

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO.457/2004

New Delhi, this the 9<sup>th</sup> day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Mukesh S/o Sh. Parmanand,  
Warden, Central Jail No.1,  
Tihar, New Delhi

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Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

Govt. of NCTD & Ors through

1. Secretary Home (General)  
Department,  
5, Sham Nath Marg,  
New Delhi

2. Director General (Prisons),  
Prisons Headquarters,  
Central Jail,  
Tihar, New Delhi

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Respondents

(By Advocate : Shri Rishi Prakash)

ORDER

By Sarweshwar Jha, A.M. :

The applicant has sought the impugned order dated 12.1.2004, whereby his claim for pay and allowances for the period of termination of his services from 12.3.1997 to 14.9.2000 has been rejected, being quashed and set aside and directions being given to the respondents to grant him pay and allowances for the said period with 18% interest.

2. The services of the applicant, who had initially joined as a Warden on 23.1.1996 in the scale of pay of Rs. 950-1400/-, were terminated vide order of the respondents dated 12.3.1997 without assigning any reason. The said order was challenged by him vide OA No.1548/1998, which was allowed by the Tribunal with a direction to the respondents to reinstate him in service. While the respondents reinstated him in service, they treated the intervening period as 'no work no pay'. He again approached the Tribunal vide OA No.2706/2002 and which was disposed of by the Tribunal with a direction to the

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respondents to pass an order in accordance with law and rules. The impugned order has been passed by the respondents on 12.1.2004 in compliance with the directions of the Tribunal. As is observed, the respondents have not agreed to treat the period of termination of services as spent on duty and, therefore, they have not agreed to pay any wages for him for that period. Hence this OA.

3. It has been contended by the applicant that the matter deserves to be dealt with as per the provisions of FR 54 which envisages a show cause notice being served on the applicant before they treated the period in question as 'no work no pay'. He has also alleged that no enquiry had been initiated against him after his reinstatement. He has argued that the respondents could not have denied him the benefit of pay and allowances for the intervening period without having resorted to an enquiry against him. In his opinion, termination of his services by the respondents was illegal and without any reason.

4. In this connection, the applicant has relied on the decisions of this Tribunal in OA No.2706/2002 dated the 17<sup>th</sup> September, 2003 in which while the impugned order as issued by the respondents in a similarly placed matter was quashed and set aside, it was also ordered that the Department "is at liberty to pass a fresh order in accordance with the rules and after issuing a show cause notice to the applicant".

5. The respondents have taken me through their reply and have given a short account of the facts relating to the case. According to them, the applicant was appointed as a Warden temporarily vide their offer of appointment dated 23.1.1996 in the scale of pay of Rs.950-1400/- in the Central Jail, Tihar, New Delhi. He was given necessary training. However, vide order dated 12.3.1997 his services were terminated forthwith. He approached the Tribunal, as submitted by him, earlier vide OA No.1548/1998 and which was allowed. The impugned order terminating his services was also set aside by the Tribunal. The applicant was thereafter reinstated in service, but the period during which his services remained terminated was treated as 'no work no pay'. As submitted earlier, the applicant again approached the Tribunal vide OA No.2706/2002, which was allowed and whereby the impugned order dated 29.5.2001 was quashed and set aside vide the Tribunal's order dated 17.9.2003 with liberty to the Department to pass a fresh order in accordance with relevant rules, after issuing a show cause notice to the applicant. The

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respondents did comply with the order of the Tribunal by passing their order dated 12.1.2004, but the applicant continues to be aggrieved.

6. The respondents have argued that the applicant has not exhausted the departmental remedies and have instead rushed to the Tribunal. They have also confirmed that the services of the applicant were terminated under the CCS (Temporary Services) Rules, 1965. They have denied that his services were terminated without any fault on his part. According to them, the work performance of the applicant was found unsatisfactory, which led to the termination of his services under the said Rules. They have confirmed that show cause notice dated 7.11.2003 had been served on the applicant correctly and it was not in violation of the provisions of FR 54-B, and that the impugned order dated 12.1.2004 had been passed by the competent authority after considering his reply to the show cause notice. They have also asserted that his services were rightly terminated, as his work performance was found unsatisfactory during the relevant period. As he did not perform any duty during the said period, it was rightly ordered that the said period be treated as 'no work no pay'. They have vehemently denied that any of their actions is in any manner illegal, arbitrary and violation of the provisions of FR 54-B or any other provision or any other rule and law.

7. The applicant has, however, disputed the submissions made by the respondents in their counter by filing a rejoinder to that effect and has reiterated most of the things as mentioned in the OA.

8. It is observed that the applicant has approached this Tribunal three times on one aspect of the matter or the other. While vide OA No.1548/1998 he had challenged the termination of his services on the grounds that the impugned order in the said OA had cast a stigma on him and hence he should have been issued notice of hearing before the order was passed and that the said order was vitiated inasmuch as he was not paid one month's pay in lieu of notice, and which had been disposed of by the Tribunal by setting aside the said order and with a direction to reinstate him into service, vide his subsequent OA No.2706/2002 he questioned the order of the competent authority treating the termination period from 12.3.1997 to 14.9.2000 as 'no work no pay' and which was disposed of by the Tribunal on 17.9.2003 by quashing and setting aside the impugned order of the

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respondents and affording liberty to them to pass a fresh order in accordance with the rules and after issuing a show cause notice to the applicant; the present OA has been filed by the applicant against the order passed by the respondents in compliance with the said order of the Tribunal. The respondents have, no doubt, complied with the orders of the Tribunal and have issued their order dated 12.1.2004 after issuing a show cause notice to the applicant. They have also gone by the provisions of FR 54-B, as has been the basis of argument of the applicant in all the OAs that he has filed with this Tribunal. The provisions of FR 54-B (1) (a) & (b) read as under:

“F.R. 54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.”

9. Under these circumstances, I do not see any infirmity in the action of the respondents and accordingly I find it difficult to interfere with their orders. Resultantly, the OA has to fail and the same is accordingly dismissed. No costs.

  
(Sarweshwar Jha)  
Member (A)

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