

RESERVED ON 13.05.2015

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

(ALLAHABAD THIS THE 19th DAY OF May 2015)

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER - J

HON'BLE MR. U.K. BANSAL, MEMBER - A

ORIGINAL APPLICATION NO. 652 OF 2007

(U/s, 19 Administrative Tribunal Act.1985)

Kashmira Singh, son of Shri Ninder Singh, aged about 45 years, R/o P-59/7, N-4, Area Air Force Station, Chakeri, Kanpur.

.....Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, Army Head-quarter, New Delhi.
2. Garrison Engineer (I) (E/M), Chakeri, Kanpur 208008.
3. Assistant Engineer (E/M)-III, Chakeri, Kanpur 208008.

..... Respondents

By Advocate : Shri R.K. Srivastava

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

The applicant herein was an employee in the Department of the respondents (Military Engineering Service) at Chakeri, Kanpur on the post of Mazdoor in 1998. He was placed under suspension w.e.f. 6.6.1998 when he was arrested in a criminal case under section 307 IPC/25-A Arms Act. This suspension order was revoked on 6.6.2000 and he resumed his duties

thereafter on 14.6.2000. The order revoking his suspension clearly stated that the applicant shall be entitled to full pay and allowances from 6.6.2000. However, according to the applicant the respondents did not implement this order. The applicant was subsequently convicted by the Trial Court by an order dated 7.2.2003 and sentenced to four years and six months of imprisonment. He was kept in custody from 8.2.2003 to 14.2.2003 and then released on bail by the Hon'ble High Court. He was placed under suspension again w.e.f. 8.2.2003 on the basis of conviction order and a show cause notice was also issued for imposition of major penalty of dismissal. However, no final orders were passed in connection with this show cause notice after the applicant's sought the intervention of this Tribunal through O.A. No. 466 of 2003. The applicant was also granted a stay order by the Hon'ble High Court stating *"The execution of conviction and sentence of accused appellant shall remain suspended during the pendency of the appeal"*.

2. The suspension order of the applicant was revoked w.e.f. 8.2.2005 (Annexure 10). This order revoking his suspension also stated that the full pay and allowances shall be claimed by the applicant w.e.f. 8.2.2005 and that the pay and allowances for the period of suspension

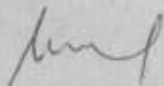
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and whether such period should be treated as duty or otherwise would be determined only when the final decision of the Court becomes available. The revocation of suspension will also not make the individual eligible for promotion etc.

3. It is the contention of the applicant that the respondents have withheld the annual increments of the applicant even though there is no specific order for withholding the annual increments. The claim of the applicant for annual increments was referred to the respondents for consideration under Rules by another order of this Tribunal in O.A No. 990 of 2006 filed by the applicant in this regard. The respondent No.2 has rejected this claim vide impugned order dated 8.6.2007.

4. Through this O.A., the applicant is seeking the following relief (s):-

- "a). To quash the impugned order dated 09.06.2007 (Annexure A-1 to this original application).*
- b) The respondents may be directed to release the annual increment of the applicant w.e.f. Oct, 1998.*
- c) The respondents may be directed to pay the arrears of pay and allowance with all consequential benefits.*
- d) Any directions may be issued to the respondents, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and award cost in favour of the applicant".*



5. It is the contention of the applicant that the respondents ignored important facts in the case such as the revocation of his suspension order by the Competent Authority and the fact that his sentence/conviction ordered by the Trial Court has been stayed by the Hon'ble High Court till finalization of his appeal.

