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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

.....

O.A. 550 of 1994

with

O.A.757 of 1994
O.A. 841 of 1994
O.A.1531 of 1994

Date of Decision:

O.A.550/94

Shri Kul Bhushan Madan ... Applicant

Vs.

Union of India & Ors. ... Respondents

O.A.757/94

Shri A.S. Gupta & Ors. ... Applicant

Vs.

Union of India & Ors. ... Respondents

O.A.841/94

Shri Mahesh Ahluwalia ... Applicant

Vs.

Union of India ... Respondents

O.A.1531/94

Shri Anjan Sain Gupta ... Applicant

Vs.

Union of India ... Respondents

CORAM: Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

Shri R.D. Kewal Ramani, counsel for the applicant
Shri B.B. Raval, Counsel for the applicant

Shri M.K. Gupta, counsel for the respondents

...2.

1. Whether to be referred to the Reporter? No

2. Whether Reporters of local newspapers may be allowed to see the judgement? X

3. Whether their Lordships wish to see the fair copy of the Judgement? X

4. Whether to be circulated to other Benches? X

(B.K. SINGH)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

.....

O.A. 550 of 1994
with
O.A. 757 of 1994
O.A. 841 of 1994
O.A. 1531of 1994

New Delhi, this the 7th day of October,1994

Hon'ble Shri J.P. Sharma,Member(J)

Hon'ble Shri B.K. Singh, Member(A)

O.A.550/94

Shri Kul Bhushan Madan
s/o late M.M. Madan,
C-2-C, Pocket-12,
House No.164,Janakpuri,
New Delhi. .... Applicant

By Advocate: Shri R.D. Kewal Ramani

Vs.

1. Union of India
through Cabinet Secretariat
Rashtrapati Bhawan,
New Delhi.

2. Additional Secretary(Personnel)
Cabinet Secretariat
Room No.8-B, South Block,
New Delhi.

3. Joint Secretary(Personnel)
Cabinet Secretariat,
Room No.8-B, South Block,
New Delhi.

4. Under Secretary(Personnel IV)
Cabinet Secretariat
Room No.8-B, South Block,
New Delhi. .... Respondents

By Advocate: Shri M.K. Gupta

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O.A.757/94

1. Shri A. S. Gupta,
s/o Shri B.P. Gupta,
aged about 45 years,
R/o A-18, Rakshi Kunj,
New Delhi.

2. Shri R.R. Sandal,
s/o Shri R.M. Sandal,
R/o Q.No.528, Sector-16,
Faridabad(Haryana)

3. Shri Basudev,
s/o Shri M. Ram,
R/o C-128, Nanak Chand Basti,
Kotla Mubarakpur,
New Delhi.

4. Shri D.C. Dhyani,
s/o Shri B.P. Dhyani,
R/o BR-20/B, Shalimar Bagh,
New Delhi.

5. Shri Chandra Sekharan A.K.
s/o Shri A.K. Ezhuthassan,
R/o Q.No.925,Sector-4,
R.K. Puram,
New Delhi.

6. Shri Ramesh Kumar,
s/o late Shri Cheddilal,
R/o House No.70,
Ravinder Nagar,Near Khan Market,
New Delhi.

7. Shri V.K. Gupta,
s/o late Shri O.P. Gupta,
R/o Q.No.337,Sector-5,
R.K. Puram,New Delhi.

8. Shri M. Gopalakrishnan,
s/o late Shri N.M. Swamy Naidu,
R/o 38, B-6,Sector 4,
Rohini,
Delhi.

9. Shri Raj Narain Sharma,
s/o late Shri Gopal Narain Sharma,
R/o WZ-317,Naraina Village,
New Delhi.

10. Shri Rakesh Kumar,
s/o late Shri Rameswar Chander,
R/o A-210,Moti Bagh-I,
New Delhi.

.... Applicants

By Advocate: Shri B.B. Raval

Vs.

1. Union of India,
through the Cabinet Secretary,
Govt. of India,
Rashtrapati Bhavan,
New Delhi.

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2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No.8-B, South Block,
New Delhi. ... Respondents

By Advocate: Shri M.K. Gupta

O.A. 841/94

Shri Mahesh Ahluwalia,
s/o Shri Sita Ram,
R/o C-4-B/219,Janakpuri,
New Delhi. ... Applicant

By Advocate: Shri B.B. Raval

Vs.

1. Union of India
through the Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Room No.8-B, South Block,
New Delhi. ... Respondents

By Advocate: Shri M.K. Gupta

O.A.No.1531/94

Shri Anjan Sain Gupta,
s/o Shri D.C. Sen Gupta,
R/o 23-F, Gasta Housing Society,
Teacher's Colony,Block B-3,
Paschim Vihar,
New Delhi ... Applicant

By Advocate: Shri B.B. Raval

Vs.

