

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Dated: This the 4th day of August, 1995.

ORIGINAL APPLICATION NO. 731 OF 1993.

Hon'ble Mr. S. Das Gupta, Member(A)

Hon'ble Mr. T.L. Verma, Member(J).

Krishna Murari Gupta, s/o late Sri Chhittar Mal,
Postal Assistant, Agra Fort, H.O. Agra - 3.

... APPLICANT.

By Advocate Shri R.K. Tewari & A.K. Tripathi.

Versus

1. Senior Supdt. of Post Offices, Agra -1.
2. Director, Postal Services, c/o Postmaster General, Agra.
3. Chairman, Postal Services Board, Postal Directorate, New Delhi-1.
4. Union of India, through Secretary, Ministry of Communication, New Delhi.

..... RESPONDENTS

By Advocate Shri S.C. Tripathi.

ORDER.

By Hon'ble Mr. T.L. Verma, Member(J).

Sub-Post Office
The applicant while working as Assistant Postmaster, Bichpuri /
was put under suspension on 30.9.1972 on the allegation that he
had committed criminal misappropriation of Rs. 21900.15 by
withdrawing the same from different Saving Bank Accounts during
the period 1971-72, in contemplation of disciplinary proceedings.
The matter was also reported to the police. After registering a
case against the applicant and Ram Murari Gupta under Section
409 IPC the police submitted charge sheet against them. The
applicant was tried of the said offence in the Court of D.P. Agrawal,
Additional Munsif Magistrate, Agra. The trial court acquitted
the applicant by giving him benefit of doubt, by order dated
4.4.1988. The appeal against acquittal filed by the State in
the High Court of Judicature at Allahabad was dismissed by order
dated 7.5.1992.

2. The suspension of the applicant was revoked by the
order dated 8.8.1988 (Annexure A-3) and the applicant was directed
to join as P.A. Fatehabad Sub-Post-Office. According to the

applicant, he was put under suspension for the reason that a criminal case had been registered against him and the same was pending. As the applicant was acquitted by the Magistrate of the charges levelled against him, the competent authority should have passed orders as to how the period of suspension was to be treated along with the order revoking his suspension.

3. ~~The~~ further case of the applicant is that while he was under suspension the recommendations of the III and IV Pay Revision Commission were implemented with effect from 1.1.1973 and 1.1.1986 respectively. In terms of the recommendations of the Pay Revision Commissions there was rise in the basic pay of the grade in which the applicant was working and as such the subsistence allowance should have been raised in proportion to the increase in the basic pay of the applicant, but the same was not done, as a result the applicant has been put to financial loss. By this application, the applicant has prayed that the difference of the subsistence allowance paid and admissible to the applicant be directed to be paid with interest thereon at the rate of 12% per annum.

it is stated

4. That the applicant ~~is~~ due for promotion to Lower Selection Grade with effect from 30.11.1983 and Higher Selection Grade thereafter. While he was under suspension, the D.P.C., in fact, considered the applicant's case for promotion to Lower Selection Grade and kept its recommendation in sealed cover as is apparent from Annexure-A-4. The contention of the applicant is that the respondents ought to have opened the sealed cover after the applicant was honourably acquitted of the charges of misappropriation by the criminal Court and he should have been given promotion in terms of recommendation of the D.P.C. Instead of doing so, the respondents again placed the case of the applicant for promotion to Higher Selection Grade before the D.P.C., which ~~might have considered~~ ^{met to consider} promotion of Postal Assistant to Lower Selection Grade. This, according to the applicant, was highly unjust, because the applicant had already been considered by the D.P.C. for his promotion to one-time time-bound promotion scheme viz. for promotion to Lower Selection Grade and the recommendation of the D.P.C. had been kept in sealed cover.

