

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.561 of 1997

Friday, this the 1st day of August, 2003

Hon'ble Mr. Justice R.R.K.Trivedi, V.C.
Hon'ble Mr. D.R. Tiwari, A.M.

Naseer Khan,
aged about 50 years,
son of Sri Umrao Khan,
Resident of Village Sikari
Sector-4, Fatehpur Sikri,
District - Agra.

- Applicant.

(By Advocate : Shri K. C. Sinha)

Versus

1. Union of India through Secretary,
Ministry of Human Resources & Development,
New Delhi.
2. Director General,
Archeological Survey of India,
Jan Path, New Delhi.
3. Chief Horticulturist,
Archeological Survey of India,
Taj Mahal, Agra.
4. Deputy Superintendent,
Horticulturist, Archeological Survey
of India, Taj Mahal, Agra.

- Respondents.

(By Advocate : Shri G. R. Gupta)

ORDER (ORAL)

By Hon'ble Mr. Justice R.R.K.Trivedi, V.C. :

By this OA filed under Section 19 of A.T. Act, 1985,
the applicant has prayed for a multipul relief. He has

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also claimed payment of salary, increment and bonus for the period of suspension with 18% interest.

2. The facts of the case are that the applicant was serving as Garden Attendant under Respondent No.3. The applicant was involved in a criminal case under Section 304 (Part I), 323 and 34 I.P.C. The case was registered at Police Station Fatehpur Sikri, Agra as Crime Case No.180/90. Since the applicant was in police custody (in Jail) for more than 48 hours, he was suspended by order dated 9.5.1991 (Annexure-I). The aforesaid suspension order continue upto 3.5.1992. The applicant was tried in Session Trial No.74/93 by IIIrd Additional District and Session Judge Agra and was acquitted on 18.3.1994. The applicant has prayed for aforesaid relief mentioned in the OA on the ground that he has been acquitted in criminal case.

3. Under fundamental Rule 54-B, the authority competent to order to reinstate the applicant is required to pass a specific order under Rule 54- B, which reads 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.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date



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of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such (amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such (amount (not being the whole) of the pay and allowances) to which he would have been entitled had he not been suspended, 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.

(6) Where suspension is revoked pending finalization of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.



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(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note :- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of :-

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

4. ~~about 4~~ The respondents have filed the counter. In Para 17 & 20, the respondents have mentioned amounts paid to the applicant after suspension was over but they have not mentioned ~~any order~~ ^{about 4} in terms of Rule 54-B mentioned above, ~~has been~~ passed in respect of the applicant.

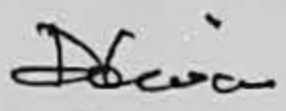
5. In our opinion, in this case the respondent No.3 may be directed to pass specific order under Rule 54-B for which a representation shall be made by the applicant within two weeks.

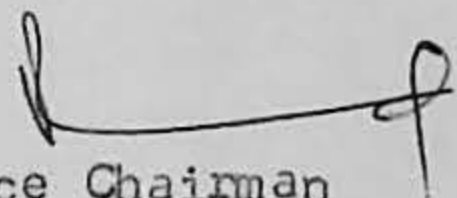
6. For the reasons stated above, the OA is disposed of finally with liberty to the applicant to make a representation before Respondent No.3 i.e. Chief Horticulturist, Archeological Survey of India, Tajmahal, Agra to pass order under fundamental Rule 54-B and pay the amount due to him as claimed in this OA.

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If the representation is so made, Respondent No.3 shall consider and decide the representation within four months and he will also decide for what amount the applicant is entitled. The amounts already paid shall be given adjustment. There shall be no order as to costs.


Member-A


Vice Chairman

HKM/