

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 60 of 2004

Monday, this the 25th day of September, 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P.V.P. Thajudeen,
S/o. Nalla Koya,
Police Constable,
Lakshadweep Police, Agathi Airport,
Union Territory of Lakshadweep,
Residing at : Pentamvellipur,
Androth Island,
Union Territory of Lakshadweep.

... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
2. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavarathi.
3. The Administrator,
Union Territory of Lakshadweep,
Kavarathi.

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-1 and
Mr. P.R. Ramachandra Menon for R-2 & 3)

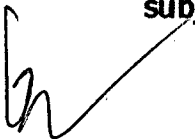


ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

This is the second round of litigation. In the earlier round, an order by the disciplinary authority removing the applicant from service was confirmed by this Tribunal by order dated 21-12-1997 in O.A. No. 587/98, which, however was quashed and set aside by the Hon'ble High Court of Kerala by judgment dated 24-12-2002 in O.P. 2466/2000 and the operative portion of the said judgment reads as under:-

"7. In the result, we set aside Ext. P2 order passed by the second respondent as well as Ext. P1 order passed by the Tribunal. However, on the basis of the decision of the Supreme Court in Managing Director ECIL v B. Karunakar (1993) 4 SCC 727, the disciplinary action should continue from the submission of the inquiry report. The inquiry report has already been forwarded to the petitioner. Now, the reason for disagreeing with the finding of the Inquiry Officer is also known to the petitioner. Therefore, a fresh show cause notice is not necessary. The petitioner is directed to file a detailed representation within 30 days from today in which case, the disciplinary authority shall consider the same and pass fresh orders. The delay in taking up proceedings, what is the punishment required etc., are matters to be decided by the disciplinary authority. The petitioner will be deemed to be in service till final orders are passed. If no written explanation is received from the petitioner within 45 days from today, the disciplinary authority shall proceed with the case as if the petitioner has no explanation."

2. Now the facts capsule, bare minimum for having a hang of the case. The applicant, while working as a constable at Kavaratti Police Station, was subjected to certain disciplinary proceedings, by way of a charge sheet,



which contained the following two Articles of Charge:-

"Article of Charge I :

Shri P.V.P. Tajuddin, PCB No. 325 of Kavaratti Police Station while posted at Kavaratti Police Station on 20.10.1990 at 1310 hours intruded into the room of the Sub Inspector of Police (SHO of Police Station) without permission and without observing usual formality and abused him in threatening tone. By doing so, Shri P.V.P. Tejuddin, PCB No. 325 of Kavaratti Police Station has committed grave misconduct and act of indiscipline and thus made himself liable for disciplinary action under CCS (CCA) Rules, 1964 and Section 7 of the Indian Police Act, 1861.

Article of Charge II :

Shri P.V.P. Tajuddin, PCB No. 325, while posted at Kavaratti Police Station was found absent from his official duty on 14.2.1990, 15.6.1990, 27.8.1990, 20.11.1990 and 2.12.1990. By wilfully absenting himself from official duties on above dates Constable B. No. 325 P.V.P. Tajuddin committed grave indiscipline and dereliction in his official duty and thus made himself liable for disciplinary action under CCS (CCA) Rules, 1965 and Section 7 of the Indian Police Act, 1861."

3. The inquiry culminated into an order of removal w.e.f. 10-01-1997 and the applicant, after exhausting the departmental remedies, approached the Tribunal in the aforesaid OA 585/98 which was dismissed by the aforesaid order dated 21-12-1998 against which the applicant moved the Hon'ble High Court of Kerala, through O.P. No. 2466/2000 and the same was allowed as aforesaid. In pursuance to the aforesaid order, the applicant made representation dated 04-1-2002 (Annexure A-2) and the disciplinary authority by order dated 04-02-2003 passed the following order:-



"I thus think that reduction to a 3 lower stage in the time-scale of pay for a period not exceeding 3 years with cumulative effect is sufficient to meet the ends of justice. I accordingly award this penalty. The period of removal from service from the date of issue of this order is regularized as not spent on duty for all intent and purpose."

4. On receipt of the aforesaid order, the applicant had made a representation dated 24-09-2003, with regard to the order relating to treating the period of removal from service as non duty, highlighting the specific order passed by the High Court and also pointing out that if the order passed was under the provisions of FR 54, the same too would not be appropriate and requested the authority to "order regularization of period of absence from duty till the issuance of order as period spent on duty for all purposes with all consequential benefits. (Annexure A-4 refers).