5. This application has, therefore, been filed by the applicant for issuing a direction to the respondents to treat the period of suspension from 30.9.72 to 11.8.1988 as on duty for all purposes, including grant of pay etc. and to open the sealed cover containing the recommendation of the D.P.C. regarding promotion of the applicant to lower Selection Grade in accordance with one-time time-bound promotion scale and to implement the same retrospectively from 30.11.1983 with arrears of pay and allowances and for issuing a further direction to promote the applicant to Higher Selection Grade, with effect from 1.10.1991 with all consequential benefits, including arrears of pay etc.

The respondents have resisted the claim of the applicant. According to the respondents, the applicant was put under suspension in contemplation of departmental proceeding on the allegation of misappropriation of public money. The disciplinary proceeding, however, was kept in abeyance because of the pendency of the criminal proceedings. Once the applicant has been acquitted by giving benefit of doubt, the respondents contemplate to take disciplinary proceeding against the applicant for his departmental lapses. Initiation of the disciplinary action, it is said, has been delayed, on account of non-receipt of relevant records filed in the Court of Magistrate in the criminal proceeding. The disciplinary proceeding has not been disposed of. The period of suspension can only be decided after conclusion of the disciplinary proceedings on the basis of final orders itself. It is stated that claim of the applicant for promotion also will depend upon the result of the disciplinary action and as such the same cannot be allowed to the applicant till the disciplinary proceeding is finally disposed of.

6. The first question that falls for our consideration is whether the suspension of the applicant was because of his involvement in the criminal case or in contemplation of disciplinary proceeding. It is admitted by both sides that the applicant was put under suspension with effect from 30.9.1972. The suspension order has not been filed by either party. The respondents, have, however, asserted in paragraph 11 of the counter affidavit that the applicant was placed under suspension in contemplation of disciplinary proceedings. From

the averments made in paragraph 3 of the supplementary counter affidavit, it would appear that the case was reported to the Police for the first time on 9.11.1972, by letter no.F-58-2/72-73 dated 9.11.1972 and, thereafter, on 3.9.1973, when further misappropriation of Rs.6,700/- was detected. The applicant, was put under suspension by the order dated 30.9.1972 i.e. to say 3 months before the matter was reported to the Police for action. In these circumstances, it follows that suspension of the applicant was not for involvement in a criminal case, but in contemplation of disciplinary proceeding.

In view of the foregoing conclusion the second question that arises for consideration is whether the respondents were under legal obligation to regularise the period of suspension of the applicant while passing orders revoking his suspension. According to the applicant, soon after he was acquitted of the charge levelled against him by competent court of law, the respondents should have suo-moto declared the period of his suspension from 30.9.1972 to 10.8.1988 in terms of FR 54-A, which reads as follows:-

'F.R. 54-A(1) 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 from 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) or (3) subject to the direction, if any, of the court.

3(2)(1) Where the dismissal removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case maybe, 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 2 (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;

(ii) 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 judgment of the court shall be regularised in accordance with the provisions contained in sub-rule(5) of Rule 54.0

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits 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 for full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

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

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

7. A plain reading of the provisions of F.R.54-A extracted above disclose that these provisions apply to cases, where 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 ~~such~~ duty in such cases is required to be regularised and the Government servant is to be paid pay and allowances according to the provisions of sub-rule(2) or (3), subject to the direction, if any, of the court. In the instant case, the applicant had neither been dismissed nor removed nor compulsorily retired and as such the provisions of F.R.54-A has no application direct or indirect to the facts of the case before us.

8. Rule 54-B runs as follows:

'F.R.54-B.(1) When a Government servant who has been suspended is reinstated ~~3~~(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 of 10 the date of his retirement (including premature retirement),0

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 between the 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 30 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 30 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-rule (2) and (3) the Government servant shall, subject to the provision of sub-rules(8) and (9) be paid such 40 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 40(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 finalisation 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.

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

Provided that if the Government servant so desires the

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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) 10 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.

