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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 2535/93

New Delhi this the 8th April 1994

The Hon'ble Member Shri J.P. Sharma, Member (J)

The Hon'ble Member Shri S.R. Adige, Member (A)

Shri Chintamani Sharma,
S/o Late Shri Laxmi Narain Sharma,
R/o K-157 Gali No. 4,
Rangpuri, Extension Mahipal Pur,
New Delhi.

... Applicant

(By Advocate : Shri D.R. Gupta)

Versus

1. Govt. of N.C.T. of Delhi through
Chief Engineer (Flood),
4th Floor, I.S.B.T.,
Kashmeri Gate,
Delhi.

2. Office of the Executive Engineer
(Floods), Division VI, Gur Mandi,
Delhi-110 006.

... Respondents

(By Advocate : Shri Virender Mehta)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was employed as Workcharged Mate in the Office of Respondents No. 2 and was implicated in a criminal case. The applicant was convicted by the Additional Sessions Judge, Sonapat by the order dated 17.11.1987. Following this conviction, the applicant was dismissed from service by Respondent No.2. Earlier to this, the applicant was arrested by Haryana Police on 3.9.1985 and he was placed under suspension with effect from the same date. However, on account of

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his conviction by the Criminal Court, he was removed from the service by the order dated 26.12.1987. Against this conviction the applicant filed an appeal before the High Court of Punjab and Haryana and by the order dated 20.11.1989 the applicant was acquitted. The applicant's acquittal was maintained by the Hon'ble Supreme Court ~~by the Hon'ble Supreme Court~~ by rejecting the appeal of State of Haryana against the order of acquittal by the order dated 26.7.1991. The applicant, therefore, was reinstated in service with effect from 20.11.1991. The applicant was, however, not granted any relief of pay and allowances of the period when he remained out of employment. He filed O.A. No. 1270/93 aggrieved by the inaction of the respondents to make a specific order in terms of F.R. 54. That O.A. was disposed of by the order dated 2.9.1993 directing the respondents to dispose of the representation of the applicant by speaking order. The respondents by the order dated 23.11.1993 observed that

"The reasons for your suspension and subsequent dismissal from the service are not due to some disciplinary action of the department. These are due to your involvement in certain criminal cases of moral turpitude. You had been acquitted by the Hon'ble High Court and the Hon'ble Supreme Court, giving you the benefit of doubt, not on merits, thus you are not entitled for full benefits of Pay and Allowance for that period of absence in detention".

Aggrieved by the aforesaid order, the applicant filed the present application praying for the grant of the relief that the aforesaid order of 23.11.1993 be quashed and a direction be issued to the respondents to treat the period of absence of the applicant from duty including the period of suspension preceding his dismissal by the respondents from 3.9.1985 to 20.11.1991 as period spent

on duty and to pay him the full pay and allowance alongwith all consequential benefits of increments, leave, and other service benefits alongwith 18 per cent interest.

2. The respondents contested this application and in his reply stated that in view of the provisions of F.R.17 the applicant is only entitled to draw his pay and allowances with effect from the date when he assumed the duties of the post and not for the period when he did not perform any work or attended to his duties. The applicant has not discharged the duties from 3.9.1985 to ²⁰11.11.1991 and as such he is not entitled to any pay and allowances for this period. Provisions of F.R. 54 are not applicable in the case of the applicant.

3. We have heard the counsel at length and perused the record. It is undisputed that the applicant was not proceeded departmentally for any misconduct. He has also not been punished in a departmental enquiry. It was only under Rule 19 (1) that the penalty was imposed upon the applicant on the ground of conduct which has led to his conviction on criminal charge. The conviction is now no more in force. The applicant has been acquitted by the High Court which has been upheld by the Hon'ble Supreme Court. The matter came before the Full Bench in the case of S. Samson Martin Vs. Union of India and Ors., CAT, Madras Reported(1990) 12 Administrative Tribunals Cases P.643 and the Bench observed - "in conclusion our views in the matter which has the approval of the Hon'ble Supreme Court in Brahma Chandra Gupta Versus Union of India reported in(AIR 1984 SC 380), is that in case of acquittal the concerned person should be given full pay and allowances and that the disciplinary

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authority does not have the power to

4. This was the railway case and the Bench finally gave the decision that the railway servant who has been discharged only on the initiation of the criminal proceedings against him and who has been subsequently reinstated in service by revocation of the order of suspension upon his acquittal is entitled to full pay and allowances during the period under which he was placed under suspension without the disciplinary authority having to determine how and why he was acquitted.