1. Union of India
through the Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.

2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Govt. of India,
Room No.8-B,South Block,
New Delhi. .... Respondents

By Advocate: Shri M.K. Gupta

...4.

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O R D E R

Hon'ble Shri J.P. Sharma, Member(J)

Since common question of fact and law is involved, all the cases are taken together and disposed of by a common judgement. In fact the arguments in all these cases were also heard together.

O.A.550/94 filed on 18.3.94

2. The applicant Shri Kul Bhushan Madan was put under suspension w.e.f. 29.11.80 while he was working as L.D.C. in Cabinet Secretariat having been arrested by the police in a criminal case u/s 342, 353 and 506 IPC in FIR No.311 dated 27.11.80. He was suspended alongwith 32 other employees of the Cabinet Secretariat. This suspension order was revoked by the order dated2.3.87, mentioning the fact that a disciplinary enquiry under Rule 16 of the CCS(CCA)Rules,1965 is contemplated against him. The applicant, therefore, was re-instated in service on 2.3.87. The relief claimed by the applicant in this application is that the applicant be granted full pay allowances of the suspended period from 29.11.80 to 1.3.87. The other relief prayed for by the applicant for quashing of the orders dated 28.4.87, 25.1.88, 30.9.88 and 11/12.1.89 and order dated 7.3.94 has not been pressed. The order dated 28.4.87 is an order passed by the disciplinary authority in the departmental proceedings initiated under Rule 16 of CCS(CCA) Rules on the basis of a chargesheet issued by order dated 5.3.87, imposing the penalty of

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censure. The order dated 25.1.88 is passed by the disciplinary authority under FR 54(b)(1) that the period of suspension in respect of Shri Kul Bhushan Madan,L.D.C. from 29.11.80 to 1.3.87 will be treated as period not spent on duty and the subsistence allowance paid to Shri Kul Bhushan Madan,L.D.C. during the said period will be treated as pay and allowance for that period. It was further ordered that the period of suspension though not on duty shall count for the purposes of (a) Earned Leave, (b) Annual increments (c) Pension and DCRG benefits. The order dated 30.9.88 and 11/12.1.89 was passed by the higher authorities under Rule 27(3) and Rule 29(1)(V) (a) of the CCS(CCA)Rules,1965 respectively. The order dated 7.3.94 is to the effect that the applicant cannot get the benefit accrued to Shri J.M. Soni,ARO(S&T) as a sequel to the judgement delivered by the CAT cannot be automatically extended to him. Thus, the only relief in this application for the payment of pay and allowances for the suspension period from 29.11.80 to 1.3.87 with 12% interest on arrears of pay.

<u>O.A. 757/94 filed on 6.4.94</u>

3. In the above application Shri A.S. Gupta and 9 others have jointly filed this application, aggrieved by the order dated 9.3.94 rejecting the request for extending the benefit accrued to J.M. Soni as a sequel to the judgement delivered by the CAT in the case filed by Shri Soni. A similar order has been passed in the case of Applicant No.2 on the same date. A similar order was passed on 15.3.94 in the case of Applicant No.3.

The applicants were also among those 33 officials against whom FIR was lodged on 29.11.80 as referred to above in the case of Kul Bhushan Madan in O.A. 550/94. The applicants were also likewise suspended by the order dated 29.11.90 and that suspension order was revoked on 2.3.87. All these applicants were also served with the chargesheet under Rule 16 of CCS(CCA)Rules,1965 which ended in a punishment of censure on the applicants. A similar order was passed in the case of above applicants disallowing the full pay and allowances under the period suspension and also treating that period to be counted to be spent on duty only for the benefit of leave,increments, pension and gratuity.

4. The relief claimed by the applicants is to quash the orders of not giving benefits to the applicants of the judgement of the case J.M. Soni, ARO(S&T) and that the period of suspension from 29.11.80 to 1.3.87 be treated as period spent on duty for all practical purposes including for the purpose of pay and allowances followed by all consequential benefits like seniority,promotion, confirmation, arrears of pay and allowances,bonus and any other benefits alongwith 18% interest and also cost of this application.

O.A.841/94 filed on 29.4.94

5. Shri Mahesh Ahluwalia,Field Assistant (under suspension) has also the similar grievance assailing the order dated 1.6.92 where he was informed that the matter with respect to his representation dated 1.6.92 is under consideration

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and he will be informed of the outcome in due course of time. His further representations to the effect that he may also be given the benefits of the judgement of J.M. Soni Vs. UOI O.A.866/90 was not disposed of.