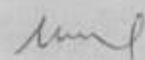
6. In their counter affidavit, the respondents have stated that there is no dispute regarding basic facts of the case as narrated in the O.A. His application for grant of annual increments w.e.f. 1998 could not be accepted according to the provision of Para 54 (B) of Fundamental Rules. It has been pointed out that the applicant has not yet been acquitted by the Hon'ble High Court following his appeal and hence in terms of Rule 54 (B) of Fundamental Rules, the pay and allowances including annual increments for the period of suspension can be restored only after the acquittal by the Hon'ble High Court. The respondents have further clarified that initially the applicant was suspended on 6.6.1998 due to his detention in a criminal case and this order was revoked on 6.6.2000. After he was convicted, he was placed under suspension again w.e.f. 8.2.2003 and this order was also revoked on review w.e.f 8.2.2005. Regular review of the applicant's suspension was carried out and his subsistence allowance was also increased. It has been

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emphasized that the pay and allowances for the period of suspension could be restored only on the applicant's acquittal by the Hon'ble High Court as per Rule 54 (B) of Fundamental Rules. Since the case has not concluded and a final decision has not been delivered, it is not possible for the respondents to restore the pay and allowances for the period of suspension and hence it is not possible to allow annual increments as well.

7. Rejoinder affidavit has been filed by the applicant wherein the contents of the O.A. have been reiterated. A reference has been made to an O.A. allegedly filed by a similarly situated person of the same department (O.A. NO. 3391 of 1992 before Central Administrative Tribunal, Principal Bench, New Delhi), which was disposed of by an order to the respondents to consider the claim of the applicant regarding payment of increment as well as other allowances during the pendency of the appeal before Hon'ble High Court.

8. During the course of the hearing, the counsels argued largely on the lines of their pleadings. The applicant's counsel referred to an order of C.A.T, P.B. New Delhi in O.A No. 2517 of 2010 decided on 22.9.2011. In this referred case, the applicant was arrested in connection with a criminal case and placed

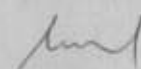


under suspension in 2001 and his increments had been stopped and not released even after his reinstatement. However, the remaining part of this case decided by Hon'ble Principal Bench relates to retirement benefits which are not relevant to the present case. It has been held that a decision on how to treat the period of suspension may have to wait until conclusion of criminal proceedings. However, except for that period, the respondents should grant the applicant's increments for the remaining period when he actually worked following his reinstatement.

9. The relevant portion of F.R. 54 (B) reads as follows:-

"54 (B) (6) Where suspension is revoked pending finalization 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".

10. The impugned order dated 8.6.2007 was examined in the light of this Rule. This order speaks of the pay and allowances for the period in which he was under suspension. It also states that granting of annual increments for the period of suspension and onwards is also not possible till a final decision in the criminal case against him by the concerned court. This order has been




issued in accordance with the provision of F.R. 54 (B) and hence there is no reason to interfere with the same to the extent that it deals with the period spent by the applicant under suspension. However, the applicant has been working with the respondents for the entire period from the date of his first suspension i.e. 6.6.1998 to the present except for two periods spent by him under suspension. Hence, there seems to be no impediment under the Rules to grant him annual increments due during the period in which he has worked as an unsuspended employee of the respondents. This period is from 6.6.2000 to 7.2.2003 and again from 8.2.2005 onwards. The respondents have not cited any Rules, which have the effect of prohibiting the increments to the employee during the period that he was not under suspension and has worked. In-fact withholding of such increments can only be a consequence of orders issued after due process.

11. It is, therefore, directed that the respondents may continue to withhold the decision on the restoration of pay and allowances including increment for the period spent by the applicant under suspension till the outcome of the criminal appeal in the Hon'ble High Court as per F.R. However, the respondents shall grant the annual increment to which the applicant is entitled in the regular

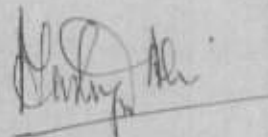
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course to him for the period for which he has actually worked as a regular non-suspended employee. If according to such revised fixation of pay, some arrears are due to the applicant, the same shall also be paid to him within a period of two months from the date of receipt of a certified copy of this order.

12. The O.A. is accordingly disposed of with no order on costs.



Member (A)



Member (J)

Manish/-