9. It is clear from sub-rule (3) of F.R.54-B that where the authority competent to order reinstatement is of the opinion that the suspension was ^{unjust} ~~held~~ unjustified, the Government servant, shall, subject to the provisions of sub-rule(8) be paid the full pay and allowances, which he would have been entitled to had he not been suspended. Sub-rule (4) makes it clear that in a case falling under sub-rule(3), the period of suspension shall be treated as a period spent on duty for all purposes. Sub- rule(5) comes into operation if the case does not fall under sub-rule (2) and (3). In the instant case, sub-rule (5) will be attracted, because the case of the applicant does not fall under sub-rule (3). We have already noticed above that pending final disposal of the disciplinary proceeding drawn against the applicant, it is not possible to hold that the suspension of the applicant in contemplation of disciplinary proceeding on the allegation that he had misappropriated public money by withdrawing the same from different savings bank accounts, was unjustified. ~~XXXXXXXXXXXXXXXXXXXX~~ We, therefore, find no merit in the contention of the learned counsel for the applicant that the respondents should have

decided the nature of the period of suspension simultaneously with the order whereby the suspension of the applicant was revoked and the same not having been done, the applicant would be deemed to be treated on duty during the aforesaid period of suspension for all practical purposes.

10. This leads next to the consideration of the question whether the respondents were under ^{an} obligation to enhance the amount of subsistence allowance in proportion with the increase in his basic pay after implementation of third and fourth Pay Revision Commissions' recommendations. In this connection ^{reference to} F.R.23 appears to be relevant, which is reproduced below:-

'F.R.23. The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay; provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final.'

11. Regarding the question whether a Government servant under suspension might give an option to elect any revised scale of pay, which might be introduced in respect of the post held by him immediately prior to his suspension, the Government of India has decided that the cases in which the revised scale of pay takes effect from a date prior to the date of suspension, the Government servant should be allowed to exercise the option under F.R. 23 even if the period, during which he has to exercise the option falls within the period of suspension. He will be entitled to the benefits of increase in pay, if any, in respect of the duty period before suspension and also in the subsistence allowance for the period of suspension, as a result of such option. In ~~the~~ cases in which the revised scale of pay takes effect from the date

falling within the period of suspension, the Government servant should be allowed to opt under F.R. 23 even while under suspension. The benefit of option will, however, accrue to him in respect of the period of suspension only after his reinstatement depending on the fact ~~that~~ whether the period of suspension is treated as on duty or not. The recommendation of the III Revision Committee came into force with effect from 1.1.1973 and the recommendation of the IV Pay Commission was implemented with effect from 1.1.1986. Both the dates on which the recommendations of the III and IV Pay Commissions were given effect ~~fall~~ within the period ^{of the applicant} of suspension. In that view of the matter and having regard to the decisions of the Government of India referred to above the applicant had the option to elect the new scale of pay, but the benefit of option would be available to him in respect of the period of suspension only after his reinstatement depending on the fact whether the period of suspension is treated as on duty or not. Whether the period of suspension of the applicant will be treated as on duty or not, will depend on the final conclusion of the departmental proceeding, which is still pending. According to F.R. 23 the applicant would be treated as if he had been transferred to the new post on a new pay after the implementation of the recommendations of the Pay Revision Commission provided he elects to retain his old pay until the date he earned his next or subsequent increment or until he vacates his post or ceases to draw pay on that time-scale. The applicant does not appear to have exercised his option to retain his old pay in terms of F.R.23. That being so, he would be deemed to have been transferred to a new post carrying the scale of pay as recommended by the III and IV Pay Revision Commissions. The benefit of the same

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however, will be available to him only after the nature of his absence during the period of suspension is decided after the conclusion of the disciplinary proceedings in view of the decision of Government of India referred to above. In any view of the matter, the applicant will be entitled to the difference of the pay as may be fixed on the basis of the increase ~~recommended~~ ^{by} by the III and IV pay Revision Commission and the amount already paid by way of subsistence allowance.

