

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH; ALLAHABAD.**

ORIGINAL APPLICATION NO.236 of 2005.

ALLAHABAD THIS THE 7th Day February 2006.

Hon'ble Mr. A.K. Bhatnagar, Member-J
Hon'ble Mr. D.R. Tiwari, Member-A.

Suresh Chandra Kushwaha, aged about 58 years, son of Shri Ram Kuber Maurya, resident of House No.288, Kachchi Sarak, Daraganj, Allahabad.

.....Applicant.

(By Advocate: Sri Rakesh Verma)

Versus.

1. The Union of India through Secretary, Ministry of Health and Family Welfare Nirman Bhawan, New Delhi.
2. The Additional Director, Central Government Health Scheme, 2nd Floor, Sanam Place, Civil Lines, Allahabad.

.....Respondents.

(By Advocate: Sri R.C. Shukla)

O R D E R

By Hon'ble Mr. D.R. Tiwari, Member-A

By this O.A., filed under section 19 of the A.T. Act 1985, the applicant has prayed for the following relief(s):-

- "i) to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 18.12.2002 and 3.2.2005 passed by the respondent No.2 (Annexures NO. A-II and A-I)
- ii) to issue a writ, order or direction in the nature of mandamus directing the respondent No.2 to treat the petitioner as on duty during the suspension period from 24.4.1983 to 4.12.2002 for all purposes and allowing all the benefits thereof including pay and allowances.
- iii) To issue a writ, order or direction in the nature of mandamus directing the respondent NO.2 at least refix the pay of the petitioner in the pay scale of Rs.4500-7000 taking into account the period of suspension notionally and place him at the appropriate stage in the aforesaid pay scale with effect from 5.12.2002

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but without arrears and further to allow the petitioner further annual increments of the subsequent period from 5.12.2002 onwards with arrears thereof within a period as may be stipulated by this Hon'ble Tribunal".

2. Shorn of details, the applicant was appointed as Lab Technician on 9.3.1971 in the pay scale of Rs.150-300 and is continuing as such in the pay scale of Rs.4500-7000. While he was working as Lab Technician on 22nd April 1983, a criminal case Crime NO.86 of 1983 under section 302/201 I.P.C was registered at P.S. Daraganj, District Allahabad in regard to the occurrence dated 13.9.1982. In pursuance of the aforesaid F.I.R, the applicant was arrested by the local police in the night of 24.4.83 from his house and was sent to Central Jail, Naini and was subsequently enlarged on bail on 4.5.1983. Chief Medical Officer, C.G.H.S Allahabad by his order dated 30.4.1983 (Annexure A-III) placed him under suspension under sub Rule 2 of Rule 10 of C.C.S (C.C.A) Rules, 1965. The applicant reported for duty in the afternoon of 5.5.1983 (Annexure A-IV). The C.M.O. by memorandum dated 6.5.1983 (Annexure A-V), asked the applicant to explain as to why he did not inform the department about his arrest. The applicant by his letter dated 6.5.1983 (Annexure A-VI) submitted that the police arrested him in the house in the night of 24.4.1983 and after his production before the Magistrate he was sent to jail. However, he told the local police to inform the department as he was a Govt. employee. The respondents by memorandum dated 12th May 1983 (Annexure A-VII) asked to submit his explanation about the details of criminal case under which he was arrested,

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whether he was acquitted finally along with the facts about release on bail by the Court. By his letter dated 18.5.1983 (Annexure A-VIII) the applicant explained the situation under which he was arrested and was released on bail. By another memorandum dated 20th May 1983 respondents asked the applicant to remain present during the period of suspension in the office regularly between office hours 10 A.M to 5 P.M. The memorandum also required him to put his signature in the attendance register. The applicant submitted a reply by his letter dated 21.5.1983 disclosing that there is no provision to put attendance during the period of suspension enclosing therewith the Rules and instructions on the subject of suspension (Annexure A-X and A-XI).

