

Central Administrative Tribunal  
Principal Bench

O.A. 648/2000

New Delhi, this the day of 24th July, 2001.

(16)

Hon'ble Shri S.R.Adige, Vice-Chairman(A)  
Hon'ble Dr.A Vedavalli, Member(J)

Dr. Virendra Jain,  
s/o Late Sh.J.P.Jain,  
Medical Officer,  
C.G.H.S.,  
Subzi Mandi Dispensary,  
Delhi-110007

R/o,5A/3, Ansari Road, Darya Ganj,  
N. Delhi-110 002.  
(By advocate: Shri R.L.Dhawan)

...Applicant

Versus

Union of India : Through

1. The Secretary,  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi-110011.

2. The Director,  
C.G.H.S.,  
Nirman Bhawan,  
New Delhi-110011.

3. The Director(C.H.S.),  
Ministry of Health & Family Welfare,  
Nirman Bhawan,  
New Delhi-110011.

4. The Additional Director  
CGHS-EastZone  
CGHS Building,  
Rajindra Nagar,  
New Delhi-110060.

...Respondents

(By Advocate:None)

ORDER(Oral)

By Shri S.R.Adige, Vice-Chairman(A)

Applicant seeks:-

1. Full pay and allowances for the period he was under suspension and to treat the aforesaid period as period spent on duty for all purposes.
2. Two time-promotions with all consequential benefits, including

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seniority and monetary benefits at par with his juniors.

3. Car allowance and Post-graduate allowance including arrears thereof.

4. Leave salary for the leave periods.

5. Interest @ 18% p.a. on the monetary dues allegedly illegally withheld by them.

2. We have heard applicant's counsel, Shri R.L.Dhawan. None appeared for respondents even on second call. We are, therefore, proceeding to dispose of this OA after hearing Shri R.L.Dhawan and perusing the available materials on record.

3. Applicant who joined the Central Health Services as Medical Officer on 6.10.87, was placed under deemed suspension vide order dated 20.1.89 (Annexure A-4). Consequent to his being arrested and detained in custody on 22.10.88 for a period exceeding 48 hours, in respect of a criminal case initiated against him.

4. The aforesaid criminal case related to FIR No. 299/89, under section 304-B/398-A IPC. The charge was that applicant's wife Dr.Sangeeta Jain whom he had married on 10.3.88 had committed suicide by taking some injections on 17.10.88, and applicant had subjected her to cruelty and harassment on account of demands of dowry and had caused physical and mental torture to her, leading to her suicide. The demand included that of a Maruti Car.

5. The aforesaid criminal case against applicant was tried by the Additional Sessions Judge, New Delhi who

✓in his judgement dated 11.10.1991 (Annexure-8), acquitted applicant holding that neither charge was proved against him, as there was total lack of evidence. 18

6. Applicant informed <sup>7</sup> the concerned authorities of the aforesaid acquittal by his letter dated 12.10.91, and ~~respondents~~ by order dated 31.1.92(A-10/1) applicant's suspension was revoked with immediate effect. A copy of the aforesaid order dated 31.1.92 was endorsed to applicant also by registered post with a direction to report to Directorate-General, Health and Services, Nirman Bhawan, New Delhi, but applicant contends that he did not receive the aforesaid order dated 31.1.92 and it is only after approaching the concerned authorities regularly, was he informed that his suspension had been revoked, and it is only after he received respondents' letter dated 28.4.95(A-10) enclosing <sup>7</sup> another copy of the revocation order, and directing him to join duty immediately, that he rejoined duties on 6.6.95.

7. Applicant contends that right up to January, 1995, respondents had continued to pay him subsistence allowance, though his suspension had been revoked w.e.f.31.1.92. Upon rejoining duty, he submitted a representation on 12.6.95(A-12) for release of his subsistence allowance for the period 1.2.95 to 5.6.95 which we are informed has not yet been paid to the applicant. By subsequent representation dated 16.6.95, applicant sought full pay and allowance, including the increments and revision of pay w.e.f.1.10.91 on promotion, but the same has also not been paid to applicant, according to him.

8. Respondents in their reply have stated that the applicant had submitted an application for leave on

Ymedical grounds from 19.6.1995 to 7.7.1995. However, he remained absent till 7.8.1996 and joined duties only on 8.8.1996. Respondents in paragraph 5 of their reply state that furthermore the status of two spells from 1.2.1992 to 5.6.95 and from 19.6.95 to 7.8.96 is under dispute. It appears that the Department of Personnel & Training had raised certain querries in this regard, and applicant was given an opportunity to explain as to why the period from 19.6.95 to 7.8.96 should not be treated as Dies Non, to which applicant has submitted his reply on dated 30.11.98(A-31).

9. F.R.54(B)(1) lays down when a Government servant who has been suspended, is reinstated or would have been so reinstated but for his retirement(including premature retirement while under suspension), the authority competent to order reinstatement shall consider and make a specific order:-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement(including premature retirement), as the case may; and
- (b) whether or not the said period shall be treated as a period spent on duty.

Rules 54 B(3) lays down where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances to which he would

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Y have been entitled, had he not been suspended.

10. In view of the above, the OA is disposed of with the following directions:-

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- 1) As there is nothing to indicate that respondents have passed orders in accordance with the provisions of FR 54(B)(1), regarding the pay and allowances to be paid to applicant during the period of suspension ending with his reinstatement, they are called upon to pass such orders forthwith. While doing so, they shall also examine applicant's claim for grant of full pay and allowances <sup>in the aforesaid period</sup> in accordance with the provisions of FR(B)(3), and in the light of the fact that he was acquitted in the criminal case by the Additional District Judge who inter alia held that there was a total lack of evidence against applicant. These directions should be implemented within three months from the date of receipt of copy of this order.
- 2) Thereafter respondents will also consider applicant's claim for time bound promotion in accordance with rules instructions and judicial pronouncements, including the Hon'ble Supreme Court's rulings in K.V.Jankiraman case 1991(2) SCALE 423.
- 3) Within the period of three months from the date of receipt of a copy of this order, respondents will also pass appropriate order on applicant's prayer for release of car

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allowances, PG Allowances and leave salary in respect of which he had entrusted applicant earlier.

11. OA is accordingly disposed of. No costs.

A.Vedavalli  
(Dr.A.Vedavalli)  
Member(J)

S.R.Adige  
(S.R.Adige)  
Vice-Chairman(A)

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Kd/