12. We now move on to the consideration of the question whether the prayer of the applicant for issuing a direction to the respondents to open the sealed cover containing recommendation of the D.P.C. regarding his promotion to lower selection grade without the departmental proceedings being finally disposed of and promote him retrospectively in terms of recommendation of the D.P.C. with all consequential benefits including arrears of pay. In the normal course, issuing of such direction may not be considered appropriate. The instant case, however, stands on a different footing. The reason for the delay in concluding the disciplinary proceeding, as given by the respondents in their counter reply is pendency of appeal against acquittal, filed by the State in the High Court and non-availability of the records filed in the criminal courts in connection with the trial of the accused. After the applicant had been acquitted by giving benefit of doubt, the respondents ~~could have~~ ^{initiated} the disciplinary proceeding against the applicant and concluded the same notwithstanding the fact that the State ~~have~~ ^{had} moved the High Court in its appellate jurisdiction against the judgment of acquittal passed by the lower court. Assuming, however, that the respondents were justified in not resuming the disciplinary proceeding pending appeal against acquittal in the High Court, we see

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no justifiable reason not to complete the same after the appeal against the acquittal was dismissed on 7.5.1992.

13. The applicant has retired from service with effect from 1.1.1995 on attaining the age of superannuation. Had the respondents made sincere efforts to obtain the relevant records from the court of the Magistrate, the disciplinary proceedings could have been completed before his retirement and necessary action on the recommendation of the D.P.C. could have been taken and the applicant would have been promoted, had he been found not guilty by disciplinary authority. The delay on the part of the respondents in disposing of the disciplinary proceedings has resulted in denial of justice to the applicant inasmuch as not only his claim for promotion and increased subsistence allowance has been denied to him but also the same will effect the settlement of his terminal benefit. The reason given by the respondents for the delay in disposing of the disciplinary proceedings after the appeal was dismissed by the High Court is non-receipt of the relevant records. There is not even a chit or papers on the record to show that the respondents had been pursuing the matter to ^{its} ~~their~~ right earnest. The court or the Magistrate is not across the ^{sea} ~~see~~ so as to cause such an abnormal delay in continuing the records filed by them in the Court or the Magistrate. We are not at all satisfied with the reasons given by the respondents for the delay in disposing of this disciplinary proceedings against the applicant. We have no doubt that delay in holding departmental inquiry has put the delinquent officer to severe hardships. It will be difficult for him to have recollections after 23 years about the matters, which took place in 1971-72. Some of the witnesses, who could have come forward to depose

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in his defence might be dead or may not be available for the reason that they have retired and settled at different places not known to the applicant. Even witnesses, who may be available, may not be able to recollect correctly the chain of events with which they were not directly connected. Apart from that, delay may cause mental torture to the delinquent officer. For this reason, we were inclined to quash the departmental proceedings which ^{has} not yet taken off. We are, however, unable to pass such an order because the applicant has not claimed any relief to that effect. As that as it may, we consider it appropriate to dispose of this application with the following directions:-

- (1) The respondents are directed to dispose of the disciplinary inquiry within three months from the date of communication of this order, failing which the same shall stand quashed and the applicant shall be entitled to all service benefits as if no proceedings were pending against him.
- (2) In case the disciplinary proceeding is brought to a conclusion, as per direction given above and the applicant is absolved of the charges framed against him, he shall be entitled to full pay and allowances for the period of his suspension minus the subsistence allowance already paid.
- (3) The recommendation of the D.P.C. (sealed cover) should be opened and acted upon. The applicant shall be given promotion if so recommended by the D.P.C. with effect from the date his next junior has been promoted with all consequential benefits, including arrears of pay. He shall also be considered for promotion to next higher grade by the D.P.C. on the basis of the record available, if he is so entitled before the

date of his superannuation i.e. on 1.1.1995. He shall be given the said promotion with retrospective effect. In case passing of ^{some} ~~such~~ an examination be essential ^{for earning promotion} then in that case the applicant shall be entitled to notional fixation of pay in the next higher grade, so as to entitle him to terminal benefit on the basis thereof.

There will be no orders as to costs.

L. M. J.
Member (J).

W. E.
Member (A)