6. He has also prayed for the grant of the reliefs that the period of suspension from 29.11.80 to 1.3.87 be treated as period spent on duty for all practical purposes including for the purpose of pay and allowances with all consequential benefits of seniority, promotion, confirmation, crossing of E.B. and the arrears be paid with 18% interest alongwith cost of the application.

O.A. 1531/94 filed on 20.7.94

7. The applicant has assailed the order dated 22.7.93 informing the applicant that his representation dated 21.5.93 regarding regularisation of suspension period as on duty is under consideration of the authority and the outcome will be intimated but he has not since been informed. The case of the applicant is almost the same as the applicants of the above noted Original Applications and he has also prayed for the grant of the same relief i.e. the period of suspension from 29.11.80 to 1.3.87 be treated as period spent on duty for all practical purposes including for the purpose of pay and allowances followed by all consequential benefits like seniority, promotion, confirmation and arrears of pay be paid alongwith 18% interest with cost of the application.

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8. Notice was issued to the respondents who almost filed the same reply in the first three Original Applications. Taking certain preliminary objection that the application is not maintainable and is hopeless debarred by delay and laches as well as by limitation. Similar reply was filed later on in the remaining O.A.

9. Before deciding the main issue, the relevant facts are that all the applicants were arrested by the police on institution of a criminal case by the Department itself while they were posted on various posts in the Cabinet Secretariat. There was some pen-down strike which lead to certain ugly incidents and the authorities have, therefore, lodged the FIR against all these applicants alongwith certain other colleagues working in the Cabinet Secretariat. That criminal case continued and the applicants were put under suspension as said above w.e.f. 29.11.80. That criminal case was withdrawn by the order dated 28.2.87 passed by M.M. New Delhi and the same is quoted below:-

> "The prosecution has already moved an application dated 6.2.87 for permission to withdraw the case. The grounds on which the withdrawal is sought are that all the accused are government servants. In order to maintain cordial relations between the government employees and the Government, the prosecution is of the opinion that the case must be withdrawn. The accused persons have already faced a trial for about six years. Keeping in view the facts and circumstances of the case and the grounds mentioned in the application, it appears that it will bein the interest of justice to allow the application. Accordingly the application is allowed.

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Statement of A.P.P. Shri S.S. Maya recorded separately.

In view of the statement, the accused persons are acquitted. File be consigned to RR."

After the aforesaid order was passed the competent authority by the order 2.3.87 revoked the order of suspension dated 29.11.80 which is quoted below:-

WHEREAS an order placing under suspension was made by the Join Director(E) on 29.11.80 vide Order No.1/ADMN/80 dated 29.11.80.

WHEREAS after investigation in FIR No.311/80 of Lodhi Colony Police Station he alongwith others was prosecuted in a Court of Law on criminal charges and the Government thought it fit to withdraw the case and the Court allowed application for withdrawal and technically acquitted.

WHEREAS it is contemplated to hold proceedings only under Rule 16 of the CCS(CCA) Rules,1965

NOW THEREFORE, I, in exercise of the powers conferred by clause (c) of sub-rule(5) of Rule 16 of the CCS(CCA)Rules,1965 hereby revoke the said order of suspension with immediate effect.

sd/-
JOINT SECRETARY(PERS)
APPOINTING AUTHORITY"

...10.

Thereafter, the disciplinary authority vide Memo. No. 23/2/87-Pers-2 dated 5.3.87 initiated the disciplinary proceedings under Rule 16 of the CCS(CCA)Rules,1965. The disciplinary authority vide order dated 28.4.87 and after considering the reply filed by the applicants that since unconditional apology was tendered so it was illegal to inflict punishment after the withdrawal of the criminal case and further offered unqualified apology praying for the closure of the file, the disciplinary authority held the charge established against the applicants and imposed the penalty of censure on the applicants. The disciplinary authority further by the order dated 25.1.88 passed the order under FR 54(B). it was held that the suspension in the case was not unjustified/further passed the order under FR 54(b)(1) that the period of suspension from 29.11.80 to 1.3.87 will be treated as period not spent on duty and the subsistence allowance paid during the said period will be treated as pay and allowances for that period. It was further ordered that the period of suspension though not on duty shall count for the purposes of (a) Earned Leave, (b) Annual increments and (c) pension and DCRG benefits. This order has been upheld by the higher authorities in appeal and revision by the orders dated 30.9.88 and 11/12.1.89 respectively.

