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**Central Administrative Tribunal  
Principal Bench**

OA No.2342/2004

New Delhi this the 11<sup>th</sup> day of August, 2005.

**Hon'ble Mr. Shanker Raju, Member (Judl)**  
**Hon'ble Mr. S.A. Singh, Member (A)**

Kunwar Pal Singh  
ASI in Delhi Police  
(PIS No. 28640069)  
R/o O-1/1, Police Colony,  
Andrews Ganj, New Delhi-49.

-Applicant

(By Advocate: Shri Anil Singhal)

*-Versus-*

1. Govt. of NCT of Delhi through  
Commissioner of Police,  
PHQ, IP Estate, New Delhi.
2. Joint Commissioner of Police,  
New Delhi Range, PHQ,  
IP Estate, New Delhi.
3. DCP (North-East Distt.)  
Through Commissioner of Police,  
PHQ, IP Estate,  
New Delhi.

-Respondents

(By Advocate: Shri Ajesh Luthra)

**ORDER**

**By Mr. Shanker Raju, Member (J):**

By virtue of the present Original Application, applicant impugns respondents' order dated 6.9.2004 whereby while deciding the suspension period which is ordered to be treated as spent on duty, applicant has been denied traveling allowance, washing allowance, conveyance allowance, special pay as one month's extra pay.

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Applicant has sought the above benefits with interest @ 18% per annum.

2. It is not disputed that after acquittal from the criminal case and on dropping the disciplinary proceedings against the applicant, by an order dated 3.3.2004 the suspension period from 4.1.1989 to 23.12.2003 has been decided as period spent on duty for all intents and purposes. The subsisting grievance of the applicant is for non-payment of special pay, washing allowance, traveling allowance, conveyance allowance with interest on the ground that having decided the period of suspension as the period spent on duty is a legal fiction and applicant is deemed to be on duty for the interregnum period of suspension and as a result thereof whatever allowances are admissible to others, who had performed their duties, would mutatis mutandis apply to the applicant. It is in this context stated by the learned counsel for the applicant Shri Singhal that what has prevented the applicant from performing duties is an illegal action of the respondents as this is not attributed to the applicant, he is entitled for the benefits, as prayed for.

3. A reliance has been placed on a decision of the Single Bench of this Tribunal in OA No. 749/2001 (***Mahavir Singh vs. Govt. of NCT of Delhi & Ors.***) decided on 16.4.2002 whereby these allowances have been made available to the applicant with the following observations:

"7. In the above view of the matter the applicant succeeds substantially and the OA is disposed of accordingly. Respondents are directed to grant the benefit of traveling

allowance, conveyance allowance, working allowance, as the applicant's absence has already come to be treated as 'spent on duty'. He would be entitled for other allowances also. Respondents shall consider the case of the applicant for grant of ACP Scheme, at par, with his junior, who has started getting higher pay in the upgraded scale. No costs."

4. Shri Singhal has also relied upon the decision of the Single Bench in OA No. 1142/2004 (**Shri Subhash Vats vs. Govt. of NCT of Delhi & Ors.**) decided on 7.1.2005 wherein similar circumstanced applicant has been accorded the benefit though it is stated that no stay has been granted by the High Court against this decision. Following directions had been issued in the said case:

"10. I have carefully considered the rival contentions of the parties and perused the material on record.

11. FR 54(b)(3) which applies to the Delhi Administration provides as under:-

"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 have been entitled, had he not been suspended"

12. If one has regard to the above, when the competent authority reinstated a government servant from suspension and treated the period as wholly justified and granted full pay and allowances as done in the present case by treating the suspension period as spent on duty for all intents and purposes in the light of decision of the Apex court in **U.O.I. vs. K.V. Jankiraman** (1991(2)ScaleSC423) 'no work no pay' would have no application as the applicant was prevented from performing duties without any fault attributed to him.