5. The respondents did not seem to have responded to the abovesaid representation, and the applicant had filed OA No. 60/2004. Later on, the respondents, passed annexure A-5 order dated 4th June 2005 fixing the pay of the applicant as under:-

1	<i>Pay as on 01-03-1990 (Rs 825-12-900-EB-20-1200)</i>	<i>Rs. 900/-</i>
2	Date of Next Increment	01-03-1991 (EB not crossed pending DE hence subsequent increment not sanctioned)
3	Date of D.E. Initiated	25-01-1991

4	Pay and allowances from 10.01.1997 to 03-02-2003	To be decided after issue of show cause notice
5	Pay w.e.f. 4-2-2003 after reducing 3 increments with cumulative effect for a period of 3 years	Rs 855/-
6	Date of ending of punishment period	04/02/06

6. It was also ordered that the pay of the applicant was not revised with effect from 01-01-1996 as per Revised Pay Rules. And that after the date of ending his punishment period his pay will be refixed as per rules.

7. Further, by another order dated 4th June, 2005, the respondents had informed the applicant that the applicant was entitled to only subsistence allowance during the interrupted period, in accordance with the provisions of F.R. 54. The applicant has registered his protest against the aforesaid order, stating that when the matter was pending consideration before the Tribunal, such an order is illegal and apart from the same, when the High Court has held that the applicant would be deemed to be in service till a final order is passed, the same means that all consequences of the directions must follow and thus requested for his full back wages for the period in question. Annexure A-7 letter dated 29-06-2005 refers. Respondents have considered the said representation but rejected the same, vide order dated 12th August, 2005 (Annexure A-8).



8. The applicant has preferred an amendment application, to challenge the aforesaid Annexure A-5 and A-8 application. The spinal ground of attack as contained in Ground B is that the disciplinary authority cannot deviate from the directions of the High Court. Other grounds are that Rule 54 of the F.R. does not apply as it is meant for a contingency where further inquiry is not ordered. Even if F.R. 54-A is said to be applicable, the same warrants issue of separate order relating to quantum of pay and allowances and the same has not been done. Apart from imposing the penalty of reduction of three stages of pay, non regularization would amount to multiple penalty, which is illegal. Further revision of pay cannot be denied to the applicant. Articles 14 and 16 of the Constitution have been violated.

9. The applicant, therefore, prayed for quashing of the Annexure A-5 and A-8 order and for a direction to the respondents to treat the entire period from the date of removal and the date of reinstatement as duty and consequential benefits of pay and allowances etc., and revision of pay scales be granted to him.

10. Respondents have contested the O.A. It has been stated by them that as per the High Court's order the applicant would be 'deemed to be in **service**' and not "**duty**".

 11. Provisions of Rule 10(4) of the CCS (CC&A) Rules specify the

consequence of an order of removal etc., being set aside by a Court and the same reads as under:-

"(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case."

12. A person could be kept under suspension or deemed suspension only when he is in service. The latitude available in the High Court's order when it states, "*The petitioner will be deemed to be in service till final orders are passed*" is obviously with a view to invoke the above provisions. This has to be read in conjunction with F.R. 54 which reads as under:-

"(1) When a Government servant who has been dismissed, removed or compulsorily retired as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order the reinstatement shall consider and make a specific order —

(a) regarding the pay and allowance 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;

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly, attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held) the Government servant shall, subject to the provisions of sub rules (5) and (7), 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.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant."

Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -


- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
 - (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.
- (6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.
- (7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.
- (8) Any payment made under this rule to 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 removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant."

13. And, the respondents have applied Rule 54(5) In the case of the

applicant vide para 6 of reply of the respondents and have also issued a show cause notice, vide Annexure A-6. And, by Annexure A-8, the applicant was held to be entitled to the eligible subsistence allowance as per FR 54 A (2)(1) read with FR 54 (7) and FR 54 A(4).

