an order dated 12.3.97. Since the termination order was challenged, termination was bad because the simultaneous payment in lieu of one month notice has not been paid to the applicant. OA was allowed and respondents were directed to reinstate the applicant. In pursuance of the said direction applicant was reinstated on 15.9.2000. Then a CP was taken up. Applicant submits that since the backwages have not been paid to him, so he was entitled to notice or at least respondents should have resorted to FR 54 before passing any order. Competent authority should have considered it or at least they should have issued a show cause notice before passing any order on backwages.

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7. Though Sh. Pandita appearing on behalf of the respondents pleaded that since the backwages have not been allowed when the OA was allowed so competent authority was competent to reinstate the applicant without paying the backwages and the order has been passed by the competent authority on the principle of "No Work No Pay" As such the OA is barred by res judicata. As far the plea of res judicata is concerned, the same is not available to the respondents because whenever a termination is quashed or set aside by the Tribunal then it is the competent authority to reinstate the applicant and the authority passing the order of reinstatement of the applicant it should ensure that order with regard to the backwages is passed under FR 54 and in this case impugned orders shows that applicant was reinstated on 15.9.2000 and no order was passed on 15.9.2000 when the applicant was reinstated. The impugned order was passed only on 29.5.2001. This order seems to have been passed under exercise of power of FR 54 only but before passing any order no opportunity of show cause notice has been given to the applicant. Thus, it violates the principle of natural justice, so the same is liable to be quashed and set aside.

8. Accordingly, I allow the OA and quash and set aside the order dated 29.5.2001. However, department is at liberty to pass a fresh order in accordance with the rules and after issuing a show cause notice, ^{Applicant is} This should be done within a period of 3 months from the date of receipt of a copy of this order.


(KULDIP SINGH)
Member (J)

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