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10. It appears that the applicants have been making unsuccessful representations again and again and one of such representations was made by some of the applicants after the case of J.M. Soni was decided by the Principal Bench in O.A.866/90 by the order dated 22.4.92. In that case J.M. Soni was also a party to the incident of 27.11.80 alongwith the applicants and some other employees. The Tribunal in that case relying on the decision of the Hon'ble Supreme Court in the case of Brahma Chandra Gupta Vs. UOI AIR 1984 S.C.380 and the Full Bench decision of CAT in the case of S. Samson Martin Vs. UOI & Ors reported in 1990(1)ATLT(CAT) 161, gave the following directions to the respondents:-

> " In the light of the foregoing discussion, the application is disposed of with the following order and directions:
>
> (i) The respondents are directed to treat the period of applicant's suspension from 29.11.80 to 1.3.87 as 'on duty'. They shall pay him full pay and allowances from 29.11.80 to 1.3.87. He is also entitled to other monetary benefits which would have accrued to a Government servant who was not placed under suspension.
>
> (ii) The respondents shall take steps to constitute review D.P.C. to consider the case of the applicant for crossing the Efficiency Bar when it fell due. Similarly, his case for further promotion should also be considered by a review D.P.C. The review D.P.C. should also take into account the order of the Metropolitan Magistrate acquitting

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the applicant in the criminal case. The D.P.C. also should not take into account any remarks contained in the annual confidential reports of the applicant relating to his suspension or pendency of criminal case against him. In case, the review D.P.Cs find him fit for crossing the E.B. from the due date, the applicant shall be allowed to cross the Efficiency Bar from the said date. Similarly, if the review D.P.C. finds him fit for promotion he shall be promoted from the date his immediate junior was so promoted. In that event, he would also be entitled to the arrears of pay and allowances.

(iii) The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of four months from the date of communication of this order.

(iv)There will be no order as to costs."

The respondents have disposed of representations of some of the applicants by the order dated 7th and 15th March,1994 and other applicants were also informed that their matter is under consideration and after decision is taken, they will be informed. However, no reply was given in the case of Anjan Sen Gupta in O.A. No.1531/94 as he made the representation in 1993.

11. The question to be decided in all these O.As. is whether the Govt. servant who had been suspended on the initiation of criminal proceedings against him and the suspension order was subsequently revoked with specific condition that a minor penalty chargesheet shall be issued for the same

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misconduct, in view of the fact that the acquittal by the criminal court in the earlier instituted criminal proceedings was technical, he is entitled to full pay and allowances for the period during which he was kept under suspension. FR 54-B lays down a provision for the treatment of such period by the competent authority on the re-instatement of a suspended employee regarding the pay and allowances to be paid to such Govt. servant of the period of suspension ending with re-instatement and whether or not the said period shall be treated as a period spent on duty. It further lays down in sub-clause (3) that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Govt. servant shall, subject to provision of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended. In such a case the period of suspension shall be treated as a period spent on duty for all purposes. In sub rule 5 of rule 54-B that in other cases besides those cases referred to sub rule 2 and 3, the Govt. servant shall be paid such amount, not being the whole, of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine after giving a notice to the Govt. servant of the quantum proposed and after considering the representation, if any submitted by him in that connection.

...14.

In such a case the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated in any specified purpose.

12. The contention of the learned counsel for the applicants in all the O.As is that similarly situated employees were not granted the benefits of the suspension period in terms of full pay and allowances had filed applications before the Principal Bench and they have been granted the reliefs of full pay and allowances of the suspension period. These cases are R.C. Batra V. UOI & Ors. O.A. No.2319/88 decided on 24.12.93; R.R. Makhija Vs. UOI & ors. O.A.No. 2572/89 decided on 23.10.92 and J.M. Soni O.A. No.866/90 decided on 22.4.92. It is therefore argued that the applicants are covered by the above decisions of the Tribunal. It is further argued that acquittal in the criminal case would render the suspension wholly un-justified and that they would be entitled to full pay and allowances, consequential benefits etc. and also to treatment of the said period as on duty for all purposes and that punishment of censure awarded to them was illegal. The learned counsel for the applicants has placed reliance on the Full Bench decision of S. Samson Martin Vs. UOI & Ors. The reliance has also been placed on the case of Brahma Chandra Gupta Vs. UOI decided by Hon'ble Supreme Court reported in AIR 1984 S.C. 380. It is further argued that the applicants

