

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH**

**Original Application No.1700/2004**

**New Delhi, this the 31<sup>st</sup> day of January, 2005**

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K.Naik, Member (A)**

Mr. Mahavir Singh Yadav  
(aged about 67 years)  
(suffering from confinement of life  
imprisonment in Centre Jail Hissar)  
through:- Jail Superintendent  
Hissar, Haryana (now on parol). ... Applicant

**(By Advocate: Sh. P.K.Sharma)**

Versus

1. Govt. of National Capital Territory of Delhi  
Through Lt. Governor, Delhi  
Rajnath Marg  
Delhi.
2. The Deputy Director  
Office of the Deputy Director of Education  
(District North-West-B)  
F U Block Pitam Pura,  
Delhi - 110 088. ... Respondents

**(By Advocate: Sh. Sachin Chauhan proxy of Mrs. A.Ahlawat)**

**ORDER**

**By Mr. Justice V.S.Aggarwal:**

Applicant joined services on 9.7.1964. On 1.11.1972, he joined as Junior Physical Education Teacher in the Government School of Delhi Administration. On 26.10.1980, he was involved in a criminal case pertaining to an offence punishable under Section 302 of Indian Penal Code. He was taken into custody on 3.11.1980 and suspended on 22.12.1980 with retrospective effect from 3.11.1980. He was tried by the learned Court of Sessions at

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Gurgaon in Haryana. The learned Sessions Judge held the applicant guilty of the above said offence on 1.9.1981. The applicant challenged the order passed by the learned Court of Sessions by filing an appeal in the High Court of Punjab and Haryana at Chandigarh. On 23.11.1981, the High Court of Punjab and Haryana acquitted the applicant.

2. In pursuance of his having been acquitted, the applicant joined service and the order was passed reinstating him on 22.2.1982. He continued in service as Physical Education Teacher upto 11.4.1994.

3. In the meantime, as the State of Haryana had preferred an appeal against the Judgement of the Punjab and Haryana High Court, the Supreme Court on 18.3.1994, has reversed the said decision of the abovesaid High Court and sentenced the applicant to life imprisonment. The applicant surrendered on 12.4.1994. The respondents served a show cause notice and thereafter on 27.7.1995, he was dismissed from service. He preferred an appeal, which has since been dismissed and his representation was also dismissed on 7.5.2004. The operative part of the said order reads:

“AND WHEREAS Sh. Mahabir Singh Yadav, Ex. PET has filed an appeal before the Minister of Education, GNCT of Delhi for review of order of Appellate Authority issued on 23.6.2000.

AND WHEREAS Sh. Mahabir Singh Yadav, Ex.PET has requested for release his dues on account of fixation of pay on the recommendation of 11th CPC and 7th CPC, regularization of suspension period, fixation of pay consequent upon deciding the period of suspension and bonus etc.

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AND WHEREAS the said representation of Sh. Mahabir Singh Yadav, Ex.PET has considered by the Department. The Asstt. Director of Education (Litigation) has discussed the issue with the Dy. Secretary (Law and Justice), GNCT of Delhi and opined that dismissal or removal of a government servant from a service or cost entails forfeiture of his past service under the provisions of Rule 24 of CCS (Pension) Rules 1972.

NOW THEREFORE, I, Dr. Bhupendra Singh, Dy. Director of Education after considering all facts and circumstances and in view of the provisions of Rule 24 of CCS (Pension) Rules, 1972, reject the request of the petitioner and Sh. Mahabir Singh Yadav, Ex.PET is hereby informed that he is not eligible for any relief."

4. By virtue of the present application, the applicant seeks setting aside of the order of 7.5.2004 and further a direction to the respondents to reconsider the order of imposition of penalty of dismissal from service so that it could be converted into one of compulsory retirement. He also prays that respondents should be directed to pay his pension, arrears of pension, leave encashment and other similar benefits. He prays that he should be paid the entire arrears of subsistence allowance from 3.11.1980 to 31.8.1981 and from 2.9.1981 to 21.12.1982 with interest. The other relief claimed is that he should be given pay parity from 5.9.1981 to 11.4.1994 with the other teachers.

5. The application is being contested.

6. We have heard the parties counsel and have seen the relevant record. At the outset, the learned counsel for the applicant had urged that the penalty of dismissal from service



could not have been imposed invoking Article 311 of the Constitution.

7. So far as this particular argument is concerned, it has to be stated to be rejected. This is for the reason that admittedly after the Supreme Court held the applicant guilty of the offence punishable under Section 302 of IPC, a show cause notice was given and thereafter the above said penalty of dismissal from service had been imposed. Under Article 311 (2) of the Constitution, when a person is held guilty of an offence, indeed, the regular procedure of departmental proceedings need not be followed particularly when it involves moral turpitude. Therefore, to contend that the applicant could not be dismissed from service must be held to be a plea without any substance.

8. Confronted with that position, another argument floated was that the applicant could not have been dismissed and penalty of compulsorily retirement could well have been imposed. Even on this count, there is little ground to interfere. Not only this falls within the domain of the administrative authorities but also the judicial review would be limited in its given scope. Keeping in view the gravity of the offence, the penalty of dismissal from service has been imposed. There is precious little to interfere in judicial review. This contention must fail.

9. In the impugned order, reference is being made to Rule 24 of the **Central Civil Services (Pension) Rules, 1972** to reject the claim of the applicant. Rule 24 reads as under:

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**“24. Forfeiture of service on dismissal or removal:**

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.”

It clearly shows that for purposes of pension only, a person has been dismissed from service cannot claim the past service. However, it does not entail that the applicant is not entitled to any payment for the period he had rendered the service in this regard.

10. The learned counsel for the respondents, keeping in view the said fact, in that event contended that application is barred by time. We have no hesitation in rejecting this particular contention for the reason that the impugned order is of 7.5.2004. It is by virtue of this order that he is being denied his dues on account of fixation of pay on recommendations of the Fourth and Fifth Central Pay Commissions. The application has been filed within one year of the same. Therefore, it must be taken to be filed within time.

11. The learned counsel for the applicant had urged that after the applicant had been acquitted by the Punjab and Haryana High Court and till Supreme Court held him guilty of the offence punishable under Section 302 of IPC, he had rendered certain services to the Department. He should be given the benefit of Fourth and Fifth Central Pay Commissions wherever it is applicable.

12. We find no reason as to why the said claim should be refused. This is for the reason that if, for a certain period, a person has rendered service to the Department, necessarily, during

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that period if any benefit is to be given of by any Pay Commission, it cannot be denied to the said person. Therefore, the respondents must calculate that amount and pay to the applicant.

13. Similar benefit should also accrue pertaining to any leave encashment, which was due. The applicant must get the arrears.

14. For these reasons, the application is only allowed in part. We find no reason to interfere in the order of dismissal of the applicant but it is directed that in the light of the findings recorded above, his claim should be considered and arrears, if any, pertaining to the period to which we have referred to above, may be calculated and paid to him. This should be so done preferably within four months of the receipt of the certified copy of this order.

S.K. Naik  
**(S.K.Naik)**  
**Member (A)**

V.S. Aggarwal  
**(V.S.Aggarwal)**  
**Chairman**

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