

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.2236/90

M.A.No. 4010/94

New Delhi: / January 31st, 1995.

HON'BLE MR.J.P.SHARMA, MEMBER (J).

HON'BLE MR.S.R.ADIGE, MEMBER (A).

Madan Mohan Kumar,
Motor Mechanic,

Central Telegraph Office,
Eastern Court,

New Delhi. R/o J3/223, DDA House Kalkaji; Applicant.

By Shri R.L.Sethi, Advocate.

Versus

Union of India through

1. The Secretary,
Ministry of Telecommunication,
New Delhi.

2. The Chief Superintendent,
Central Telegraph Office,
New Delhi.

3. The Chief General Manager(NTR),
Department of Communication,
Kidwai Bhawan,
New Delhi

.....Respondents.

By Shri V.S.R. Krishna, Advocate.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

The applicant Shri M.M.Kumar, Motor Mechanic, Central Telegraph Office, New Delhi was suspended on 27.1.88 consequent to his having been convicted by the Metropolitan Magistrate, New Delhi of certain offences under sections 92, 93 and 97 Delhi Police Act. He was proceeded against departmentally under Rule 19 CCS(CCA) Rules vide letters dated 2.3.89 and 17.3.89, culminating in his removal from service vide orders dated 27.4.89. Subsequently in appeal, the applicant's conviction in the criminal case was set aside, consequence of which the penalty of removal from service was set aside by order dated 30.4.90, and the period from 27.4.89 i.e. the date of his

rejoining duty (6.5.90) was treated as period spent under suspension pending further inquiry under the CCS(CCA) Rules. Upon the conclusion of that inquiry a penalty of reduction of pay by two steps in his scale of pay for three years without cumulative effect was imposed vide orders dated 14.9.91. Upon the applicant's representation to settle his suspension period from 27.1.88 to 6.5.90, the respondents have ordered that the said period will remain as period spent under suspension, for which pay and allowances will remain restricted to the subsistence allowance already drawn, against which the applicant has filed this O.A. praying that the said period be treated as on duty for all purposes.

2. In this connection, reliance is placed on FR 54(2) and FR 54(3) read with Home Ministry's O.M. dated 29.11.66 in support of the proposition that where the authority competent to order reinstatement is of opinion that the Govt. servant who had been removed from service has been fully exonerated, the Govt. servant shall be paid full pay and allowances to which he would have been entitled had he not been removed prior to such removal, and the period of absence from duty including the period of suspension preceding removal from service shall be treated as period spent on duty for all purposes.

3. A perusal of the A.D.J's appellate judgment dated 23.1.90 (Annexure-A1) clearly shows that the applicant's conviction was set aside because of procedural infirmities in the conduct of the criminal cases and it was by no means acquittal on merits. Furthermore, upon his reinstatement,

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a further departmental enquiry was conducted against him on the same charge of misconduct which resulted in his being punished with reduction of pay for three years without cumulative effect vide orders dated 14.9.91.

4. The applicant has cited various rulings in the O.A. itself to support his contention that once a person is acquitted of a criminal charge, the employer has no option but to reinstate him and pay him for the period he was under suspension all backwages and allowances, less what he has already been paid as subsistence allowance. The payment cannot be denied merely because the acquittal was on benefit of doubt and not a clean one, and in fact there is no difference between "an honourable acquittal" and "not honourable acquittal". The only words known to the Cr.PC are 'discharge' and 'acquittal', and the effect of a person being acquitted and discharged are the same. Rulings have also been cited in support of the contention that disciplinary proceedings under the CCS(CCA) Rules are quasi-judicial in character and once a disciplinary case has been closed and the official reinstated after being fully exonerated, fresh proceedings cannot be initiated at will, unless the relevant rules or statute give the authority the power of review.

5. We have heard Shri Sethi for the applicant and Shri Krishna for the respondents. We have also perused the materials on record and given the matter our careful consideration. F.R.54 states that "(1) when a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review, 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 preceding his dismissal, removal, or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Govt. servant shall be paid the full pay and allowances (subject to all other conditions under which such allowances are admissible) 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. "

6. In the present case, the respondents by their order dated 23.12.91, after taking into account the penalty, imposed upon the applicant, of reduction of pay by two steps in his scale of pay for three years, as well as all other aspects of the case, have directed that the period passed under suspension i.e. 27.1.88 to 6.5.90 be treated as suspension period for all purposes and the pay and allowances for this period be restricted to the subsistence allowance already paid to the applicant. It cannot be said that the applicant was fully exonerated in this case and under the circumstances, the decision taken by the respondents under Rule 54 vide order dated 23.12.91 cannot be said to be arbitrary, perverse, illegal or malafide or violative of Articles 14 and 16 of the

Constitution. In the background of this explicit rule under which the respondents have acted, the rulings relied upon by Shri Sethi that upon reinstatement, the applicant is required to be paid all back wages and allowances for the period he was under suspension, less what he had been paid as subsistence allowance, are not of much help to the applicant. Further more, in Nelson Morris Vs. UOI ⁴arr. ⁱⁿ JT 1992 (5) S.C. 511^A the Hon'ble Supreme Court has held that even after a delinquent Government servant has been acquitted in a criminal case, there is no bar to his being proceeded against a departmental enquiry. In the present case, as the applicant was reinstated in service, only because his conviction was set aside in appeal owing to certain procedural infirmities in the criminal trial and was not a full exoneration on merit, there was no bar to the respondents further enquired into the applicant's misconduct, which culminated into the punishment of reduction of pay by two steps in his scale of pay for three years. Under the circumstances, the ruling relied upon by Shri Sethi that after the applicant had been reinstated, further enquiry into his misconduct could not be held, also does not help the applicant.

7. In the facts and circumstances of this case, therefore, no good grounds ^{are} made out to warrant interference in the matter and, therefore, this application fails ^{in along with I/A 4010/94} and is accordingly dismissed. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)