

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No 1924 of 1997

Decided on: 15/4/98

(S)

Fateh SinghApplicant(s)

(By Shri N.S. Bhatnagar Advocate)

Versus

U.O.I.Respondent(s)

(By Shri S.K. Gupta Advocate)

CORAM:

THE HON'BLE ~~SARV~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1924 of 1997

New Delhi this the 15th day of April, 1998

HON'BLE MR. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Fateh Singh
S/o Shri Risal Singh
R/o 19/73, West Patel Nagar,
Sarai Rohilla,
Delhi.

...Applicant

By Advocate Shri N.S. Bhatnagar.

Versus

Union of India through the
Deputy Commissioner of Police,
Police Control Room PHQ,
New Delhi.

...Respondents

Shri S.K. Gupta, proxy counsel for Shri B.S.
Gupta, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar. Member (A)

This is the third round of litigation by the applicant. He successfully challenged the order of dismissal passed against him in August, 1990 under Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980. The Tribunal observed that it was stated in that the basis of the punishment order was the punishment in some of the criminal cases referred to in the said order which included all 5 cases referred to in the Annexure-D of the aforesaid order. But the Tribunal, however, held that the order of dismissal could be construed to be rested only on the circumstances leading to the conviction in the last criminal case. As in that criminal case he was acquitted, the Tribunal directed the reinstatement of the applicant and left it to the disciplinary authority to decide the question as to how the period from the date of dismissal to the date of

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reinstatement should be treated and the emoluments he should draw during this period. On the respondents treating this intervening period as the period not spent on duty, the applicant filed O.A. No. 1250 of 1995. This was disposed of by the order of the Tribunal setting aside the impugned order as being non-speaking and directing the respondents to pass appropriate order keeping in view the provisions of F.R.54. It was also stated in the order that in case the respondent ^s decide to treat the period ^{R.D.} not spent on duty, they would set the reasons and grounds thereof by a speaking order and liberty was also given to the applicant to agitate the matter after the issue of the speaking order. The aforesaid speaking order has been impugned in the present application.

2. In the impugned order dated 26.6.1997, respondents have stated as follows:-

"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".

3. The applicant contends that the aforesaid impugned order on the ground that the provisions of FR



54(A)(3) have not at all been taken into consideration as was directed by the Tribunal. Applicant contends that his earlier dismissal was based only on the last criminal charge under which he was fined Rs.50/- only under the Delhi Police Act, 1980 and the said order was set aside on appeal. FR 54(A)(3) reads as follows:-

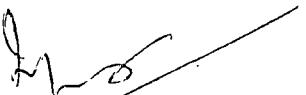
"(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be":

4. As stated above, the Tribunal held that the order of dismissal should be construed to be rested only to the circumstances leading to the conviction in the last criminal case which ultimately resulted in his acquittal. The respondents in the impugned order as extracted in Para 2 have stated that his appeal against conviction in another criminal case is pending in the High Court and if this is decided against him and in the meanwhile, the intervening period of his dismissal in another case and the reinstatement is treated as duty, it will result in financial loss to the Government. There is no averment by the respondents that applicant has been proceeded against departmentally also in the criminal case which resulted in his conviction in the

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trial court and which is under appeal in the High Court. The respondents cannot be said to have complied with the provisions of FR 54, as directed by the Tribunal while dealing with the intervening period upto his reinstatement after his dismissal in some other criminal case, the orders on which were set aside by this Tribunal after noting that in the aforesaid criminal case, the applicant was acquitted. If the appeal in the other case goes against the applicant, it is always open to the respondents to order appropriately in this behalf. It is an admitted position that the earlier dismissal order was set aside by the court on merits of that case and, therefore, there is no provision in the rules to treat the intervening period otherwise than in the manner provided under the rules. The respondents' averment that he had not performed duty during this intervening period, is no consideration so long as the dismissal order had been set aside by the court on merits of that case.

5. In the light of the foregoing, we are unable to sustain the impugned order and accordingly the impugned order is quashed and set aside. The respondents are directed to pass fresh orders for the intervening period under the rules within a period of one month from the date of issue of this order. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh