

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2591/2004

This the 22nd day of February, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. N.D.DAYAL, MEMBER (A)

Shri Jag Mohan Sahni,
S/o Late Shri Duni Chand Sahni
R/o A-11, Greenvie Apartment,
Sector-9, Rohini,
Delhi-85.

(By Advocate: Sh. Devesh Singh alongwith Sh. Santosh Kumar)

Versus

1. The Secretary,
Government of India,
Ministry of Defence,
New Delhi.
2. Chief of the Naval Staff,
(For Director of Civilian Personnel)
Directorate of Civilian Personnel,
Naval Headquarter, Sena Bhawan,
D-11 Wing,
New Delhi-11.

(By Advocate: Sh. Rajeev Kumar proxy for
Sh. J.B.Mudgil)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Applicant has filed the present OA assailing the order of the respondent dated 28.9.2004 whereby the decision about regularization and grant of full pay and allowances for the period from 27.12.2000 to 8.4.2003 is deferred till the disciplinary proceeding are finalized.

2. The facts are short and simple. The applicant was working as Senior Naval Store Officer in the Directorate of Civilian Personnel, Naval Headquarters when in a disciplinary proceeding conducted against him he was dismissed from service on 27.12.2000. Applicant filed OA No.3140/2001 assailing the orders of the disciplinary authority which was allowed on 8.4.2003. The operative portion of the order reads as under:-

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“6. Resultantly, we quash the impugned orders and direct that if so deemed proper, the enquiry officer may from the stage the inspection of the documents had been completed, proceed in accordance with law. OA is disposed of.”

3. As a result the applicant was reinstated in service by order issued on 25.7.2003.

It was also directed that further enquiry would be held against him under the CCS (CCA) Rules, 1965. Applicant has since been appointed to the post of SNSO which is in a higher grade w.e.f. 29.7.2003. The pay of the applicant was also fixed at Rs.15,000/- on his reinstatement in service by order dated 7.8.2003 with all other financial benefits. The applicant thereafter submitted representations for regularization of the intervening period from 29.12.2000 (date of dismissal) to 8.4.2003 (date of reinstatement) but to no effect.

4. Respondent in the counter reply pleaded that the OA was premature since the question of regularization of the intervening period would be considered after finalisation of the disciplinary proceedings which are in progress.

5. In the rejoinder applicant has reaffirmed his own allegations.

6. We have heard the learned counsel for the parties.

7. Learned counsel for applicant has referred to OM dated 27.5.1961 and 30.5.1962 which has been produced in the OA, and has inter alia stated as under:-

“4. (1)

(2) Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

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3. Regarding question (2) stated in para 1 above, it has been decided that FR 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service is held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution. In such cases –

(i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under rule 12 (3) or 12 (4) of Central Civil Services (Classification, Control and Appeal) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

(ii) if the Government servant is not “deemed” to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be

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automatic and compulsory, provided that where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him nothing shall be paid to him:

Provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the Court regarding arrears of salary."

8. It is argued that by virtue of this OM the applicant is entitled to be granted full pay and allowances for the intervening period in question.

9. Counsel for respondents conversely referring to the counter reply has stated that the OM dated 27.5.1961 and 30.5.1962 stands superseded with the introduction of Rule 54A (2) of the Fundamental Rules.

10. Admitted facts are that the disciplinary proceedings under the Service Rules are pending against the applicant. The question is whether before they are finalized the respondent are legally bound to consider the regularization of the period between the date of dismissal of the applicant from service and the date of his reinstatement in service as per the rules and instructions or this matter is to be decided on the conclusion of the pending departmental proceeding.

11. It is noteworthy that the Tribunal while setting aside the penalty orders of the disciplinary authority had remitted the matter to the disciplinary authority to proceed into the matter afresh, if so liked, from the stage copy of the enquiry report was received by him. Pursuance to this order the respondent authorities have decided to continue the disciplinary proceeding against the applicant. FR 54A added to the statutory rules much after the office memorandum dated 27.5.1961 and 30.5.1962 and has to be followed by the respondents. The rule has provided as under:-

"F.R. 54-A.(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2) (i) Where the dismissal removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the

requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (amount being the whole) of the pay and allowances 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 maybe, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case maybe, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal removal or compulsory retirement including the period of suspension preceeding such dismissal, removal or compulsory retirement, as the case maybe, and the date of reinstatement shall be treated as duty for all purposes, and he shall be paid the full pay and allowances for the period, 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.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

12. The rule unmistakably applied to a case where the dismissal, removal or compulsory retirement of the Government is set aside by a court and Government servant is reinstated without holding any further enquiry. The period of absence of the government servant from duty is to be regularized in accordance with sub-Rule (2) & (3), subject to the direction if any, of the court. As noticed above, the Tribunal while setting aside the penalty order did not direct the respondent to regularize the intervening period as spent on duty and to pay him the full pay and allowances or the consequential financial benefit that arise as a consequence of his reinstatement in service. In the absence of such direction from the court the order about regularization of the period and the payment of pay and allowances would be governed by Rule 54A. But the rule would

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apply only when no disciplinary proceedings are pending. In other words as per FR 54A on exoneration of the charges on merit in a disciplinary proceeding the Government servant on being reinstated in service would be paid such amount, not paying the whole of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service etc. The decision is to be taken as per sub-Rule (2) after providing a hearing to the Government servant.

