

76

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

.....

Date of Order : 19.4.2002

O.A.NO. 179/2001

Mahendra Kishore Sharma S/o Shri Dayal Prasadji Sharma, by caste Sharma, aged about 47 years, Junior Engineer in the office of Garrison Engineer, Udaipur.

.....Applicant.

versus

1. The Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Engioneer-in-Chief, Army Headquarters, Kashmir House, New Delhi.
3. Chief Engineer, Southern Command, Pune.

Garrison Engineer (MES), Eklingarh Cantt., Udaipur.

.....Respondents.

.....

Mr. Manoj Bhandari, counsel for the applicant.  
Mr. Kuldeep Mathur, Advocate, Brief holder for  
Mr. Ravi Bhansali, Counsel for the respondents.

.....

CORAM :

Hon'ble Mr. Gopal Singh, Administrative Member  
Hon'ble Mr. J.K.Kaushik, Judicial Member

.....

ORDER

(Per Mr. Gopal Singh, A.M.)

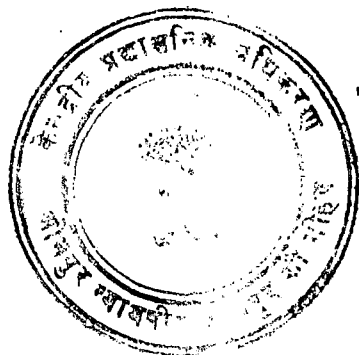
This is a second round of litigation by the applicant. The applicant has approached earlier this Tribunal vide O.A. No. 158 of 1996 decided on 24th August, 1999. In our order dated 24th August, 1999, we had directed that the applicant would be re-instated in service within three months from the date of issue of that order and he

*Gopal Singh*

would also be entitled to full back wages. In compliance to the above order, the respondent department has reinstated the applicant but have denied the wages for the suspension period i.e. 21.10.1993 to 24.4.1995. The respondent-department had earlier passed an order for making payment of this period also vide Part II Order dated 27.11.2000 placed at Annex. A/4. However, payment for this period has been denied by the respondents on the ground that there is no specific direction from the Tribunal to pay Pay and Allowances for the period of suspension.

2. We have heard the learned counsel for the parties.

3. The Fundamental Rule 54-A deals with the payment of Pay & Allowances for the suspension period when a person is reinstated consequent upon the orders of the Court. In this connection, we consider it appropriate to extract below Fundamental Rule 54-A :-



"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 regularized 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.

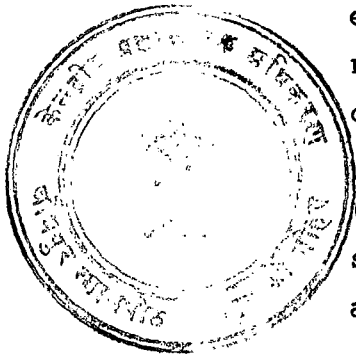
(2)(i)Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, 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 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

*Upadhyay*

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 regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(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 the 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.


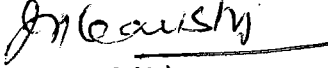
(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement, Where the emoluments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


4. In the instant case, the applicant has been reinstated in terms of our order dated 24.8.1999 passed in O.A. No. 158/96. It is a fact that no further disciplinary action has been taken against the applicant. In these circumstances, we are of the view that the applicant would be entitled to full pay and allowances for the period

*Copied*

of suspension. Accordingly, we pass the order as under :-

4. The O.A. is allowed with a direction to the respondents to release the payment of Pay & Allowances to the applicant for the period of suspension i.e. from 21st October, 1993 to 24th April, 1995, within a period of three months from the date of receipt of a certified copy of this order. No orders as to cost.

  
  
(J.K. Kaushik)  
Judl. Member

  
(Gopal Singh)  
Adm. Member

.....

mehta

2045  
2042  
2040

Part 101  
Shaw  
8/10/102

Part II and III destroyed  
in my presence on 11/1/02  
under the supervision of  
section officer ( ) as per  
order dated 11/1/02

Section officer (Record)