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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of Aug 2009

HON'BLE MR. S. N. SHUKLA, MEMBER-A

Original Application No. 143 OF 2006

Shri R.J. Garison, son of Shri A.F. Roynolds, resident of B-3/177, Arawali Apartment Sector-34, Noida. Present place of posting as L.D.C. at Head Quarter Office, Directorate General of Light House and Light Ships "Deep Bhawan" A-13, Sector 24, Noida, U.P.- 201301.

...Applicant

By Adv: Sri J.S. Pandey

Versus

1. Union of India, through Secretary Government of India, Ministry of Shipping Road Transport And High Ways, Transport Bhawan.
2. The Directorate General of Light Houses and Light Ships "Deep Bhawan", A-13, Sector-24, Noida, District Gautam Budh Nagar, U.P.
3. The Director, Department of Light House and Light Ships "Deep Bhawan 44 B.S. Road, Portblayer - A & N, Islands-744101.

... Respondents

By Adv: Sri S.C. Mishra

ORDER

This O.A. has been filed seeking following reliefs:-

"(a). To issue, a direction in the nature of Certiorari for quashing the impugned order dated 29.12.2001 passed by the appellate authority (respondent No. 2) in so far as it relates to denying the due claim of the applicant for suspension period whereby the applicant has been disentitled to get full salary an allowance as on duty during the suspension period.

(b). To issue, a direction in the nature of mandamus for directing/commanding the respondent No.2

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(appellate authority) to pay the entire salary an allowance for suspension period to the applicant treating his as on duty.

- (c). To issue, a direction in the nature of mandamus for commanding the respondent No. 2 (appellate authority) to pay the substance allowance and pay according to revise pay rules 1986 & 1997 Central Civil Services as required by Law.
- (d). To issue, a direction to the respondent No.2 not to realize Rs. 67,287/- alleged extra payment as mentioned in letter dated 21.12.2004, in pursuance of which Rs. 1,000/- per month is deducting by the respondent No. 2 since January, 2005 from the salary of the applicant, whenever the representation is pending.
- (e). To issue, any such other and further suitable order which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (f). Cost and incidentals of this Application may awarded to the applicant."

2. The facts of this case can be best understood by reproducing the relevant extracts from this Tribunal's Calcutta Bench judgment and order in OA 41/AN/2002 dated 17.09.2003 reproduced as under :-

"2. The case has a chequered history of litigation. The applicant joined service as L.D.C. on adhoc basis w.e.f. 11.3.76 in the Department of Light House and Light Ships at Port Blair. He was made quasi permanent in the said post w.e.f. 11.4.81. He was promoted on adhoc basis as U.D.C. w.e.f. 8.5.84. But unfortunately, after one year of his service as U.D.C. on adhoc basis, he was involved in a criminal offence as a result he was placed under suspension as per order dated 16.3.85 vide Annexure-D with immediate effect. Be it noted, that he was enlarged on bail in the criminal case all along. The criminal case ended in the order of acquittal vide order dated 21.10.98. The applicant thereafter made a prayer for revocation of his suspension order and for his reinstatement, which was not acceded to. Hence he filed an application before this Tribunal bearing No. 103/AN/99. Tribunal directed for his reinstatement vide order dated 14.2.01. However, the said order was challenged before the Hon'ble High Court in WPCT No. 23/01 and Hon'ble High Court quashed the order passed by the Tribunal on the ground that Tribunal rendered

its decision on wrong information that no chargesheet was pending against the applicant. In fact, a chargesheet was already issued against the applicant on 25.10.2000 in contemplation of a disciplinary proceedings. The charge against the applicant was that he misappropriated Govt. money amounting to Rs. 7,500/-. It may be pointed out here that the criminal case started against the applicant was also for the same offence. After enquiry was concluded, the Enquiry Officer submitted his report on 7.12.2000 holding that all the charges levelled against the applicant except one charge i.e. article No. 1 were proved. The Disciplinary Authority thereupon passed an order on 25.6.2001 imposing major penalty of removal from service from the date of the receipt of the order vide Annexure-0. The applicant preferred an appeal against the said removal order. On consideration of the appeal, the Appellate Authority passed an order on 29.11.2001. In the Appellate order, it was observed that the charges framed against the applicant were proved. However, the Appellate Authority on consideration of the appeal of the applicant set aside the order of removal from service passed by the Disciplinary Authority on the grounds that the "amount involved is Rs. 7,500/- only and the case has prolonged over a period of 16 years; therefore, the appellate authority ordered that the applicant will be paid pay and allowances equal to subsistence allowance for the period of his absence from duty from the date of his removal from service till he joined the duty including the period of suspension preceding his removal and that this period will be treated as 'non-duty'. It was further ordered that the applicant shall refund the amount of Rs. 7,500/- standing against his name as per rules. The Appellate Authority also gave liberty to the applicant to submit a representation against the appellate order within ten days. Pursuant to that the applicant filed a representation which was finally decided on 10.1.2002 upholding the Appellate order.