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are entitled to the benefits of the judgement already delivered in similar cases and placed relience on the case of Devi Ram V. UNION OF INDIA reported in 1992(2) ATC 482, decided by the Principal Bench. We have considered all these aspects of the matter and considered the various judgements relied by the counsel for the applicants. The Full Bench decision of S.Samson Martin (supra) is squarely based on the decision of Hon'ble Supreme Court in the case of Brahma Chandra Gupta (supra). In fact the case of Brahma Chandra Gupta relates to an employee who was involved in a criminal case under section 19F of the Indian Arms Act and was convicted by the Lower Court but the Appellate Court set aside the conviction and acquitted him holding not guilty of the offence with which he was charged. In the full bench case it was held that whatever be the circumstances of acquittal, when the disciplinary authority has chosen to suspend on the fact of the criminal proceedings only and to wait till the end of the proceedings, it has no discretion on matters of pay and has to abide by the order of the criminal court. There is nothing like honourable acquittal in the legal framework of criminal law in force in our country. Honourable acquittal is no longer legal concept. Therefore, it is not open to the competent authority to scan the order as to find out whether the

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person chargesheeted was honourably acquitted or not. It has therefore been held if the disciplinary authority misdirects itself and indulgence in the exercise of finding out the decree of culpability from the scrutiny of the judgement it is necessarily prone to commit errors. It was, therefore, held when suspension is wholly due to a criminal proceedings, the acquittal at the end of such proceedings, would render the suspension wholly unjustified and the disciplinary authority does not have to analyse with the judgement of the Criminal Court to come to its own conclusion regarding the degree of proof in respect of the culpability. In the later part of the judgement, the Bench in para 15 also observed as follows:

> "We are aware that there are certain cases of technical acquittal. For instance, under Sec.320(8) of the Criminal Procedure Code, the composition of offence done by parties will have the effect of acquittal. Similarly, under Sec.321 of the same Criminal Procedure Code, in case of withdrawal by the prosecution after the charge has been framed, the accused shall be acquitted. The absence of valid sanction by the competent authority may also entail acquittal. Even in such cases, regarding the culpability of the employee, nothing will be known to the disciplinary authority with certainty. Therefore whatever the circumstances of acquittal when the disciplinary authority has chosen to suspend on the fact of the criminal proceedings only and to wait till the end of the proceeding, it has no discretion on matter of the pay and has to abide by the verdict of the Criminal Court."

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13. The Full Bench has also placed reliance as said above in the case of Brahma Chandra Gupta(Supra) and the relevant portion of the ratio of the judgement is in para 6 of the report at page 436 (1984) 2 SCC 433 and the same is quoted below:-

> "The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of soci-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry(emphasis supplied), that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and waspaid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified(emphasis supplied) because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassilable."

14. Now analysing both the authorities i.e. the Full Bench and the case of Brahma Chandra Gupta there is a clear distinction in the present case. In the present case the criminal case was withdrawn by the prosecution on the applicant's tendering unconditional apology and the Full Bench also in para 15 quoted above treated such a case of technical acquittal because the criminal court also did not go into the culpability of the applicants with respect to the allegations of certain conduct which amounted to an offence under section 342, 353 and 506 IPC. Further in this case the alleged acts of the applicants were

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committed with regard to the authorities when they were posted in Cabinet Secretariat on various capacities. In view of all these facts and circumstances, the order of revocation of suspension categorically mentioned in the order dated 2.3.87 that an enquiry under Rule 16 of the CCS(CCA)Rules, 1965 is contemplated inspite of the order of revocation of suspension and reinstating the applicants in service. Now the decision cited by the learned counsel of J.M. Soni came to a conclusion only on the basis of the full bench decision and the case of Brahma Chandra Gupta but as indicated above both these cases cannot squarely apply to the case of the applicants. In the case of J.M. Soni only the finding has been arrived at without giving any ratio in para 14 stating that "in our opinion, the acquittal in the instant case is not a technical acquittal, as has been wrongly concluded by the respondents." There is no other discussion whatsoever on the provisions of FR 54-B nor the para 15 of the Full Bench decision quoted above has been considered where in a case of withdrawal of prosecution the Full Bench has also observed that in case of withdrawal of prosecution under section 321 of the Cr.P.C. the accused gets only technical acquittal.

15. In the other O.A. 2572/89 of R.R. Makhija, the same bench came to the same finding. However, the provision of FR 54 sub rule 5 has been referred to but it has not been analysed and referring to the case of Madras High Court in

