

Central Administrative Tribunal, Principal Bench

O.A.No.1250/95

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 5th day of March, 1997

VO

Fateh Singh
Constable No.2097/PCR
Now 117/RB
s/o Shri Risal Singh
r/o 19/73, West Moti Bagh
Sarai Rohilla
Delhi.

... Applicant

(By Shri N.S.Bhatnagar, Advocate)

Vs.

Union of India through
the Deputy Commissioner of Police
Police Control Room
P.H.Q.,
New Delhi. ... Respondents

(By Shri Raj Singh, Advocate)

O R D E R(Oral)

The applicant was dismissed from service by the respondents from 13.8.1990. He had challenged the order of dismissal in OA No.2550/90 and vide Judgment dated 31.1.1995 the order of dismissal was quashed and set-aside. As regards the treatment of the period from the date of dismissal to the date on which he was reinstated, the Court left the matter to the Disciplinary Authority for taking decision in accordance with law. The Tribunal passed the following order:

"We direct that the applicant should be reinstated within one month from the date of receipt of this order. The question as to how the period from the date of his dismissal to the date on which he is reinstated should be treated and what emoluments should be paid during this period, are matters which we leave to the disciplinary authority for a decision in accordance with law, which should be taken and communicated to the applicant within three months from his reinstatement."

2. The respondents thereafter passed the impugned order (Annexure 'D') which reads as follows:

"In continuation of this office order No.2455-2520/HAP(P-I)/PCR, dated 7.4.1995, regarding re-instatement of Ex. Const. Fateh Singh No.2097/PCR. The intervening period w.e.f. the date of re-instatement to the date of joining duties i.e. 13.8.1990 to 25.4.1995 in respect of Const. Fateh Singh, No.2097/PCR is hereby decided as not spent on duty." (11)

3. The applicant is aggrieved that as per FR 54-A(3) if the dismissal, removal or compulsory retirement of a Govt. servant is set-aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceedings shall be treated as on duty for all purposes and he shall be paid full pay and allowances for the entire period. The applicant submits that in accordance with these rules as the dismissal order of the applicant has been set-aside, he was entitled for full payment for the intervening period.

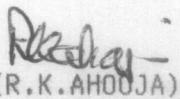
4. The respondents in their reply state that though the applicant had been acquitted from the criminal charges and consequently his order of dismissal was set-aside, the fact remains that the applicant who is a police official did not inform his department regarding his conviction. Therefore, considering this aspect, the order was passed that he would not be entitled to the pay for the intervening period.

5. I have heard the counsel on both sides. The impugned order (Annexure 'D') which has been quoted above, gives no reason whatsoever on the basis on which the respondents have decided that the period they have treated is not spent on duty. It was incumbent to ^{upon} expose the respondents to give a reasoned and speaking order stating the ground on which the decision was being taken. The learned counsel for the applicant submits that the provisions of Rule-54(supra) being quite clear, there was no alternative whatsoever available with

the respondents to have the period treated as not on duty. I am unable to agree with this plea. The Tribunal in its order dated 31.1.1995 quashing the order of dismissal had very clearly stated that the disciplinary authority would decide this matter in accordance with law and then communicate the same to the applicant. If the view of the Tribunal was that the dismissal order having been set-aside, the applicant should be given the full pay for the intervening period, a direction to that effect would have followed. Instead, a direction was given to the respondents to decide the matter. Respondents, however, issued a bald order merely saying that the period will not be spent on duty without showing any reasons whatsoever.

(2)

6. In view of the above discussion, the impugned order is set-aside. The respondents are required now to pass the order within a period of six weeks from the date of receipt of a copy of this recent order keeping in view the provisions of Rule-54(supra) and in case they decide to treat the period not spent on duty, they will state the reasons and grounds thereof with a speaking order and communicate the same to the applicant within two weeks thereafter. If the applicant thereafter wishes to agitate the matter, he will be at liberty to do so in accordance with law.


(R.K. AHOUJA)
MEMBER(A)

/rao/