

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 546 of 1987

Hari Shanker Srivastava .. Applicant

Versus

Union of India and Others .. Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Chayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant ^{who} died in the year 1989 during the pendency of this case ^{and is} ~~which was~~ represented by a legal representative ~~who~~ was placed under suspension vide order dated 5.5.76 w.e.f. 23.1.76 in connection with a criminal case no. 469 of 1980 ^{which} was registered under Section 409 I.P.C in the court of Munsif Magistrate Robertsganj, Mirzapur in 1976. The applicant was acquitted by the court of Munsif Magistrate and accordingly the suspension order was revoked from 13.3.84 and the applicant was directed to resume his duty at AFM Mirzapur Head quarter where he joined on 14.3.84. There was no specific order as to how the suspension period was taken and consequently the respondents passed an order on 24.4.85 under FR-55 directing that his suspension period will be treated as not spent on duty and will not count for pension.

2. In this application the applicant has challenged the said order. After acquittal normally the applicant

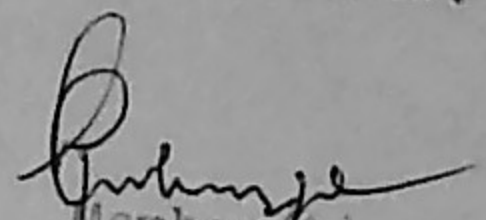
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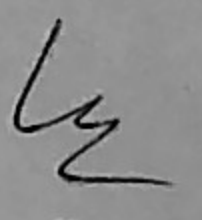
was entitled to the entire salary but the respondents have exercised the powers under FR 54(b). For exercising the powers under FR 54(b) certain conditions are to be satisfied and apart from those conditions no such order can be passed without giving an opportunity to the applicant of being heard. In the Case of Gopal Krishna Naidu Vs The State of Madhya Pradesh, A.I.R 1968 Supreme Court 240 wherein it was stated that the order under Fundamental Rule 54 is in a sense consequential order in that it would be passed after an order of reinstatement is made. But the fact that it is a consequential order does not determine the question whether the government servant has to be given an opportunity to show cause or not. It is also true that in a case where reinstatement is ordered after a departmental enquiry the government servant would ordinarily have had an opportunity to show cause. Consideration under this rule depending as it does on facts and circumstances in their entirety passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action proposed is not afforded the order is liable to be struck down as invalid on the ground that it is one in breach of the ^{principles of} natural justice. In this case ~~no~~ opportunity was not given and the relevant consideration has also not

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taken into account and accordingly this application
deserves to be allowed and the order of punishment is
hereby quashed, with the result that the entire period
will be taken treating him to be spent on duty unless
the same is not hampered by any other subsequent order.
No order as to the costs.


Member (A)


Vice Chairman

Dated: 29th July, 1992:

(Uv)