3. The applicant is aggrieved by that part of the appellate order by which he was directed to be paid only subsistence allowance for the period of his absence from duty from the date of his removal from service till the date of his reinstatement including the period of suspension preceding his removal and that the said period shall be treated as 'non-duty'. According to the applicant, since he was acquitted in the criminal proceedings and he was not responsible for the delay in initiation of the disciplinary proceedings which actually started only in 2002. He could not be denied full pay and allowances for the entire period. Hence this OA.

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4. The respondents have filed a reply in which the Appellate order has been supported. It is contended that the Appellate Authority upheld the findings of the Disciplinary Authority that the applicant was guilty of the charges and, therefore, his punishment order of removal from service was in order. However, taking a lenient view, the appellate authority decided to reinstate the applicant in service but directed that the entire period from the date of his removal till the date of his reinstatement including the period of his suspension shall be treated as non-duty. The applicant was allowed to file a representation against the appellate order which he did and the appellate order was reviewed and the Reviewing Authority did not find any reason disturb the appellate order. Hence the applicant has no case.
 5. We have heard ld. Counsels for the parties. Ld. counsel for the respondents has produced before us the departmental records.
 6. From the facts stated above, it is apparent that the applicant was placed under suspension w.e.f. 16.3.85 due to his involvement in a criminal case vide Annexure-D. The criminal case bearing No. GR case 335/85 ended in its acquittal vide order of the Ld. Chief Judicial Magistrate, Port Blair dated 21.10.98 (Annexure-H). The applicant thereafter made a prayer for his reinstatement in service by revocation of the suspension order. But his repeated representations in this regard did not evoke any fruitful result. Therefore, the applicant filed an O.A. bearing No. 103/AN/99 before this Tribunal which was decided on 14.2.2001 by directing the respondents to reinstate the applicant forthwith with full salary from the date of his acquittal till the date of his resumption of duty. In the said order, the Tribunal observed that till the date of the order no chargesheet was issued against the applicant. A writ petition was filed against the said order of the Tribunal and the Hon'ble High Court set aside the order of the Tribunal on the ground that chargesheet was already issued against the applicant and this fact was not brought to the notice of the Tribunal. In fact, a charge memo was issued against the applicant on 25.10.2000. Thereafter, an enquiry was held and Enquiry officer submitted his report on 9.12.2000 holding the applicant guilty of all the charges except one. The Disciplinary Authority on consideration of the enquiry report passed an order of removal from service against the applicant on 25.6.01. The applicant preferred an appeal and the appellate authority by his order dated 29.11.01 set aside the removal order and reinstated the applicant. It was, however, clearly mentioned in the appellate
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order that although charges against the applicant were proved, considering the fact that the amount involved was Rs. 7500/- only and the case has prolonged for a long period of 16 years and, therefore, the applicant deserved sympathetic consideration. Thus, it was a concessional order and not on merit. The Appellate Authority, however, directed that the entire period of his absence from duty from the date of his removal till his reinstatement including the period of suspension shall be treated as non-duty. Obviously, this order was passed under FR 54 (1) which provides that when a Govt. servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal or review, the authority competent to order the reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the Govt. servant for the period of his absence from duty including the period of suspension preceding his dismissal/removal and whether or not the said period shall be treated as a period spent on duty. Thus the Appellate Authority has directed that the entire period of his absence shall be treated as non-duty. It is the discretion of the Appellate Authority to pass appropriate order under FR 54 as to how the period of absence shall be treated. There is no doubt that the applicant did not work from the date of his suspension in 1985 till his reinstatement in service. Therefore, we do not find any infirmity in the order of non-payment of full salary for the entire period especially when the applicant was not reinstated on merit and the charges levelled against him were proved. We find that the entire period was treated as non-duty. In that event, the past service rendered before dismissal/removal or suspension will not be forfeited vide GOI Decision No. 3 below FR 54. The applicant also filed a representation against the appellate under which was also considered and decided on 10.1.02 vide page 235 of the O.A. The review order in para 3 stated as follows:-