5. F.R. 54(8) clearly lays down in sub clause (1) that when a Government servant who has been dismissed, removed or compulsory retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the competent authority to order the reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be whether or not the said period shall be treated as a period spent on duty. Sub clause (2) lays down that if a Government servant who has been dismissed, removed or compulsory retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed or removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement,

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as the case may be. F.R. 54-A also lays down 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 regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) and or (3) subject to the directions, if any, of the court. Sub-rule lays down that if the dismissal or removal of the Government servant is set aside on merit of the case, 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 may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances for the period, to which he would have been entitled, had he not been dismissed or removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. In view of these specific provisions the case of the applicant is fully covered in as much as the respondents did not initiate any disciplinary proceedings against the applicant after he was fully exonerated of the charge tried by the Criminal Court. The competent authority cannot scan the judgement of the Criminal Court of acquittal in order to make out a case that the such acquittal was not either on merits or that the acquittal has been passed because of adequate evidence not coming before the court. It was open to the competent authority if it has found that the acquittal in the circumstances of the case was not on merits then it was open to initiate departmental proceedings against the applicant irrespective of the fact that the applicant was

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acquitted by the Criminal Court. In the present case the order of dismissal from service was passed only because of the conviction of the applicant on account of involvement in a criminal case and prior to dismissal suspended because of the said criminal case. That Criminal case was on account of some unofficial act which amounted to an offence under the Criminal law. If the applicant has been acquitted any stigma attached to him also goes away and he is ⁵retored the same position as if he was never having any stigma on his person of committing any act amounting to an offence. The application of F.R. 17 in such a case is not called for. The absence of the applicant from the duty was not unauthorised and he was kept out of work because of the criminal act alleged against him. He was also dismissed from service because of the said criminal act having been established against him by the Trial Court. If the judgement of conviction is set aside by the appellate court then the applicant get the same status as a Government servant which he enjoyed before his involvement in the Criminal Case.

6. The learned counsel for the applicant has also referred to the Cuttack Bench of the Tribunal in the matter of Sripati Satpati Vs. Union of India and others reported in (1990) 12 ATC P 343 wherein in a similar case the Bench ordered the payment of full pay during the period of suspension. The applicant of that case was acquitted and the criminal court gave him the benefit of doubt. Another decision on the point is of the Madras Bench of the Tribunal in the case of K.G. Tuli Vs. U.C.I. (1991) (17) ATC 722. The learned counsel has also referred to a decision of the Madras High Court in the case of Union of India vs. Jai Ram reported in

AIR (1960) Madras 325 where the High Court held that on acquittal the employee has to be paid the full pay and allowances and the entire period is to be treated as spent on duty. The law on the point therefore is well settled and does not need any further probe into the matter. The Full Bench decision cited above is based on the decision of the Hon'ble Supreme Court and the other judgement of the different Benches of the CAT clinches the issue that if a Government servant who has been dismissed or removed from service on account of conviction by the Criminal Court and that conviction has been set aside, then such a Government servant has to be paid the pay and allowances to him as if he has been on duty during all this period.

7. In view of the above facts and circumstances the application is allowed and the respondents are directed to pass the Order under F.R. 54 B on the basis of the above observation without applying the provisions of FR 17 and the applicant in such a situation be given the benefit as said above. In the circumstances the respondents to pass the order within two months from the date of receipt of the copy of the judgement. The parties to bear their own costs.

S.R. Adiga
(S.R. Adiga)
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)

Mittal