13. But in the present case, the stage that has not reached as yet, since the disciplinary proceedings have not been concluded. Once they are concluded, it will be incumbent upon the respondent to consider the regularisation of the intervening period from the date of dismissal to the date of reinstatement and payment of the pay and allowances for the said period.

14. Learned counsel for applicant has referred to Union of India vs. Madhusudan Prasad (2004) 1 SCC 43 in support of the case of the applicant. In the cited case Safaikaramchari in the CRPF was dismissed from service on 7.11.1994. He was dismissed from service for unauthorized absence without serving any show cause notice nor any enquiry preceded his dismissal. The appellate authority set aside the order of dismissal and directed reinstatement and further directed that the period of absence from date of dismissal till reinstatement be considered as dies non without any break in service for the purpose of pensionary benefits. The employee was reinstated in service on 15.2.1996. He filed a writ petition for payment of salary for the intervening period from the date of dismissal to the date of reinstatement. His petition was allowed and the order was confirmed by the Division Bench in appeal. The Hon'ble Supreme Court after considering FR 54 observed as under:

“5. It is true that when a reinstatement is ordered in appeal or review, the authorities can pass specific order regarding the pay and allowances to be paid to the government servant for the period of his absence from duty preceding the dismissal, removal or compulsorily retirement as the case may be. This is an enabling provision and the authorities can consider the relevant facts as to whether the employee should be denied the salary for the period he was kept under suspension preceding the removal, dismissal or compulsorily retirement. The counsel for the applicant has placed reliance on the decision of the Constitution Bench of this Court in Managing Director, ECIL vs. B. Karunakar where this Court held that the question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. If the employee succeeds in the fresh enquiry and is

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directed to be reinstated, the authority should be at liberty to decide according to law it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

6. The above case was concerning an employee, who was found guilty in an enquiry but the report was not furnished to the employee and the show cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed that appropriate order should be passed regarding the back wages. In the instant case, the Appellate Authority directed reinstatement of the respondents and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given a show cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. We do not think is a fit case where Fundamental Rule 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed.

15. The Hon'ble Supreme Court has dismissed the appeal but the facts of the case showed that no disciplinary proceeding was pending against the employee after the dismissal order was set aside and he was reinstated in service which is not the case in hand.

16. Hon'ble Supreme Court in **A.P. SRTC and Anr. vs. S. Narsagoud**, (2003) 2 SCC 212 has made following observations on the question when the reinstatement was directed, back wages for the intervening period between date of dismissal from service and the date of reinstatement in service were the natural consequences:-

“We find merit in the submissions so made. There is difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service.”

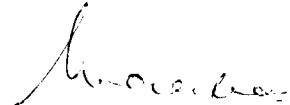
Same view was reiterated by the Apex Court in **A.P. State Road Transport Corporation and ors. vs. Abdul Kareem**, (2005) 6 SCC 36 and in **Rajasthan State Road Transport Corporation and ors. vs. Shyam Bihari Lal Gupta**, (2005) 7 SCC 406.

17. The procedure which is to be followed in the event the disciplinary proceedings are pending when the applicant is reinstated in service as a consequence of an order of the Court have been laid down in the order of the Constitution Bench of the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad and others vs. B.Karunakar and others 1993 (4) SCC 727. It is held as under:-

“Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

18. As a result of the above, as laid down by the Hon'ble Supreme Court and FR 54A there is force in the contention of the respondent that the present OA is premature. The respondents have stated in the reply that decision on the question of regularization of the intervening period between 27.11.2000 (the date of dismissal) to the 8.4.2003 (the date of reinstatement), and the payment of the pay and allowances for the said period ~~will~~ be decided by the respondents in accordance with Rule FR 54A after the disciplinary proceedings are concluded.

19. However, learned counsel for applicant has lamented that although the respondent had decided to proceed with the disciplinary proceeding vide order dated 25.7.2003 (Annexure-C) yet no progress in the said proceedings has been made. It would be traversity of justice if the respondent after deciding to proceed with the disciplinary enquiry way back in July 2003 take no further action in the matter and conclude the disciplinary proceedings expeditiously. More than 2-1/2 years have passed since then. It will be proper that the respondent may be directed to conclude the disciplinary proceeding and pass final order therein within a time frame.



20. Accordingly, the OA is dismissed as premature with a direction to the respondent to finalise the pending disciplinary proceedings and decide about the regularisation and payment of pay and allowances for the intervening period from 27.12.2000 (the date of dismissal) to 8.4.2003 (the date of reinstatement) in accordance with the extant rules applicable preferably within a period of 6 months provided the delay is not attributable to the applicant.



(N.D. DAYAL)
Member (A)



(M.A. KHAN)
Vice Chairman (J)

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