"For the para-3 of the representation, of Shri R.J. Gracin it is true that the case has prolonged for more than 14 years in the CAT and since most of the persons who initiated action against Shri R.J. Gracin have either retired or transferred outside from Port Blair, it has taken some time, thereafter, for conducting and finalising departmental proceeding/action. As such, in fairness, when the Government servant has not performed any duty, the period should be treated as "non-duty" for the period of his absence from the date of his removal from service till he joins

the duty including the period of suspension preceding his removal."

It appears that it was mentioned that the case has prolonged for more than 14 years in the CAT. In our view, this observation is not correct. In fact, the applicant came up before this Tribunal on many occasions, but no case prolonged for so many years. Every case was decided within a reasonable time and in none of the cases filed by the applicant, any injunction order was passed. Therefore, there was no reason for the respondent authorities in not initiating and completing the departmental proceedings in time. The acquittal order was passed on 21.10.98 and the chargesheet was issued on 25.10.2000 i.e. after two years. We find that as per the decision of the Appellate Authority treating the entire period of absence as non-duty, the applicant may suffer in the matter of his pensionary benefits as in that event this period shall not be counted as qualifying service. We are of the view that when the Appellate Authority has already taken a lenient view taking into consideration that the amount involved was only Rs. 7500/- and the same was directed to be recovered from him, if the entire period is excluded from his qualifying service, he will suffer substantially in the matter of his retrial benefits. Moreover, if the entire period from suspension till reinstatement i.e. 16 years is not treated as qualifying service, the applicant may not get pension.

7. Considering matter from all its angles, we think it proper to dispose of this case with liberty to the applicant to submit appropriate petition before the competent authority for treating the entire period of his absence from duty including the period of suspension as qualifying service for the pensionary benefits. If such petition is submitted by the applicant, the respondent authorities may consider the same with due sympathy and pass appropriate order accordingly as per rules. No costs."
3. In pursuance of the CAT Calcutta Bench order dated 17.09.2003 the applicant filed representation dated 06.10.2003 before Director General Light Houses and Light Ships "Deep Bhawan" Noida, but the same was also rejected by order dated 05.04.2004. Thereafter the applicant also submits to have filed representations dated

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07.06.2005, 21.06.2005 and lastly on 16.10.2005 for stopping the recovery which was started since January 2005 by deducting Rs. 1000/- per month from this salary for realizing the alleged extra payment of Rs. 67285/- and Rs. 7500/-. The last representation dated 16.10.2005 remains to be decided till the filing of the OA. One of the prayers in the aforesaid representation of the applicant to the competent authority was that the subsistence allowance paid to the applicant was as per the old pay scale. During the intervening period two Pay Commissions were set up, first in 22.09.1986 and the second in 1997 for which a notification was issued by the Central Government. However, the respondents were not paid his subsistence allowance and arrears in pursuance of the revised pay scales as per the two successive Pay Commissions.

4. In the counter affidavit it has been admitted that the applicant was paid an excess amount of Rs. 67285/- in view of the due/drawn statement. With regard to the other averments in the OA the stand taken by the authorities was supported.

5. Rejoinder affidavit as well as written submissions have been filed on behalf of the

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applicant reiterating the earlier stands and also drawing support from certain decisions of the superior Courts. Supplementary counter affidavit and supplementary rejoinder affidavit reiterating the earlier pleadings. Some additional facts have also been brought on record through supplementary affidavit filed on 03.08.2008 indicating that the applicant was once again visited with the disciplinary action and he was once again dismissed with some other penal consequences. However, the fact of subsequent disciplinary proceeding is not relevant for the purpose of this OA is not considered for any further dilation.

