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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.1407/99

New Delhi, this the 01st day of September, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Sh. Ghasi Ram, Civilian Mazdoor, S/O Sh.
Sukh Ram, 338-Coy., ASC (Sup.), Type 'A',
Mathura - 281 002.

Residential Address:

443, Narayan Prui, Dhauli Piao, Mathura
(UP).

.....Applicant

(By Advocate: Sh. D.N.Sharma)

Versus

1. Union of India, through the Secretary to the Govt. of India, Ministry of Defence, South Block, D.H.Q. Post Office, New Delhi.
2. The Quarter Master General (ST-12), Quarter Master General's Branch, Army Headquarters, D.H.Q., Post Office, New Delhi.
3. The Director General of Supply & Transport (ST-12), Quarter Master General's Branch, Army Headquarters, D.H.Q., Post Office, New Delhi.
4. The Officer Commanding, 338-Coy., ASC (Sup.), Type 'A', Mathura - 281 002.

.....Respondents.

(By Advocate: Sh. A.K.Bhardwaj)

O R D E R

Hon'ble Mr. S.A.T.Rizvi, Member (A):

The applicant Ghasi Ram, an Industrial Mazdoor (Civilian) in the 3-Reserve Petroleum Depot, A.S.C. Mathura, was dismissed from service consequent upon his conviction in a criminal case. Subsequently, he was acquitted by the learned High Court and has been reinstated. However, the competent authority has allowed full pay and allowances to the applicant from the date of his acquittal by the learned High Court and has treated the period from the date of discharge to the date of

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acquittal as dies-non. The applicant has represented against the said order (Annexure A-1) but has not received any reply. Hence, this OA.

2. Briefly stated the facts of the case are the following.

3. In March, 1981, a criminal case under Section 307/34 IPC was registered against the applicant at a Police Station in Distt. Mathura (UP). He was accordingly placed under suspension w.e.f. 8.6.81 (Annexure A-4). Following his conviction by the lower court, a show-cause notice dated 17.5.83 was served on him proposing dismissal ^{from} service on the ground of his conviction by the learned Court of Session Judge, Mathura under the aforesaid Sections of the IPC. The applicant preferred an appeal against his conviction before the learned High Court of Allahabad which granted bail to the applicant on 29.3.83, and later acquitted him on 5.12.90. Meanwhile, the applicant had submitted his reply to the aforesaid show-cause notice on 4.6.83. The competent authority, allegedly without examining his representation properly, dismissed him from service w.e.f. 7.6.83 on the basis of his conviction by the learned Sessions Court. He represented against his dismissal before the Quarter Master General, Army Headquarters, New Delhi but no reply was received from that source. After his acquittal by the learned High Court, he had filed a detailed representation dated 13.2.97 before the Quarter Master General, Army Headquarters, New Delhi enclosing a copy of the judgement of the learned High Court and

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pleading that since his dismissal from service was the outcome solely of his conviction in the criminal case, he was entitled to full pay and allowances for the period from the date of his dismissal right upto the date of his re-instatement. In response to this representation and the follow-up reminders sent by the applicant, the impugned order dated 30.9.98, referred to, was passed allowing him full pay and allowances only from the date of his acquittal, treating, as already stated, the period from the date of dismissal to the date of acquittal by the learned High Court as dies-non. His representations, in the matter, have not borne fruit. The respondents have not much to say in this case except that, according to them, the OA is not maintainable on the ground of territorial jurisdiction as the applicant is posted and has been residing at Mathura (UP) and also ^(Lat) since, he has still not been exonerated from the charge of unauthorised absence levelled against him vide their Memo dated 16.4.81, he is not entitled to the relief prayed for. The respondents have also claimed that the applicant is not entitled to any wages in accordance with the principle of "no-work-no-pay". The respondents have further stated that the learned High Court has not, while acquitting the applicant, mentioned anything about his pay and allowances for the period of dismissal. According to the applicant, the respondents have not initiated any departmental proceeding against him after his re-instatement in the wake of the learned High Court's judgement and order in question. This fact has not been controverted by the respondents.

4. In his rejoinder, the applicant has pointed out that since the Hon'ble Chairman, C.A.T. had allowed the case to be retained at the Principal Bench under the provisions of Section 25 of the Administrative Tribunals Act, 1985, the question of jurisdiction raised by the applicant cannot be ~~raised~~. The applicant has further stated that in April, 1981, he had furnished a medical certificate from the authorised medical attendant in support of the 10 days' leave he had then availed from 25.3.81 to 3.4.81 and the respondents have not pursued this matter nor have imposed any penalty on him in the said leave case. In their reply, the respondents too have not indicated pendency of any departmental proceeding on this account.

5. We have heard the learned counsel for the parties and have perused the material on record. The facts of the case as brought out in the above paragraphs are simple and straight forward. The only question to be decided is whether the applicant is entitled to back wages in full from the date of his suspension/dismissal upto the date of his acquittal by the learned High Court. Subsequent to the date of his acquittal by the learned High Court, full pay and allowances have already been allowed by the respondents.

6. The learned counsel for the applicant has cited a number of rulings of this Tribunal, Hon'ble High Court and Hon'ble Supreme Court to press his contention that in a case, like the present one, in which the act of dismissal from service was based exclusively on the

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applicant's conviction by the lower Court and, following the applicant's acquittal by the learned High Court, no departmental action has been taken, the only option available to the competent departmental authority is to allow to the applicant full back wages from the date of dismissal onward. Our attention has been drawn in particular to the order of the Madras Bench of this Tribunal in N.Dasan Vs. Secretary, Deptt. of Tele-communication, New Delhi, 1987 (3) SLJ (CAT) 46 (Madras) which is reproduced below for the sake of convenience:

"Held that there is force in the plea of the applicant. It was solely on account of the conviction that the applicant was compulsorily retired from service. When the conviction was set aside the compulsory retirement was also revoked and the applicant was reinstated. The period from the date of acquittal to the date of rejoining duty has been treated as duty for all purposes. But the period from the date of compulsory retirement to the date of acquittal has been treated as dies non without break in service. This is sought to be supported by the respondents under sub-rules (4) & (5) of FR-54. Though the applicant relies on sub-rule (3) of FR-54-A, the said sub rule has no application to the facts. Actually it is sub rule (4) of FR 54 that governs the case. As such an order of the competent authority is required under sub rule (5) directing that the period of absence from duty is to be treated as period spent on duty. There is absolutely no justification in law or logic to split the period from the date of compulsory retirement to the date of rejoining duty and to treat the period till the date of acquittal by the High Court as dies non and to treat the post-acquittal period as duty for all purposes."

Having regard to the fact that the respondents have not initiated any departmental proceedings against the applicant nor any such proceeding appears to be pending, we are inclined to feel that this ruling should find application in this case. The provisions of FR-54 seem to provide for a situation like the present one. A look at this provision would reveal that in a case covered by this particular rule, the period of suspension and dismissal shall also be treated under, certain conditions, as a period spent on duty. We are not inclined to go into a conclusive determination of this aspect of the matter and would prefer to leave it to the competent departmental authorities/respondents to follow the relevant rules and instructions and where necessary, give proper opportunity to the applicant to state his case, before taking a final decision consistently with the aforesaid ruling of this Tribunal (Madras Bench) cited by the learned counsel for the applicant. We direct the respondents accordingly, and to this extent the impugned order dated 30.9.98 stands modified.

In the result, the OA partly succeeds and is disposed of with the directions already given in para 7 above. No order as to costs.

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(S.A.T.Rizvi)
Member (A)

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Kuldeep Singh
Member (J)