13. As Co-ordinate Bench of this Tribunal in Mahavir Singh has also allowed a similar claim, I respectfully agree with the same.
14. By treating suspension period as spent on duty, the applicant is deemed to be on duty and it would be deemed as a legal fiction that he had not only performed duties on working days but on holidays as well. As such, the allowances payable to other police officials, who were not under suspension, the same are to be paid at par to the applicant also. Merely because the applicant had not performed duties, would not negate and will not make otiose the provisions of FR 54(b)(3). Having decided to treat the suspension period as spent on duty for all intents and purposes it is legitimately expected from the respondents who are estopped from taking contrary plea to deny extra pay to the applicant. The decision of Delhi Administration relied upon is taken in an individual case and cannot be treated as a policy decision. Moreover, in the wake of judicial verdict, these executive instructions cannot hold the filed.
15. As regards conveyance allowance, respondents have shown only specific period during which the applicant had not attended roll call. Apart from the period, during which the applicant was under suspension and had performed duties, has not been brought to my notice. As such a presumption is to be drawn that for all period the applicant had marked his attendance twice during suspension. As such, he is legally entitled to conveyance allowance as well.
16. So far as interest is concerned, the contention of the applicant is misconceived. The decision cited pertains to retiral benefits. The delay in accord of benefit is not attributable to the respondents as immediately on his acquittal he has been paid the allowances. As such interest would not entail.
17. In the result, for the foregoing reasons, OA is partly allowed. Respondents are

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directed to pay to the applicant extra pay for the period of suspension as well as conveyance allowance except the period highlighted before us when the applicant had not marked his presence. The interest claimed is rejected. These directions shall be complied with by the respondents, within a period of two months from the date of receipt of a copy of this order. No costs."

5. On the other hand, learned counsel for the respondents states that as regards the washing allowance and traveling allowances, when the individual had not performed duties and has not moved an application for availing traveling allowances, the same has been rightly denied in accordance with orders of MHA, New Delhi in the case of **Constable Lakhi Ram** vide order dated 15.10.1991 denying these benefits to the police official therein.

6. Shri Singhal, learned counsel of applicant has also relied upon decision of the Apex Court in **L.I.C. vs. UOI**, 2004 (3) SLJ 389 to contend that delay in disbursement of amount entails interest.

7. Shri Ajesh Luthra has produced copies of the attendance registers to show that during the period of suspension on various occasions applicant had remained absent from roll call.

8. WE have carefully considered the rival contentions of the parties and have perused the material on record.

9. The implication of FR 54(b)(3) is that when suspension is treated as wholly unjustified full pay and allowances are admissible to a government servant. Having treated the period of suspension as 'spent on duty' for all intents and purposes, principle of 'no work no

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pay' would have no application is a legal friction. It is to be presumed that the applicant had been prevented from performing duties by an illegal act of the respondents as not only the applicant was acquitted from the criminal charges but departmental enquiry has also been dropped. This makes the applicant scot-free and any stigma attached on this account has been obliterated.

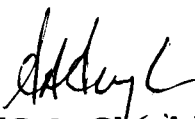
10. The ratio in **Subhash Vats and Mahavir Singh's** cases fully applies to the present case as learned counsel of the respondents has failed to point out any distinguishing features.

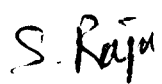
11. Though the decision in **Subhash Vats's** case has not been over turned, it has been apprised that a writ petition is going to be filed in this case. As such, <sup>he</sup> follow the doctrine of precedent.

12. Deprivation of conveyance allowance is illegal as applicant has been called during suspension to attend the roll call and as regards washing allowance, when the applicant was treated as on deemed duties having treated the period of suspension as 'spent on duty' the applicant is entitled for the said relief.

13. As regards traveling allowance, there was no occasion for the applicant to have availed traveling allowance as he was under suspension and had been prevented from giving an application in this regard to the respondents. However, traveling allowance can be availed only when the journey is actually performed. As such, <sup>he</sup> do not subscribe to grant traveling allowance to the applicant. However, <sup>he</sup> is entitled for conveyance allowance.

14. In the result, for the foregoing reasons, Original Application is partly allowed. Respondents' order except non-grant of traveling allowances are set aside. Respondents are directed to accord to the applicant benefits of washing allowance, conveyance allowance, special pay which would entail an interest of 9% per annum, shall be disbursed to the applicant, within a period of one month from the date of receipt of a copy of certified copy of this order. No costs.

  
**(S.A. Singh)**  
Member (A)

  
**(Shanker Raju)**  
Member (J)

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