

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 14th day of May, 2001.

Coram: Hon'ble Mr. S. Dayal, AM

Hon'ble Mr. Rafiq Uddin, JM

ORIGINAL APPLICATION NO. 1014 OF 1994

Hans Raj, aged about 33 years,
s/o Sri Meghu Ram,
r/o Mohalla Golaghat,
P.O. Chetnath, Distt. Ghazipur.

. Applicant

(By Advocate Sri Rakesh Verma)

Versus

1. Union of India through Secretary,
Ministry of Finance & Revenue,
New Delhi.
2. Manager, Government Opium &
Alakaloid Works,
Ghazipur.
3. The General Manager,
Government Opium & Alakaloid Works,
Ghazipur.

. Respondents

(By Advocate: Km. Sadhna Srivastava)

O R D E R (ORAL)

(By Hon'ble Mr. Rafiq Uddin, JM)

The applicant, who was working as Sweeper
in the office of Government Opium & Alakaloid Works,

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Ghazipur, Respondent No.3, was imposed a punishment of compulsory retirement after holding a departmental enquiry by an order dated 27-2-1988. The applicant filed OA No.423 of 1990, challenging the order of compulsory retirement dated 27-2-1988. The O.A. was disposed of, vide order dated 5-12-1991 by this Tribunal, quashing the punishment order of compulsory retirement of the applicant from service. It was also ordered that the applicant will be deemed to be in service. The order of the appellate authority dated 25-5-1988 was also quashed. It was, however, observed that the order would not preclude the disciplinary authority from going ahead with the enquiry proceedings beyond the stage of giving the enquiry officer's report to him and giving him reasonable opportunity for filing an objection against the same and thereafter decide the matter. According to the applicant, a copy of the aforesaid order was served on the respondents on 17-12-1991. The applicant had also been approaching and reporting for duty to the respondents, but the applicant was not permitted to join his duties and no steps were taken by the respondents. The applicant was, however, intimated vide a letter dated 31-3-1992 (Annexure No. A-4 to the O.A.) that his case was still under consideration before the Management and the action will be taken after receiving direction from the Management. It appears that vide order dated 22-2-1993 (Annexure No. A-1 to the O.A.) Respondents ordered payment of salary to the applicant for a period 27-2-88 to 13-8-92 @ 50% per month.

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Aggrieved by the aforesaid order, the applicant has filed this O.A. and has sought directions to quash the impugned order dated 22.2.93 and direction to the respondent nos.2 & 3 to make full payment of salary to him for the period w.e.f. 27.2.88 to 13.8.92 after adjusting the amount already paid.

2. We have heard Sri Rakesh Verma for the applicant and Km. Sadhn Srivastava for the Respondents.

3. It is admitted case of the applicant that after passing of the order dated 5-12-91, a fresh punishment order dated 14-8-92 amending the punishment of compulsory retirement has been passed by the Respondents. The applicant has also challenged the said punishment order by means of O.A. No.991 of 1994, which is still pending before this Hon^eble Tribunal.

4. We have perused the impugned order, which is purported to have been passed under Rule 54(A) (2)(1) read with sub-rule 7 of Rule 54 of Fundamental Rules. It has been contended by the learned counsel for the applicant before us that the provision of Rule 54 (A)(2)(1) are not applicable to the case of the applicant. It is urged that the applicant is entitled for full salary for the period, in question, because as per direction of this Tribunal the applicant was deemed to be in service, as per

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provisions of Rule 54 (A) (1). In order to appreciate the controversy, we reproduce the provisions of Rule 54-A(1)-(4) of Fundamental Rules:-

"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 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) or (3) subject to the directions, if any, of the court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the (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 may be, 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:

(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.

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(3) If the dismissal, removal or compulsory ~~xx~~ 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 the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed 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. The learned counsel for the applicant has pointed out that since there is also a provision for payment of pay and allowances in terms of directions of the Court, the applicant is entitled for full pay and allowances, in view of the directions contained in the order dated 5.12.91, in which he was deemed to be in service. We, however, do not agree with this contention of the applicant, because provisions of Sub-clause (1) of Rule 54-A are applicable only in the case where no further enquiry is held against the government servant and the order of the court setting aside the compulsory retirement is complied with. However, as pointed out earlier in the present case, Respondents have held further enquiry in terms of the directions of this Tribunal and also passed

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punishment order against him. Therefore, in our considered opinion, provisions of sub-rule (2) of F.R. 54-A are applicable because order of compulsory retirement was set aside by the Tribunal on the ground of non-compliance with the requirements of Article 311 of the Constitution of India, as much as he was not supplied with the copies of the enquiry report and the applicant was not exonerated on merits. Accordingly, we do not find any illegality in the impugned order and the O.A. is dismissed. No order as to costs.

Rafiq Uddin

(RAFIQ UDDIN)
JUDICIAL MEMBER

(S. DAYAL)
MEMBER (A)

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