6. In written submissions filed on behalf of the applicant in addition to all earlier pleas raised before the authorities and the Tribunals it has been submitted that the penalty under Rule 11 of CCS (CCA) Rules 1965 awarded to the applicant is minor. Therefore, after acquittal of the applicant in the criminal case the quantum of subsistence allowance and salary will be 'full' as per revised pay scale. This proposition of law has been held in Hon'ble Supreme Court case in **Andhra Bank Vs. W.T. Sheshachalam reported in 2004 (1) UPLBEC 938.**

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7. It is also submitted that the recovery of the alleged excess amount is not sustainable when the employee was granted the revised pay scale, even the charges of Rs. 7500/- was never proved and accordingly the applicant was reinstated in the service. Reliance was placed on **Ram Murti Singh Vs. State of UP and others reported in 2006 (4) ESC 2379 Alld (DB)** and **Shiv Prakash Richaria Vs. State of UP and others reported 2008 (3) UPLBEC 2517.**

8. Heard the parties counsel and perused the pleadings on record. The reliefs sought from this Tribunal can be summarized as under:-

- i. the entire suspension period of the applicant should be treated as on duty and he should receive full pay and allowances for the entire suspension period.
- ii. Applicant is legally entitled to the arrears of subsistence allowance and pay according to the revised pay scale in accordance with revised pay rules of 1986 and 1987 as recommended by the Pay Commission and accepted by the Central Government.
- iii. The alleged excess amount of Rs. 67287/- paid to the applicant for which the recovery is being effected is illegal in view of the

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representations dated 07.06.2005, 21.06.2005 and 16.12.2005 which are still pending.

9. In connection with his claim for being allowed full salary and allowances during his entire period of suspension the applicant has placed reliance on the Hon'ble Supreme Court decision in the case of Andhra Bank (supra). The case before the Hon'ble Supreme Court related to a Bank employee. The rules for payment of subsistence allowance to the suspended employee are distinct and different from the rules under FR 54. The below extracted are the rules for payment for subsistence allowance in service conditions of the bank (extracted from the order of the Hon'ble Supreme Court) :-

"A. Where the enquiry is departmental by the Bank:

(1) Where the investigation is not entrusted to or taken up by an outside agency (i.e., Police/CBI):

(a) for the first three months of suspension one-third of the pay and allowances which the workman would have got but for the suspension;

(b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension provided that after one year of suspension full pay and allowances will be payable if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

(2) Where the investigation is done by an outside agency (i.e., Police/C.B.I.) and such investigation is followed by a departmental enquiry by the Bank and not by prosecution:

(a) for the first three months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension;

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- (b) for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension:

Provided that full pay and allowances will be payable after six months from the date of receipt of report of the investigating agency that it has come to the conclusion not to prosecute the employee or one year after the date of suspension, whichever is later;

And provided further that the enquiry is not delayed for reason attributable to the concerned workman or any of his representatives.

B. Where the enquiry is held by an outside agency including a trial in a Criminal Court (irrespective of whether the enquiry/trial is preceded by an investigation by an outside agency (i.e., Police/C.B.I.) or not:

- a. for the first six months of the suspension one-third of the pay and allowances which the workman would have got but for the suspension: or
- b. for the period of suspension, if any, thereafter, one-half of the pay and allowances which the workman would have got but for the suspension, until the enquiry is over."

10. It was in light of these rules specific to the bank employees. The Hon'ble Supreme Court gave the finding as per the head notes reproduced below:

"Service-Suspension-Subsistence allowance-Suspension of employee for criminal proceedings initiated-Suspension continued on account of departmental proceedings-How much subsistence allowance to be paid in such cases-Held that in such a cases where employee is acquitted in criminal proceedings but continues to be under suspension on account of departmental proceedings, he would be entitled to full pay and allowances as subsistence allowance.

A person who is prosecuted criminally but ultimately acquitted of the criminal charges cannot be placed in a worse position in the matter of subsistence allowance as compared to those, where the outside agency itself had concluded not to prosecute.

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After acquittal, clout of criminal prosecution comes to an end and in case only departmental proceedings continue or remain pending or initiated thereafter, they would be guided only by the provisions applicable, for departmental proceedings in the matters relating to payment of subsistence allowance. The conclusion of the investigating agency to prosecute, would lose its effect or relevance on acquittal in the criminal cases.

