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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO 2372/2001

New Delhi this the 17th day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI M.P.SINGH, MEMBER (A)

Constable Ganesh Pal No.11824/DAP
Son of Shri Prabhu Lal
R/o Village & P.O. Garh Kherra
District Sawai Madhopur
Rajasthan.

..... Applicants

(By Mrs.Avnish Ahlawat, Advocate)

-versus-

1. Union of India through
Its Secretary
Ministry of Home Affairs
North Block
New Delhi.
 2. Deputy Commissioner of Police
9th Bn, D.A.P
Pritam Pura Police Lines
Delhi-34.
 3. Dy.Commissioner of Police
19th Bn., D.A.P.,
Pritam Pura Police Lines
Delhi-34.
- Respondents

(By Mrs.Jasmine Ahmed, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

Applicant (Constable Ganesh Pal) seeks setting aside of the impugned orders whereby he has been denied back-wages. He seeks a direction to the respondents to pay the back-wages to him from 29.8.1995 to 28.6.2000 with interest.



2. The relevant facts are that the applicant had been proceeded departmentally on the allegation that while temporarily attached with Security Unit, he absented himself unauthorisedly from 25.10.1992 and resumed duty on 29.10.1992. His services were terminated under Rule 5 (1) of the Civil Services (Temporary Service) Rules, 1965. The representation of the applicant had been accepted and he was reinstated forthwith with a direction that a departmental enquiry should be initiated against him for various acts of mis-conduct. The applicant was ordered to be kept under suspension during the pendency of the departmental enquiry. Subsequently, the applicant was reinstated vide orders dated 7.7.1994 but the departmental enquiry continued. It had been alleged that the applicant was a habitual absentee.

3. The enquiry officer in his report of 31.8.1994 held that the charge against the applicant of having absented for four days from Government duty had been substantiated. He absented willfully and unauthorisedly. His past conduct of absenting himself on 32 occasions was also taken note of. The disciplinary authority had gone into the said report and reduced the applicant's pay by two stages from Rs.1010/- to Rs.970/-p.m. with immediate effect for a period of two years permanently. It was subject to the condition that the stage of reduction would be changed if his termination/suspension period was

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decided in his favour. It was directed that the applicant will not earn increments during the period of reduction. The disciplinary authority directed that the period of absence should be treated as leave without pay. The applicant had preferred an appeal. The same was considered and rejected. Instead an enhanced penalty was proposed and a show cause notice to this effect was served. The applicant had submitted a reply. After considering the reply, an order was passed on 11.8.1995 removing the applicant from service. It was ordered that his absence of four days and suspension period should be treated in the same manner as decided by the disciplinary authority.

4. The applicant had challenged the said order and filed OA No.1054/1997. This Tribunal on 6.4.2000 had accepted the application and set aside the abovesaid orders and gave the following findings:-

"12. Under the circumstances the O.A. succeeds and is allowed to the extent that the aforesaid impugned orders are quashed and set aside. Applicant should be reinstated in service within two months from the date of receipt of a copy of this order. The period from the date of applicant's removal from service till the date of his reinstatement and such consequential benefits as will flow from the reinstatement shall be regulated by respondents in accordance with rules, instructions and judicial pronouncements on the subject. No costs."

5. The grievance of the learned counsel for the applicant is that once the order of removal from service has been set aside, the applicant

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cannot be deprived of his salary and full benefits to that effect.

6. The argument so advanced at the Bar cannot be ignored. This is for the reason that once the order of removal has been set aside on merits, in terms of FR 54, the intervening period has to be treated as spent on duty. The present case of the applicant does not fall in any of the exceptions. In the present case, the order of removal of the applicant was set aside. Thus there is no ground why he could not be given back-wages for the period in question.

7. In coming to this conclusion, we are fortified from the decision of the Delhi High Court in the case of **Constable Mahender Singh & Ors. v. Commissioner of Police and Others** in Civil Writ Petition No.4359/1998 decided on 14.9.1999. Therein also, the services of the petitioners before the High Court had been terminated. They had preferred an Original Application in this Tribunal and the dismissal order was set aside. Once again the High Court was concerned as to whether the such petitioners were entitled to the back-wages or not. The High Court held:-

"Once the Tribunal directed reinstatement the natural consequences to follow was to allow back wages and the consequential benefits unless for reasons to be recorded to deprive the same. As already pointed out no reasons have been assigned in the impugned order for depriving the same to the petitioners. To support our conclusion that such benefits

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follow in the normal course, reliance can be placed on the decision of Supreme Court in the case of Kuldeep Singh vs. The Commissioner of Police & Ors. reported in 1998 (6) SCALE 588, where also on account of non compliance of the mandatory rule 16(3) of the Delhi Police (F&A) Rules, 1980, the enquiry was considered to be vitiated and the order of dismissal quashed. After quashing the order of dismissal the appellant was ordered to be reinstated and also granted consequential benefits including arrears of pay upto the date of reinstatement."

The ratio decidendi of the said decision is fully applicable to the facts of the present case. The order dismissing the applicant from service has since been set aside. The applicant had been directed to be reinstated. Once the order of dismissal has been set aside as a necessary corollary unless there are cogent reasons which are absent herein, the applicant must be entitled to the back-wages.

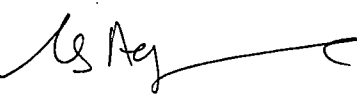
8. For these reasons, the impugned order is set aside and it is directed that the applicant is entitled to the back-wages from 29.8.1995 to 28.6.2000.

9. The application is disposed of in the aforestated terms with no order as to costs.

Announced.


(M.P. Singh)
Member (A)

/sns/


(V.S. Aggarwal)
Chairman