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UOI Vs. Jayaram Damodhar Timiri 1960(1)MLJ 410 and another case decided by the Tribunal in the case of M. Jayarangam Vs. Senior Supdt. of Post Offices 1988(7) ATC 676 held that the applicant is entitled to full pay and allowances for the suspension period. The facts of the case of Jayaram Damodhar Timiri as well as of M. Jayarangam have not been at all touched in the aforesaid judgement. In both these cases the pharaseology on acquittal has been discussed holding that there cannot be different kinds of acquittal in a criminal case. Even in the case of Jayaram Damodhar Timiri Madras High Court observed that once there is an acquittal and in the absence of any other disciplinary proceedings launched by the Government, the plaintiff would be entitled to continue in the employment and he should be reinstated. Thus, on the face of it the issue involved in both these cases was regarding the nature of acquittal and the Full Bench decision in the case of S. Samson Martin do observe that there are technical acquittal also in criminal cases but the technical acquittal is as good as honourable acquittal for all purposes. This aspect will be dealt with in the later part of the judgement with reference to the law laid down by the Hon'ble Supreme Court. The case of R.R. Makhija having been discussed, now we come to the case of R.C. Batra Vs. UOI & Ors. decided on 24.12.93. In para 5 of this

judgement the Tribunal has taken it as a covered case with the decision of the case of J.M. Soni(Supra) and the Full Bench decision in the case of S. Samson Martin (Supra) and passed the final orders. The next case of Balwant Singh Solanki O.A.252/89 decided on 28.2.94. In this judgement after discussing the facts and after observing in para 8 of the judgement that the counsel Shri P.P. Khurana is unable to state why the judgement of the case of J.M. Soni cannot be followed and the Tribunal observing that there is no difference between these 2 cases i.e. of the applicant and J.M. Soni gave similar directions in that case also.

16. As pointed out earlier, the Hon'ble Supreme Court has considered in some of the recent decisions as to how the period of suspension of Govt. servant after his acquittal from the criminal case, having been suspended earlier, has to be treated after his reinstatement by the administration.

17. In the case of Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal decided by Three Judges of the Hon'ble Supreme Court reported in (1994)1 S.C.C. 541, the Hon'ble Supreme Court considered the case of a Bank employee. The said Bank employee was involved in a case under section 302 IPC and on his conviction by the Session Judge, the employee was dismissed from the service. However, on appeal against this conviction, the High Court allowed the appeal and acquitted him of the offence giving him the benefit of doubt. The petitioner did not reinstate the employee who raised an industrial dispute and the Central Govt. Industrial Tribunal by the judgement May 19,1983 gave the

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award that the dismissal was unjustified, quashed the same and ordered the bank to reinstate the employee with full back wages and to allow continuity in service as if he was never dismissed from service. The Bank reinstated the employee in service by the order dated 24.8.83 and treated him on duty during the period from April 28,1977 to August 23,1983 and paid him admissible wages for the back period. The employee filed application before the Labour Court under section 33-C(2) of the Industrial Dispute Act,1947 claiming the difference in amount paid to him as subsistence allowance during the period of suspension from September 18, 1974 till the date of his dismissal i.e. April 28, 1977. He also claimed other benefits of increment etc. whereby his pay on reinstatement has to be fixed taking into account the increments earned by him during the period of suspension. The Labour Court decreed the claim of the employee which was impugned before the Hon'ble Supreme Court. The Hon'ble Supreme Court framed the question for consideration "whether the order of suspension is automatically set aside on reinstatement and whether the Management cannot deal with the period of suspension according to regulations governing the service conditions". The Hon'ble Supreme Court considered the relevant provisions of the regulations 39, 46 and 47 which lay down that an employee who is arrested for an offence his period of absence from duty is to be treated as not being

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beyond circumstances under his control. In such circumstances when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such an employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, regulations vest the power exclusively in the Bank to treat the period of suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank therefore cannot be saddled with the liability to pay him as salary and allowance for the period. That will be against the principle of no work, no pay and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable.

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18. The regulations referred to above are in pari materia with FR 54-B which envisages every eventuality for a Govt. servant under suspension regarding payment of full pay and allowances after his exoneration from the blame either in departmental enquiry or in a criminal case.

19. The Hon'ble Supreme Court also considered this matter in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation, Hanumakonda Vs. V. Venkateswarulu and Another reported in Judgement Today 1994(3)S.C.199. In that case also regulations 18,20 and 21 of the Andhra Pradesh State Road Transport Corporation Employees(Classification,Control and Appeal)Regulations,1967 were considered. The question in that case was framed whether an employee of the APSRTC was kept under suspension pending investigation, inquiry or trial in a criminal prosecution, is entitled to salary for the period of suspension after the criminal proceedings are terminated in his favour. The Hon'ble Supreme Court after considering the various aspects of the matter held that on acquittal and reinstatement an employee does not become, without any further scrutiny, entitled to the payment of full salary for the period during which he remained under suspension and that it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. The High Court has answered the question in favour of the employees which was [illegible] by the authorities before the Hon'ble Supreme Court.

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Thus, it has been held that it is open to the competent authority after issuing a show cause notice in respect of the proposed action and considering his reply before passing an order regarding the payment of full salary for the period of suspension. Thus, the relief granted to the employees by the High Court was quashed by the Hon'ble Supreme Court.