3. The applicant filed Civil Misc. Writ Petition NO.43132 of 1997 and the Hon'ble High Court by its order dated 20.1.99 (Annexure A-XII) allowed the petition and the operative portion of the order is as under:-

"Accordingly the writ petition succeeds and is allowed with direction upon the respondents to re-instate the petitioner without prejudice to the disciplinary proceeding, which may be concluded within such time as may be convenient to the department. The respondents shall thereafter pay full salary to the petitioner. It would be open to them to pass such order as they may deem fit and proper, at the conclusion of the disciplinary enquiry in respect of the salary for the suspension period".

Since the respondents did not comply the aforestated order of the Hon'ble High Court, the applicant filed the contempt petition and order was passed on 25.11.2002 summoning the respondent No.2 to appear in person in the Court on the next date i.e 20.1.2003 (Annexure A-XIV). Subsequently, the

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respondent NO.2 revoked the suspension by office order dated 5.12.2002 (Annexure A-XIII). The applicant submitted the formal charge report on 5.12.2002 (Annexure A-XV).

4. The respondents fixed the pay and allowances of the applicant w.e.f. 5.12.2002 in the pay scale of Rs.4500-7000 at the initial stage of Rs.4500-7000 vide impugned order dated 18th December 2002 (Annexure A-II). Against this order, the applicant submitted a detailed representation for treatment of period of suspension from service from 24.4.1983 to 4.12.2002 as spent on duty for all purposes (Annexure A-XVIII). The respondents did not agree with the request of applicant and rejected his representation vide impugned order dated 3.2.2005 (Annexure A-I) on the ground that he has not been fully exonerated by Trial Court in the aforesaid criminal case and as such his request cannot be acceded to. The applicant has submitted that a fire accident took place in the District Court in March 1985 and the records of the criminal case pending against him were burnt. The applicant submitted an application dated 4.4.2003 before the Court of District Judge, Allahabad (Annexure A-XVI) to find out the record of the aforesaid criminal case. He made an application on 9.6.2003 for supply of certified copy of the aforesaid report but the same was rejected by the then Incharge of the office of the Criminal Court, namely, Sri Surendra Singh on the same date but was permitted to note ^{now} ~~done~~ the contents of the aforesaid report which are being reproduced as under:-

P. S. Singh

“न्यायालय मुख्य न्यायिक मजिस्ट्रेट, इलाहाबाद
श्रीमान जी,

पूछताछ कार्यालय के प्रार्थना पत्रा न० 21 दिनांक 4.4.2003
के सम्बन्ध में सन् 1983 के रजिस्टर्ड न० ix की तलाश किया
गया, जो कार्यालय में मौजूद नहीं है मार्च 1985 की अग्निकाण्ड
के सभवतः जल जाने की संभावना है। हम लिपिक गण की
रिपोर्ट श्रीमान् जी की सेवा में प्रेषित है।

दिनांक 30.5.2003 1, विनोद कुमार सिंह दण्डवाद लिपिक
2, अशोक कुमार पाण्डेय सहा० दण्डवाद लिपिक
3. यतीन्द्र यादव सहायक दण्डवाद लिपिक
4. राजीव श्रीवास्तव सहा० दण्डवाद लिपिक”

5. Ultimately, the applicant submitted questionnaire before the Court of Chief Judicial Magistrate, Allahabad on 17.9.2004 which is available at Annexure A-XVII. He has further pleaded that in view of the report (Annexure A-XVI) and the questionnaire at Annexure A-XVII, it would be evident that no case is pending before the Court. As such, it has been submitted that the impugned order is illegal as the entire case file of the criminal proceedings has been burnt as early as 1985. As such, the O.A. deserves to be allowed on merit.

6. The respondents, on the other hand, have resisted the O.A. and filed a detailed counter affidavit refuting the claims made by the applicant in his O.A. It has been argued that in pursuance of the order of the Hon'ble High Court in writ petition NO. 43132 of 1997 decided on 20.1.1999, the respondents have reinstated the applicant and against that order special appeal is pending before Hon'ble High Court, Allahabad vide No.1277/1999. They have also argued that the applicant filed Civil Misc. Contempt Petition NO.785 of 1999 against non compliance of the judgment and order dated 20.1.1999 passed by the Hon'ble High Court of Allahabad in C.W.P No. 43132 of 1997.

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However, after filing of the counter affidavit in respect of contempt petition of the applicant was rejected (Annexure CA-II) with the following observations:-

"With regard to past salary, this Court has already made it dependent upon the conclusion of the disciplinary proceedings. It is not denied that the criminal trial is still pending".