14. FR 54(5) becomes applicable when the case of the applicant falls under F.R. 54(3), i.e. when the Government servant is not fully exonerated, while F.R. 54(2), i.e. payment of full pay and allowances would apply when the Government servant is fully exonerated.. The order as to whether a given case falls under clause 2 or clause 5 of the Fundamental Rule must depend on the examination by the authority of all the facts and circumstances of the case and his forming the opinion therefrom of two factual findings; whether the employee was fully exonerated and in case of suspension whether it was wholly unjustified.(see **M. Gopala Krishna Naidu v. State of M.P., (1968) 1 SCR 355**) . Here, admittedly, the applicant was not fully exonerated and as such, F.R. 54(5) has been rightly invoked and order passed under F.R. 54A(2)(1) read with F.R. 54(7) and 54A(4) as contained in Annexure A-8 is also legally valid.

15. The next point for consideration is whether Annexure A-5 is legally sustainable. The pay of the applicant as on 01-03-1990 was Rs 900/- in the scale of Rs 825-12-900-EB-20-1200. As EB cannot be granted when D.E.



was under process, rightly no further increment was granted beyond Rs 900/-. By 10-01-1997, initial order of removal had been passed and the period beyond 10-01-1997 till February, 2003, i.e. date of the impugned penalty order, had been treated as non duty. During the said period the applicant was entitled to only subsistence allowance, as he was under deemed suspension. F.R. 25 deals with crossing of efficiency bar and in respect of cases, where disciplinary proceedings were involved, certain other Government Instructions would also apply. The Apex Court had occasion to deal with such a situation in the case of **O.P. Gupta v. Union of India, (1987) 4 SCC 328**, wherein it has been held as under:-

"There has to be a specific order in terms of FR 25 before a government servant can be allowed to draw his increments above the efficiency bar. The government was justified in withholding increments under FR 25 pending the departmental inquiry but after the High Court had quashed the departmental inquiry, the question whether the appellant could be deprived of his increments under FR 25 was a live issue till the controversy was settled by the Government of India, Ministry of Finance decision dated September 21, 1967. We shall first reproduce FR 25 and it is in the following terms:

"Where an efficiency bar is prescribed in a time scale, the increment above the bar shall not be given to a government servant without the specific sanction of the authority empowered to withhold increment under Rule 24 or the relevant disciplinary rules applicable to the government servant or of any other authority whom the President may, by general or special order, authorise in this behalf."


The Government of India, Ministry of Finance's decision dated September 21, 1967 as clarified by Ministry of Home Affairs, Department of Personnel and Administrative Reforms Memorandum dated April 6, 1979, insofar as relevant is reproduced below:

"(7) Procedure for consideration of cases.—(a) When

disciplinary proceedings are pending — A government servant against whom proceedings are pending but who is due to cross the efficiency bar prescribed in his time scale of pay, may not be allowed to cross the bar until after the conclusion of the proceedings. A question was raised as to the date from which a government servant whose case for crossing the efficiency bar has not been considered on account of the pendency of a disciplinary/vigilance case against him, should be considered for being allowed to cross the efficiency bar, after the enquiry is over. It has been decided, in consultation with the Ministry of Home Affairs, that if after the conclusion of the proceedings, the government servant is completely exonerated, he may be allowed to cross the efficiency bar with effect from the due date retrospectively, unless the competent authority decides otherwise. If however, the government servant is not completely exonerated, his case for crossing the efficiency bar cannot be considered with retrospective effect from the due date. Such cases can be considered only with effect from a date following the conclusion of the disciplinary/vigilance case, taking into account the outcome of the disciplinary/vigilance case.

(b) When conduct is under investigation — Same procedure as at (a) may be followed after the conclusion of the investigation and where the competent authority on consideration of the results of the investigation, has formed the opinion that a charge-sheet may be issued to the government servant concerned on specific imputations where departmental action is contemplated or that sanction for prosecution may be accorded where prosecution is proposed. Otherwise, the normal procedure should be followed.

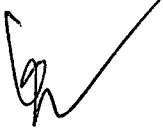
. . . The sealed cover should be opened after conclusion of the proceedings. If he is fully exonerated, the recommendations in the sealed cover may be considered by the competent authority who may lift the bar retrospectively from the date recommended by the DPC. In that case, the government servant will be entitled to the arrears of the increment(s). In case, however, the proceedings do not result in complete exoneration of the government servant, he cannot be allowed to cross the bar with retrospective effect."