It cannot be said nor it is anybody's case that due to subsequent acquittal the workman would be entitled for full pay and allowances as subsistence allowance during pendency of criminal case but for the period beyond the date when acquittal was recorded and suspension continued because of the regular departmental action it cannot be said that the same provision will continue to be applicable which was applicable during the period of criminal prosecution.

In our view, the position relating to departmental proceedings and the proceedings taken after investigating agency coming to a conclusion not to prosecute which entitles the workman to full pay and allowances as subsistence allowance after one year, will also be applicable where in the intervening period criminal prosecution was launched after investigation by an outside agency ending in acquittal but departmental proceedings continued/started or thereafter. In such cases the workman would be entitled for full pay and allowances as suspension allowance. The interpretation as suggested on behalf of the appellant to subject the employee to the rigours of rules pertaining to payment of subsistence allowance which apply where the criminal prosecution is decided to be launched, even for the period after the acquittal during departmental action, would be self-contradictory and against the obvious meaning emerging out of the provisions discussed above."

11. As against that the rule position applicable to Government Servants in FR 53 and FR 54 filed as annexure CA-1 reads as under :-

"F.R. 53, (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

F.R.54 (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been or reinstated but for his retirement on superannuation while under suspension or not, the

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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 his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty."

12. On facts of the case and different service conditions applicable in this case this Tribunal is of the view that the benefit of the ratio laid down by the Hon'ble Supreme Court (supra) is not available to the applicant. This Tribunal, therefore, finds no case to interfere in the finding given by the authorities on the appeal of the applicant to the competent authorities.

13. The other issue relates to recovery of an amount of Rs. 67287/- as excess payment made to the applicant. The relevant order in this regard is at annexure 3 page 43 of the order which briefly states that the excess payment of Rs. 67287/- needs to be recovered and that the applicant may indicate the amount and number of installments convenient to him and that no further correspondence will be entertained in this regard. On behalf of the applicant reliance is placed on the judgment of Hon'ble Allahabad High Court in State of **Ram Murti Singh Vs. State of UP and others** [2006(4)ESC2379(A11)(DB)]. The

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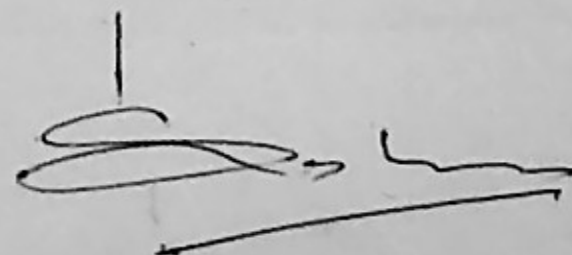
decision of the Hon'ble Allahabad High Court as relied upon amongst other Hon'ble Supreme Court decision in case of **Shyam Babu and others Vs. Union of India and others**, (1994) 2 SCC 521, dealing with a situation where the petitioner received higher pay scale due to no fault of theirs, they had held that it would not be just and proper to recover the salary already paid to them. This Tribunal is of the view that the applicant's case is squarely covered by the decision of Hon'ble Allahabad High Court (supra) and accordingly the respondents are directed to refund the amount/part of the amount already recovered from the applicant.

14. The third item regarding the advance of Rs. 7500/- have never been received by the applicant and, therefore, is not liable to pay and refund the same, has already been the subject matter of the inquiry report and disciplinary action leading up to the dismissal of the applicant albeit revoked as a gesture of lenience on the part of the authorities and "not on merits". Under the circumstances this Tribunal also does not find any reason to interfere with the orders of the authorities.

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15. The last issue relates to the payment of subsistence allowance to the applicant, on the basis of the revised pay scale as per the recommendations of the Pay Commission which were in force during the period of suspension of the applicant. The law of natural justice mandates that the applicant is extended the benefit of the subsistence allowance on the basis of prevailing scales of salary at the relevant times. The respondents are, therefore, directed to pay to the applicant the subsistence allowance on the basis of the prevailing rates of salary and allowances at the relevant times as applicable to any other serving employee as per the Government orders on the recommendation of successive pay commission.

16. With the above observations the OA is allowed in part with directions to the respondents to comply with the directions at para 13 of this order within a period three months from the date of receipt of a copy of this order. No costs.



Member (A)

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