20. The concept of the Full Bench in the case of S. Samson Martin that there is nothing Honourable acquittal cannot be accepted as a good law in view of the decision of the Hon'ble Supreme Court in the case of Management of Reserve Bank of India, New Delhi (Supra). The Hon'ble Supreme Court has held that High Court acquitted the respondent employees giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not a honourable acquittal as required by Regulation 46(4) of the Reserve Bank of India (Staff) Regulations, 1948. The aforesaid Bank employee was convicted by the Session Judge and was dismissed from service on account of his conviction. When the High Court acquitted the Bank employee giving the benefit of doubt, the Bank refused to reinstate him in service on the ground that it wasnot honourable acquittal. Regulation 46 of the regulations in sub clause 4 provides where an employee has been dismissed on account of his conviction in pursuance of sub regulation 3 of Regulation 46 and the related conviction is set aside by a higher court and the employee is honourably acquitted (emphasis supplied), he will be reinstated in service. Thus, the

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acquittal of a Govt. servant by criminal court can still be seen whether it is clean acquittal or a technical acquittal. The Full Bench in S. Samson Martin case had already held that when a criminal case is withdrawn by the prosecution against an accused then it is technical acquittal..

21. In view of the above law laid down by the Hon'ble Supreme Court there remains no doubt that the competent authority exercises its power under a statutory rule FR 54-B and after giving a show cause notice he is authorised to pass an order with reasoning for treating the period of suspension of a Govt. servant because of a criminal case till he is reinstated on the decision of the criminal case.

22. The Principal Bench in the case of Ram Phal and others Vs. UOI & Ors. presided over by Hon'ble Justice V.S. Malimath in T-990/85, in Civil Writ 522/1984 decided on March 3,1992 considered a similar case of regularisation of period by payment of full pay and allowances with all other benefits for the period under suspension till reinstatement consequent upon withdrawal of case against him. The Principal Bench has considered this matter and disagreeing with the view taken by the Delhi High Court in the case of Kartar Singh Vs. UOI (1983) 1 ILR 466(Delhi High Court) held that withdrawal of a criminal case on tendering unconditional apology is not an exoneration from the blame and

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suspension cannot be treated as unjustified for which full emoluments could be claimed under FR54-B. Though this case was decided on March 3,1992 and has also been reported but it has not been placed before the Principal Bench while deciding O.A. 866/90 by the order dated 22.4.92. The subsequent decisions in similar matters in O.A.2572/89,O.A. 2319/88 and O.A.252/89 were delivered on 23.10.92, 24.12.93 and 28.2.94 respectively. There should have been uniformity of decision atleast in the Principal Bench but the earlier decision has not been placed or cited in any of the case relied by the counsel for the applicants. The facts of Ram Phal and others case are almost identical with the facts of the present case. Ram Phal & Others during the year 1967 was involved in a criminal case for offence punishable under section 7 of the Essential Services Maintenance Act. The petitioners of that case alongwith others tendered unconditional apology whereupon the criminal cases launched against them were withdrawn in the year 1971. The competent authority passed the order treating the period of suspension as on duty for the purposes of leave, pension, increment and seniority and for the period of suspension the emoluments would be restricted to the subsistence allowance and other allowances admissible to them under the provision of FR 53. A similar situated person Kartar Singh filed a writ petition before the Delhi High Court and he was granted the full relief for the suspension period and the same was claimed by Ram Phal &

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Others before the Tribunal as the writ petition filed before the Delhi High Court in 1984 was transferred to the Principal Bench. Firstly the Principal Bench in this case found that there were delay and laches on the part of the petitioners in approaching the court for the relief and there was no satisfactory explanation placed before the Bench. It was also held that cause of action cannot be deemed to have accrued or revived to the petitioners in the writ petition by the judgement in Kartar Singh case by the Delhi High Court. The Tribunal therefore disagreeing with the view taken by the Delhi High Court rejected the writ petition as well as T.A. after interpretating sub clause (2) of FR 54 as then existed. The Full Bench decision of S. Samson Martin (supra) which was decided on 11.10.89 of course was not placed before the Principal Bench in this reported case. However, the fact remains that FR-54(B) has a similar provision even now which give power to the competent authority to consider the period of suspension under clause (5) and if the suspension was totally unjustified only in that case the relief could be claimed and granted to the claimant of the suspension period. The present case is fully covered by the decision of Ram Phal case.