Since his contempt petition was dismissed and criminal trial is pending before the Court of C.J.M Allahabad, it is not possible to agree for treatment of the suspension period of the applicant. He was informed after his representation dated 23.9.2004 on this issue was rejected vide O.M NO.32/2005 which is one of the impugned orders of this O.A. As such, the O.A. is devoid of merit and be dismissed.

7. During the course of the argument, counsel for the parties reiterated the facts and the legal pleas from their respective pleadings. The counsel for the applicant Sri Rakesh Verma, emphasized the fact that his efforts to know the latest position about the criminal case has yielded no result except the report from the C.J.M Court that no criminal case is pending against him. He has also submitted that as submitted earlier all records relating to criminal case were burnt in 1985 and to this effect he has submitted necessary papers to the respondents. The counsel for the respondents has submitted that in view of the special appeal filed in the High Court, they would not be able to take any further action in this regard.

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8. We have heard the rival submissions made by the counsel for the parties and given a very anxious consideration to these submissions. We have also perused the records very carefully.

9. From what has been submitted above, the only question which falls for consideration is the validity of the impugned orders. In this regard, the criminal case which was filed against the applicant and pursuant to which he was arrested, the position regarding the pending criminal case against the applicant, it appears from reply to the questionnaire that no such case is pending before the Court and the enquiry on application of the applicant Sri Suresh Chandra Kushwaha is pending (Annexure A-XVII). From this, it is evident that no case is pending against the applicant and the contention of the respondents that the applicant has not been fully exonerated by the Trial Court and the criminal case is still pending against him appear to be based on no documentary evidence. They have not even said anything about the averments of the applicant about the burning of the records of criminal case in the year 1985 on account of fire accident that took place in District Court, Allahabad. They have just kept quiet and have neither denied nor admitted. We are constrained to draw an inference that the criminal case records were burnt and as such the question of Trial does not arise. The assertion of the respondents that he has not been fully exonerated in criminal case has no leg to stand in the absence of any documentary evidence, the irresistible conclusion to which we arrive is that the

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Criminal case may be treated as deemed to have been dropped/closed and as such the impugned order dated 3.2.2005 (Annexure A-1) is liable to be struck down and the respondents may treat the entire period of suspension as spent on duty and action may be taken in accordance with the Rules in this regard.

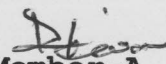
10. In so far as the impugned order dated 18th December 2002 is concerned, the respondents have fixed the pay of the applicant in the minimum of pay scale of Rs.4500-7000. This is contrary to the order of the High Court when they were directed to reinstate the petitioner without prejudice to the disciplinary proceedings. There is nothing on record to show that neither any disciplinary proceeding was initiated against the applicant nor any disciplinary proceeding is pending against him. Once the suspension has been revoked it will relate back to the date when he was placed under suspension and accordingly his pay has to be refixed notionally in the scale in which he was working at that time and the annual increment would also accrue to him in the pre-revised scale and also in the revised scale but it will all be notional in character and no arrears for that period would be payable to him and he will be entitled to fixation of the pay at the stage of the pay scale which the notional fixation would bring him after his reinstatement. It is made clear that the annual increment will accrue to him and would be payable to the applicant. This will be in conformity with the prayer No.3 of O.A. In view of this, the impugned order dated 18th December 2002 is quashed to this

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extent i.e. his pay should be fixed at the stage of the pay scale to which he is entitled after his notional pay fixation on the day of his suspension. It should be modified by notional fixation of pay of the applicant from the date of revocation of the suspension order (Annexure A-II). Insofar as the impugned order dated 3.2.2005 (Annexure A-I) is concerned is liable to be quashed as criminal proceedings may be treated as deemed to have been dropped/closed.

11. In view of the fact and circumstances mentioned above, the O.A. is succeeds on merit and the impugned order dated 3.2.2005 (Annexure A-1) is quashed and set aside. The impugned order dated 18th December 2002 is quashed to the extent indicated in preceding para. Respondents are directed to take necessary steps in accordance with the observation and direction contained in para Nos.9 and 10 mentioned above.

No order as to costs.


Member-A


Member-J

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