16. Thus, non grant of increment across EB till the currency of penalty was over is not illegal. However, it is to be seen whether the applicant is entitled to revision of pay under the 5th C.P.C. In the case of **R.P. Kapur v. Union of India, (1999) 8 SCC 110**, the Apex Court has extracted an order of the authorities which, in pursuance of an order of the Guwahati Bench in Case No. GC 171 of 1987, paid subsistence allowance in the revised pay scale applicable to the applicant concerned. Again, in the case of **Umesh Chandra Misra v. Union of India, 1993 Supp (2) SCC 210**, the Apex Court directed the Union of India as under:-

"direct the respondents to pay to the appellant the following amounts: subsistence allowance (i) from November 20, 1975 to May 19, 1976 at the rate of 50 per cent of the salary and (ii) from May 20, 1976 to February 17, 1977 at the rate of 75 per cent of the salary with interest on both the amounts thereon at the rate of 10 per cent per annum from September 26, 1979 on which date the appellant had filed his claim before the Payment of Wages Authority till the date of payment. We further direct that the subsistence allowance be paid on the basis of the revised scale of salary, if any, which was prevalent and due to the appellant during the relevant period for which the subsistence allowance is directed to be paid."

17. In view of the above decisions and also the decision of the Madras Bench of the Tribunal in the case of **B.P. Lakshmanan vs Union of India, (1994) 28 ATC 671 (Mad)**, which held that when the applicant remained under deemed suspension from 16-09-1985 till November, 1991 and meanwhile pay scales were revised w.e.f. 01-01-1986, the applicant was



entitled to consequential revision of subsistence allowance and also the decision of Hyderabad Bench in I. Sambasiva Rao vs Union of India, (1993) 23 ATC 592, we have no hesitation to hold that even if an individual is under suspension when the revised pay scale was brought in, he is entitled to the allowance in the revised scale. Thus, the applicant who was under deemed suspension from 10-01-1997 is entitled to revision of pay scale applicable to the post he was holding. In fact, the revised pay scale is effective from 01-01-1996 through Revised Pay Rules, 1997 retrospectively and the applicant was not under suspension on that date. Thus, the respondents are liable to pay subsistence allowance at the revised rates. However, the applicant will not be entitled to the benefit of any ^D increment, as during the period of suspension, no increment is admissible, vide the decision of Rohitashwa Kumar vs State of Rajasthan, (1989) 10 ATC 808 (Jodh).

18. The last point for consideration is whether the respondents' decision to treat the period between the date of removal till the date of reinstatement as non duty for all intent and purpose as contained in the last sentence of the impugned order at Annexure A-3 is legally sustainable. The High Court has held that the applicant shall be deemed to be in service till final orders were passed. The respondents have distinguished between "service" and "duty" and rightly so. Deemed service cannot be equated as deemed duty. However, the applicant would be prejudicially affected in respect of

calculation of qualifying service as Rule 25 of the CCS (Pension) Rules, 1972 prohibits non duty to be treated for qualifying purpose. The said provision reads as under:-

"25. Counting of past service on reinstatement:

(1) A Government servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service.

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement.."

19. During the course of arguments, the counsel for the respondents fairly conceded that the purport of the order in Annexure A-3 in treating the period as one of non duty, is only to deny the applicant the benefit of pay and allowance. Thus, even as per the respondents, the period in question shall count as deemed service, which is in consonance with the High Court's order. Thus, we direct that the period from 10-01-1997 to 03-02-2003 also shall count as qualifying service for the purpose of pension. To this effect the impugned order dated 04-02-2003 (Annexure A-3) would stand modified.

20. To sum up, it is held that the applicant is not entitled to full pay and

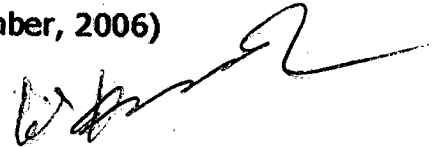
allowance for the period he was under deemed suspension and is entitled only to subsistence allowance, but under the revised pay scale applicable to the post held by the applicant at the time of deemed suspension. The applicant is also entitled to have the pay revised w.e.f. 01-01-1996 and thus, would be entitled to the difference in arrears of pay and allowance for the period from 01-01-1996 to 09-01-1997 (This order is according to the residual relief claimed vide para 8(iv) of the OA). The period from 10.1.1997 to 03-02-2003 shall, in addition to the past period of service, shall be treated as qualifying service under the provisions of Rule 25 of the CCS Pension Rules. To this extent the OA is allowed. The respondents shall implement the order within a period of three months from the date of its communication.

21. No costs.

(Dated, the 25th day of September, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER

cvr.