

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**



OA No.1393/2004

New Delhi this the 3rd day of December, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.A. SINGH, MEMBER (A)

Jagdish, No.331/5,
Working as Sweeper,
Under Dy. CP, VII Bn.,
DAP, PTS Malviya Nagar,
New Delhi.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. N.C.T. of Delhi through
the Chief Secretary,
New Sectt. New Delhi.
2. The Commissioner of Police,
Delhi Police Head Quarter,
I.P. Estate,
New Delhi.
3. The Dy. Commissioner of Police,
VII Bn, DAP,
Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicant impugns respondents' order dated 27.1.2004, rejecting his request for counting the period from 5.7.93 to 19.8.99 as qualifying service for the purposes of fixation of pay, increments and grant of benefit of ACP Scheme.

2. Applicant, who was working as a Sweeper, Class IV, in Delhi Police was earlier dismissed from service on 8.10.82, which had been assailed by him in OA-2695/93 and by an order dated 15.7.99 the OA was allowed with the following directions:

“8. For the reasons brought out above, we hold
that the order of the disciplinary authority as at



Annexure A-1 confirmed by the appellate authority as at Annexure A-3 cannot be sustained. We accordingly quash the same and we direct the respondents to reinstate the applicant in service within one month from the date of receipt of a copy of this order. He however shall not be given any back wages during the period from the date of dismissal till the date of reinstatement. We grant liberty to the respondents that if they so desire, they may proceed with the enquiry again after furnishing a copy of the enquiry proceedings and enquiry report and getting the reply to such enquiry report and take whatever action is permissible in accordance with the relevant rules and instructions in respect of the first two charges."

3. Applicant by an order dated 19.8.99 was re-instated in service with immediate effect without prejudice to the departmental action. However, as directed by the Tribunal was denied back wages during the period from date of dismissal till re-instatement.

4. On furnishing of copy of the enquiry report and on representation of applicant vide order dated 1.10.99 minor penalty of reduction of pay for one year has been imposed upon applicant. The aforesaid punishment on expiry entailed drawl of increments to applicant vide order dated 16.11.2000.

5. Learned counsel for applicant contended that in the light of FR-54-A and 54 (5) there is no specific order passed by the competent authority for the treatment of the period from date of dismissal till re-instatement, as such, as the earlier dismissal was quashed on merits the entire period is to be treated as qualifying service for all purposes.

6. On the other hand, learned counsel of respondents Shri Ajesh Luthra vehemently contended that the import of the order passed by the Tribunal is denial of back wages to applicant and for want of any specific direction to treat the interregnum till reinstatement as spent on duty the disciplinary authority vide order dated 19.8.99 re-instated applicant in service with immediate effect and denied back wages to him. As such the period from

dismissal till re-instatement is deemed to have been treated as not spent on duty. In support of his contention learned counsel of applicant placed reliance on Rule 14 (2) of the CCS (Pension) Rules, 1972 to contend that service defined is service under the Government for which a Government servant had been paid from the Consolidated Fund of India. As applicant has not been paid and denied back wages the intervening period from dismissal till reinstatement is no service and would not count as a qualifying service for any purpose.

7. We have carefully considered the rival contentions of the parties and perused the material on record.

8. Rule 25 of the Pension Rules, 1972 provides that when a government servant who is dismissed, removed or compulsorily retired from service but is re-instated on appeal or review, is entitled to count past service as qualifying service and period of interruption of service between date of dismissal till re-instatement the authority should pass an order under FR 54 and 54-A. FR 54-A (2) provides that where the dismissal is set aside by the Court solely on the ground of non-compliance of Article 311 (2) of the Constitution of India and the person is not exonerated on merits and a further enquiry is to be held as per FR 54-A (ii) though the intervening period from the date of dismissal till re-instatement shall be regularised in accordance with the provisions of FR 54 (5).

9. From the reading of FR 54 (5) it is transpired that the period of absence of duty from the date of dismissal till re-instatement it is incumbent upon competent authority to specifically pass an order as to the treatment of the intervening period.

10. From the perusal of the order passed by the Tribunal we find that the action to treat the period is to be taken after the enquiry



was resumed and a final action is taken in accordance with relevant rules and instructions. What has been denied to applicant is only back wages but nowhere the Tribunal has ruled that the above intervening period from date of dismissal till re-instatement would be treated as not spent on duty.

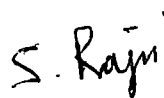
11. Reading of the order passed by the disciplinary authority on 19.8.99 shows that this has been in compliance of the order passed by the Tribunal where the back wages are denied. There is no specific order as to treatment of the period from the date of dismissal till re-instatement.

12. In this view of the matter we are satisfied that the competent authority has failed to discharge its obligation under FR 54 (5) for want of any specific order as to treatment of intervening period as spent on duty or otherwise.

13. The aforesaid compliance cannot be done away on a deeming provision. Once the Rule provides a thing is to be done in a particular manner nothing can be deemed but the actual compliance in terms of the Rules.

14. In the result, for the reasons recorded above, we partly allow the OA and set aside the impugned orders passed by the respondents. The competent authority is directed to pass an order strictly in accordance with rules in the light of our observations for the intervening period from 5.7.93 to 19.8.99 for the purpose of qualifying service, within a period of three months from the date of receipt of a copy of this order. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

‘San.’