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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 866/90
T.A. No.

199

DATE OF DECISION 22.4.1992

Shri J.M. Soni

~~Petitioner~~ Applicant

Shri J.K. Bali

Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through Secy., Respondent

Cabinet Secretariat

Shri P.P. Khurana

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. A.B. Gorthi, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is presently working as A.R.O.
(S & T) in the Cabinet Secretariat (R&AW), filed this
application under Section 19 of the Administrative
Tribunals Act, 1985 seeking the following reliefs:-

(a) To treat the period of the applicant's
suspension from 29.11.1980 to 1.3.1987 as
"on duty" and pay him full pay and allowances
and bonus for that period after deduction of
the subsistence allowance paid to him;

(b) to allow the applicant to cross the Efficiency Bar which fell due during the period of his suspension;

(c) to consider the applicant for promotion to the post of Scientific Officer Grade III and Scientific Officer, Grade II for which he became eligible during the period of his suspension from the dates his juniors were promoted to these posts;

(d) to treat the period commencing from the date the applicant is found to be entitled to promotion as Scientific Officer, Grade III, as qualifying period for future promotion to the post of Under Secretary; and

(e) to pay arrears due to crossing of E.B. as well as grant of promotions with penal interest on account of delayed payment.

2. The facts of the case are not in dispute. The applicant joined the Cabinet Secretariat in 1975 as Senior Scientific Assistant. On 27.11.1980, an F.I.R. under Sections 342/353/506 I.P.C. was lodged against him as well as 32 others with Police Station, Lodhi Colony, New Delhi. The charge against them was that they gheraoed and kept three senior officers under wrongful confinement on 27.11.1980. On

29.11.1980, he was placed under suspension with immediate effect. The applicant and the others were prosecuted in the criminal court. On 28.2.1987, a decision was taken by the Government not to proceed with the criminal case and to withdraw the same against all the accused persons. Accordingly, the Assistant Public Prosecutor moved an application in the Court of the Metropolitan Magistrate on 6.2.1987 for permission to withdraw the case on the following grounds:-

".....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."

3. On 2.3.1987, the respondents revoked the order of suspension with immediate effect. It was, however, stated in the order dated 2.3.1987 that the Court allowed the application for withdrawal and "technically acquitted" the applicant and others. It was also indicated that it was contemplated to hold proceedings against him under Rule 16 of the C.C.S.(CCA) Rules, 1965.

4. After giving the applicant a show-cause notice and receiving his explanation, the respondents imposed on the applicant the penalty of censure by order dated 24.4.1987.

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5. On 8.6.1987, the applicant requested the respondents to clarify the impact of the penalty of censure on his promotion so that in case it was to stand in the way of his promotion, he could take up the matter with the higher authorities. The respondents did not send a reply to him. He was, however, promoted as Scientific Officer, Grade III (redesignated as Assistant Research Officer, S&T) on 24.9.1987 on the basis of the recommendations of the D.P.C. He was appointed in a substantive capacity as A.R.O. (S&T) w.e.f. 24.9.1988.

6. On 11.11.1987, the respondents issued a notice to the applicant proposing that the period of his absence from the date of his suspension to the date on which he reported for duty on reinstatement, would be treated as period under suspension and the subsistence allowance paid during the above period, would be treated as pay and allowances for that period, as per FR-54 B(5) and (9). After considering the representation submitted by the applicant, the respondents passed an order under FR-54B(i) to the effect that the period of suspension from 29.11.1980 to 1.3.1987 would be treated as period 'not spent on duty' and the subsistence allowance paid to the applicant during the said period, would be treated as pay and allowances for that period. It was further ordered that the period of

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suspension though not on duty, shall count for the purposes of (a) Earned Leave, (b) annual increments, and (c) Pension/D.C.R.G. benefits.

7. The appeal preferred by the applicant to the Secretary, Cabinet Secretariat against the aforesaid order, was rejected by him on 11.10.1988.

8. The further representations made by the applicant for waiver of the penalty of censure, grant of full pay and allowances for the suspension period, treating the said period as duty, granting him promotion with retrospective effect, and fixation of his pay, were not acceded to.