23. The Hon'ble Supreme Court also considered a similar point of reinstatement of an acquitted employee from a criminal case in the case of

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Sagir Ahmad reported in (1994)27 ATC 78. In that case the Govt. servant has worked over 5 years in the Incometax Department. He was involved in a criminal case and was arrested on 17.4.85. By an order dated 18.4.85 his services were terminated, informing the employee that his services were terminated because of his involvement in a criminal case and his consequent arrest by the police. However, he was acquitted in the criminal case by the judgement dated 14.1.92. He came before C.A.T. but his application was dismissed on the ground of delay. The Hon'ble Supreme Court allowed the appeal setting aside the order of the Tribunal directing the respondents to reinstate the applicant in service and in the circumstance of the case the applicant was not granted back wages though the period of absence was treated for the purposes of continuity in service as casual labourer and for other benefits.

24. Having considered the legal position on this aspect we find that the law laid down by the Hon'ble Supreme Court is binding under Article 141 of the Constitution. Though there is a Full Bench decision on the point but that full bench decision squarely do not apply to the present case for the reasons already given in the earlier part of this order. We, therefore, do not find that this is a case where a reference is invited to a Larger Bench. We have also considered the aspect that some of the employees who claimed the benefit for the suspension period have also been granted full pay and allowances though the judgement therefore, are perincurium.

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25. The impugned order in the present case dated 25.1.88 and order of the higher authorities passed in appeal and revision dated September 30, 1988 and 11/12.1.89 have clearly taken into account that the criminal case did not run through its normal course and the case was withdrawn under special circumstances, this should not be compared with the normal cases of acquittal in a criminal case. The applicants have not challenged the order of punishment of censure dated 28.4.87 by way of appeal under the relevant statutory rules. That order has become final and no judicial review of the order is called for as the statutory remedy against the said order has not been exhausted. The Appellate Authority has also considered the order passed by the disciplinary authority dated 25.1.88 and has given a detailed reasoning that the criminal case was withdrawan upon the charged official pending unconditional apology. The Revisional authority has also considered the matter after proper application of mind. The disciplinary authority passed the order dated 25.1.88 after issuing a notice to the officials on the proposal to limit the period under suspension only to the payment of subsistence allowance and that will be treated as pay and allowance for that period. The officials had also made representations against the same which was duly considered by the disciplinary authority, appellate authority and the Revisional authority as said above. When an order has to be passed by the administrative authority the scope of judicial review is limited only to find out whether the

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proper procedure provided under the statutory rules has been applied with or not. The order under FR-54B is to be passed by the administration in special circumstances of the case taking into account the delinquency of the official, who was chargesheeted either for a criminal act or for a service misconduct. The Tribunal cannot sit as an appellate authority over the above orders if the compliance has sufficiently been made of the statutory rules. This aspect of the matter has also not been considered in any of the decisions which have been cited as exampler in the cases of similarly situated other employees by the various Benches of CAT. The matter has been considered in the case of Ram Phal(supra). We are in full agreement with the ratio of Ram Phal case and that also is a necessary fall out from the latest judgement of the Hon'ble Supreme Court in the case of Management of Reserve Bank of India, New Delhi(supra) and APSRTC (supra).

26. Even from another angle we find that in a recent decision of Hon'ble Supreme Court of Nelson Motis Vs. UOI & Anr. reported in JT 1992(5)SC 511, Three Member Bench of Hon'ble Supreme Court has held that even after acquittal of an employee in a criminal case the disciplinary proceedings against him for the same misconduct could be continued. It has been held that the nature and scope of criminal case are different from the departmental disciplinary proceedings.

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An order of acquittal cannot conclude departmental proceedings. In the present case the applicants have not been exonerated for the misconduct for which they were charged in the criminal case. The misconduct was of a serious nature because the applicants had protested in an undisciplined manner, Seeing to the nature of the organisation, certain departmental instructions purposely meant to regulate the movement of individuals in various branches of Headquarters, New Delhi. In order to pressurise the departmental authorities to withdraw these instructions, senior officers were wrongfully confined within the office complex beyond the office hours and when the persuasion to stop the gherao failed, the police had to be called to secure the release of the senior officers. The applicants were challaned under section 342/343/506 IPC. The criminal court had not arrived at a definite finding regarding the non involvement of the applicants in that indisciplined incident. Thus, prima-facie this is a case where the suspension was fully justified taking into account the conduct of the applicants and the manner in which they resorted to undignified behaviour for redress of alleged grievance against the departmental instructions.

27. The impugned order passed in the case needs no interference and all the Original Applications are dismissed as devoid of merit leaving the parties to bear their own cost. A copy of ~~each~~ order be placed in each file.

A Hasfer
KLSL
7/10/94
CO/C-IV

(B.K. SINGH)
Member(A)

(J.P. SHARMA)
Member(J)

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