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Smt. P.A. Shah

Accounts Assistant 'A'
Space Application Centre,
Jodhpur Tekra Ahmedabad.

Applicant

Advocate

Shri J.J. Yajnik

Versus

The Director,
Indian Space Research Organisation
Space Application Centre,
Ahmedabad.

Shri M.M. Shah
Controller, ISRO,
Space Application Centre
Ahmedabad.

Respondents.

Advocate Shri Akil Kureshi

ORAL JUDGEMENT

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In

C.A. 37/91 in O.A. 265/88

Date : 23-11-1992

Per Hon'ble Shri N.V. Krishnan

Vice Chairman.

Shri Yajnik for the Applicant.

Shri Akil Kureshi for the respondents.

By the original order of the Tribunal, the impunged order of removal of the applicant from service was set aside on a technical ground viz, that the applicant was not served the copy of the inquiry Officers Report and an opportunity to represent against it before the Disciplinary Authority found her guilty of the charges; ^{was not given.} There was a further direction to re-in-state the applicant in service and that her back wages be calculated and paid to her within four months of the date of the order and pay interest at 12 percent for any delay thereafter.

2. It is submitted that the applicant has not been given the back-wages. Instead, she is treated as having been suspended from the date of dismissal till the date of re-in-statement and only subsistence allowance has been paid for the period.

3. The learned Counsel for the ^{respondent} ~~applicant~~ has drawn attention to the reply filed by the respondents. The order of removal was set aside by the Tribunal on technical ground. Therefore, the Disciplinary Authority decided to proceed with the departmental inquiry, after re-in-stating the applicant. It is stated that under Rule 7 of the Department of Space Employees (Classification, Control and Appeal) Rules, 1976 the employee should be deemed to be placed under suspension from the date of the original orders of dismissal. This rule was not ^{invoked} ~~violated~~. Instead, the salary for the period from the date of removal from service till the date of re-instatement was regulated under FR 54-A (2) (1) after

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giving notices to the applicant. The salary was restricted to the pay equal to the subsistence allowance i.e. 50% pay.

4. He also submitted that the ~~order~~ of the Tribunal did not forbid the respondents from following the relevant provisions of the ~~Rules~~ applicable to this case.

5. It is true that if ~~there~~ had been no direction to the contrary or there had been no direction at all, the respondents would have been free to apply Rule 7 of the Department of Space (C.C.A) Rules 1976 or FR 54 A (2) (1) to regulate the period from the date of removal from service to re-in-statement ^{as} and also the salary ^{& due} ~~drawn~~ ^{for} thereafter. We notice that the direction to the respondent was to pay back wages without any qualification attached to it. This expression has only one meaning in service parlance which is the salary the applicant would have drawn had she not been removed from service.

6. In these circumstances, we are of the view that the order has not been complied in full. Therefore, directions have to be issued to the respondents to pay the balance of back wages within six weeks from the date of receipt of this order and we do so.

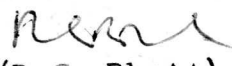
7. The learned Counsel for the respondent submits that respondent had, bonafide, belief ^{ved} that the applicant was entitled to salary under & FR 54 A (2) (1) only and therefore, the respondent should not be burdened with interest on this additional amount of


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of back wages to be paid to the applicant. The learned Counsel for the applicant ^{ad}mits that non-payment of a part of the backwages was not wilfull.

8. In the circumstance, we are of the view that the respondents will be liable to pay interest on this portion only if this amount is not paid within ^{U the} period of six weeks from the receipt of this order and, ^{Therefore we} direct that interest of 12% per anum shall be paid for any delay thereafter.

9. Accordingly, the Contempt application is disposed of with the aforesaid directions.


(R.C. Bhatt)
Member (J)


23/11/92
(N.V. Krishnan)
Vice Chairman.

*AS.