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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

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O.A. No.1261/2002

New Delhi, this the 8th day of January, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V. Srikantan, Member (A)

Devinder Singh
S/o Shri Ramphal Singh
R/o Village Badha
P.S. Khurja
District Bulandshahr
Uttar Pradesh.

....Applicant

(By Advocate : Shri Shyam Babu)

Versus

1. Government of NCT of Delhi
through its Chief Secretary,
Players Building,
I.P. Estate,
New Delhi.
2. Commissioner of Police, Delhi
Police Headquarters
I.P. Estate,
New Delhi.

...Respondents

(By Advocate : Shri Vijay Pandita)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) :

The applicant is aggrieved by the orders issued by the respondents i.e. appellate authority's order dated 24.7.2001 with regard to certain directions given in that order relating to denial of backwages for the intervening period i.e. from the date of dismissal to the date of reinstatement.

2. We have heard learned counsel for the parties and perused the relevant documents on record.

3. The relevant portion of the impugned order* passed by the appellate authority dated 11.7.2001, which was

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communicated to the applicant vide order dated 24.7.2001 reads as follows:-

"Pursuant to the CAT's directions dated 14.9.2000, the full bench of the Hon'ble CAT have made a decision that Rule 25-B of Delhi Police (Punishment & Appeal) Rules is ultra vires the provisions of Delhi Police Act and set aside the same following the judgement of the Hon'ble Supreme Court of India in the case of State of Mysore Vs. H.D. Kolkar AIR 1974 SC 90.

I have carefully gone through the appeal of Ex.Const. Devender Singh, No.2623/DAP in accordance with CAT's decision dated 14.9.2000 and found that Rule 25-B of the Delhi Police (Punishment & Appeal) Rules, 1983 has not legal force. I, therefore, set aside the punishment order of dismissal from service awarded by Joint C.P./AP, Delhi issued vide order dated 14.12.98 and he is reinstated in service with immediate effect. The punishment of censure awarded by the disciplinary authority i.e. DCP/II Bn.DAP is restored. The intervening period i.e. from the date of dismissal to the date of reinstatement in service will be treated as period spent on duty. However, he would not be entitled to draw back wages for the said period on the principle of 'no work no pay'. The period from the date of reinstatement to the date of joining duty will be treated as Leave of kind Due.

4. Shri Shyam Babu, learned counsel for applicant has submitted that from the aforesaid order it is seen that the Joint Commissioner of Police, Delhi had reviewed the earlier order passed by the disciplinary authority, who had ordered punishment of censure and has enhanced the punishment from censure to dismissal from service after holding the departmental proceedings. The appellate authority under his order dated 11.7.2001 has for the reasons quoted above stated that the applicant's dismissal order is set

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aside and the applicant is reinstated in service. However, the punishment awarded by the disciplinary authority's dated 27.9.1998 was restored. The learned counsel for applicant has submitted that the appellate authority having treated the intervening period i.e. from the date of dismissal to the date of reinstatement as spent on duty had taken a different stand in the later sentence stating that the applicant is not entitled for backwages on the principle of 'no work no pay'. He has relied on the provisions of FR 54 (1) which procedure was admittedly not adopted by the respondents but are applicable to the facts of this case.

5. On the other hand, Shri Vijay Pandita, learned counsel for the respondents, has submitted that as admittedly the applicant was not in service between the date of dismissal to the date of reinstatement, as such the principle of 'no work no pay' has been correctly applied to the case under FR 17.

6. Having regard to the facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the respondents. In the circumstances of the case the orders passed by the respondents on the principle of 'no work no pay' from the date of dismissal to the date of reinstatement of the applicant in service is not applicable. On the other hand, the provision of FR 54 will be applicable, which reads as under:

"When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so

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reinstated, the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty."

7. It will, therefore, be incumbent upon the competent authority i.e. the appellate authority, to have considered the facts and circumstances of the case with regard to passing appropriate orders regarding the intervening period from date of dismissal to date of reinstatement in terms of the provisions of FR 54. That has apparently not been done. It is relevant to note that in sub-Rules (2) - (8) of Fundamental Rule 54(1), the manner in which the intervening period has to be considered by the competent/appellate authority in such circumstances has been fully dealt with and thus it was for the competent authority to have considered the facts of the case and pass appropriate orders.


8. In the above facts and circumstances of the case, the OA partly succeeds and is disposed of with following directions:

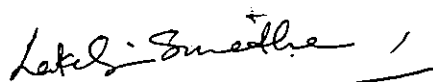
- i) Part of the last para, of the impugned order passed by the appellate authority dated 11.7.2001, stating that the principle of 'no work no pay' will apply to the intervening period is quashed and set aside;

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ii) The competent authority shall pass appropriate orders after taking into account the facts and circumstances of the case and the provisions of FR 54 regarding due payment of pay and allowances for the intervening period i.e. from the date of dismissal to the date of reinstatement of the applicant;

iii) The above shall be done within two months from the date of receipt of a copy of this order. Thereafter, such amount as is due to the applicant in accordance with law, rules and instructions shall also be arranged to be paid to the applicant within one month. No order as to costs.


(V. Srikantan)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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