9. The applicant has contended that with his acquittal in the criminal cases, would render the suspension wholly unjustified and that he would be entitled to full pay and allowances during the period of suspension as also to the treatment of the said period as on duty. After the criminal case was over, his case for crossing the Efficiency Bar was not considered. Similarly, he has contended that he became entitled to be considered for promotion to the post of Scientific Officer, Grade III in 1981 and Scientific Officer, Grade II in 1986 and 1987, and that the subsequent issue of a charge-sheet for minor penalty and imposition of the penalty of censure, have no bearing on his entitlement

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to promotions during the earlier periods.

10. The respondents have refuted the aforesaid contentions in their counter-affidavit. According to them, the criminal case was withdrawn by the Department under special circumstances and the suspension cannot be termed as 'unjustified'. He could not also be allowed to cross the Efficiency Bar with retrospective effect. They have submitted that his case for promotion to the post of Scientific Officer, Grade III in 1983 was considered, but was not recommended for promotion by the D.P.C. Again, his case for promotion to the said post was considered in 1987 and he was promoted on the basis of the recommendations of the D.P.C.

11. We have carefully gone through the records of the case and have considered the rival contentions.

12. The question whether a Government servant who had been suspended on the initiation of criminal proceedings against him and who was subsequently reinstated consequent upon his acquittal by the criminal Court, is entitled to full pay and allowances for the period during which he was kept under suspension, has been considered by a Full Bench of this Tribunal in S. Samson Martin Vs. Union of India and Others 1990 (1) ATLT (CAT) 161. The Full Bench has held that in such a case, the Government servant is entitled to full pay and allowances for the period during

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which he was placed under suspension without the disciplinary authority having to determine how and why he was acquitted.

13. The aforesaid decision of the Full Bench related to a Railway servant. In the course of the judgement, the Tribunal had considered the ambit and scope of FR-54 B. The Full Bench also relied upon the judgement of the Supreme Court in Brahma Chandra Gupta Vs. Union of India, A.I.R. 1984 S.C. 380 wherein it was observed in the case of acquittal, the concerned person should be given full pay and allowances and that the disciplinary authority does not have the power to consider the degree of culpability of the person upon its own appraisal of the judgement of the Criminal Court.

14. In our opinion, the acquittal in the instant case is not a technical acquittal, as has been wrongly concluded by the respondents. Accordingly, the applicant would be entitled to full pay and allowances during the period of his suspension.

15. With regard to the other reliefs sought in the application, we are of the opinion that the review DPCs have to be held to consider the fitness of the applicant for crossing the Efficiency Bar which fell due during the period of his suspension and his case for promotion to

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higher grades. The fact that the penalty of censure has been imposed on him, will not constitute a bar to his being considered for promotion. In this context, the learned counsel for the applicant argued that his performance, as reflected in the ACRs, had been excellent. He produced before us copy of a memorandum issued to him on 11.1.1982 to demonstrate this. In fact, a perusal of the said memorandum conveying the substance of the ~~fax~~ ACR for the period 1.4.1980 to 31.3.1981, indicates that while conveying good points about him, it also added that "for an indisciplinary act, you had been placed under suspension w.e.f. 29.11.1980." The applicant was given opportunity to make a representation if he so desired, but he did not make any such representation.

20. We are of the opinion that in all fairness, the respondents should have reviewed all the ACRs of the applicant, on their own, after his acquittal by the Criminal Court and wherever there is any mention about the involvement of the applicant in the criminal case or his suspension, a foot-note should have been added in each of the ACRs to the effect that he has been acquitted by the Criminal Court and a copy of the order of the Criminal Court should also have been placed in the A.C.R. dossier. It is not clear whether this was done by the respondents. Any D.P.C. or review D.P.C. held after the acquittal of ~~the~~

the applicant by the Criminal Court, should not take into account his suspension or the criminal case which was launched against him.

21. In the light of the foregoing discussion, the application is disposed of with the following orders and directions:-

(i) The respondents are directed to treat the period of the applicant's suspension from 29.11.1980 to 1.3.1987 as 'on duty'. They shall pay him full pay and allowances from 29.11.1980 to 1.3.1987. 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 a review D.P.Cs 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~~ [✓] the order of the Metropolitan Magistrate acquitting 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 tendency 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. ~~or he shall be permitted~~ finds him fit for promotion 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.

Thangaraj
(A.B. Goraihi) 22/4/92
Administrative Member

Arumugam
22/4/92
(P.K. Kartha)
Vice-Chairman (Judl.)