

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.236/2002

Friday, this the 5th day of July, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

S.Radhakrishna Pillai,
Senior Chargeman(Under orders of
compulsory retirement),
Naval Ship Repair Yard,
Kochi.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Commodore Superintendent,
Naval Ship Repair Yard,
Kochi-682 004.
2. Chief Staff Officer,
Personnel & Administrator,
HCR, Southern Naval Command,
Kochi.
3. Union of India represented by
Secretary to Government,
Ministry of Defence,
New Delhi.

- Respondents

By Advocate Mr C Rajendran, SCGSC

The application having been heard on 11.6.2002 the Tribunal on
5.7.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who has been working as Senior Chargeman
at the Naval Ship Repair Yard, Kochi, is aggrieved by A-1
order dated 12.3.2002 restricting the back wages payable to
him to 75% of the actual pay for the period from 14.12.98 to

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7.8.2001. He is also aggrieved by the inordinate delay in paying even the admitted amount.

2. It would appear that by A-2 order dated 19.6.2001, this Bench of the Central Administrative Tribunal had set aside the penalty order dated 14.12.98 whereby the applicant had been removed from service and the appellate order dated 10.5.99 confirming the penalty so imposed. However, this Tribunal in the said order had made it clear that the 1st respondent therein was at liberty to proceed in accordance with the provisions of sub rule 21(a) of Rule 14 and forward the enquiry report and its findings to the competent higher disciplinary authority for an appropriate action. The 2nd respondent thereupon issued A-3 order reinstating the applicant in service with effect from 14.12.98, i.e. the date from which the applicant had been imposed with a penalty of removal from service. It was also specifically ordered that the entire period from 14.12.98 onwards was to be treated as on duty and that the applicant was entitled for all service benefits. The applicant claimed consequential benefits like arrears of pay and allowances vide A-4 representation dated 20.9.2001. To this, he got A-5 reply with a direction to submit certain particulars regarding pay and allowances, if any, received by him in case of his employment elsewhere during the period 14.12.98 to 7.8.2001. The applicant furnished the necessary details as per A-6 representation dated 26.9.2001. By A-7 order dated 8.12.2001 issued from the office of the 1st respondent, the applicant was informed of the proposal of the competent authority to fix the quantum of

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his pay and allowances at 75% of the pay to which he would have been entitled had he not been removed from service for the period from 14.12.98 to 7.8.2001 duly allowing annual increments of pay, if any, in accordance with FR.54-A(2)(i).

The applicant was advised to submit his written representation, if any, ^{against} the above proposal within 10 days.

By A-8 representation dated 20.12.2001 made through proper channel, the applicant invited the 1st respondent's notice to the operative part of this Tribunal's order in O.A.799/1999 dated 19.6.2001(A-2) and the orders of the 2nd respondent made in compliance therewith. By his subsequent letter A-9 dated 2.1.2002, the applicant informed of his entitlement to full pay and allowances for the period from 14.12.98 to 7.8.2001 in accordance with rules, provisions of FR&SR and the relevant instructions therein. It would also appear that an M.A. filed by the respondents seeking certain clarifications with regard to the consequential benefits admissible in pursuance of this Tribunal's order in O.A.799/1999 was duly considered by this Tribunal and it was decided vide A-10 order dated 31.1.2002 that as the findings in the said order were self explanatory and clear, there was no room for any doubt and accordingly this Tribunal rejected the M.A. for clarification. The applicant filed a further representation A-11 dated 6.3.2002 highlighting his financial problems and requesting the respondents to release the arrears of pay and allowances due to him with interest. By the impugned order A-1 dated 12.3.2002, the 1st respondent has considered the facts elaborately and held that the applicant's case fell under FR.54 A(2)(i) and that the quantum of payment for the

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period from the date of removal from service to the date of reinstatement was also to be fixed as per the said Fundamental Rules. It would appear that the respondents took the stand that since the applicant had not been exonerated on merits by the Central Administrative Tribunal and since the order of his removal from service had been set aside solely on the ground of non-compliance of the requirements of Clause(1) of Article 311 of the Constitution, the reduced pay and allowances for the period 14.12.98 to 7.8.2001 was justified in terms of the provisions of FR 54 A(2)(i). The applicant has filed this application seeking the following main reliefs:

i) Quashing of A-1.

ii) Declaration that the applicant is entitled to full back wages for the period 14.12.98 to 7.8.2001 and direction to the respondents to pay the full back wages for the said period immediately.

iii) Direction to the respondents to pay interest at the rate of 20% per annum on the delayed payment with effect from the date on which the payment became due until the actual date of payment.

3. According to the reply statement filed by the respondents, the application is devoid of merit since the applicant's reinstatement was not based on any order of the Tribunal acquitting the applicant, on merits. There were some procedural improprieties which the respondents were at liberty

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to rectify. The Tribunal had permitted the respondents to proceed with the disciplinary matter in accordance with the provisions of Rule 14 of the CCS(CCA) Rules, 1965. The reinstatement and the further conduct of the disciplinary proceedings should be considered together. Though the applicant was entitled to regular pay and allowances from the date of reinstatement, the intervening period, i.e. from 14.12.98 to 7.8.2001 was treated as period under deemed suspension. Under FR 54(A)(2)(i), the applicant would be entitled to such an amount(not being the whole) of the pay and allowances to which he would have been entitled had he not been removed from service for the period from 14.12.98 to 7.8.2001, as determined by the competent authority. The decision was taken after affording adequate opportunity to the applicant and after considering his representation. The quantum of pay and allowances for the period 14.12.98 to 7.8.2001 could not be termed as back wages since the applicant had not been physically present in the office and since he did not render any service or put in any effort to earn such wages. Therefore, there was no impropriety or inaccuracy either in terms of facts or law in the matter of deciding to allow him pay and allowances to the extent of 75% of his normal pay and allowances for the said period. With regard to the delay, according to the respondents, the matter was to be taken up with higher authority for an appropriate action and even an M.A. was preferred seeking certain clarificatory orders from this Tribunal. Thus, the delay was not inordinate and deliberate and had occurred under the circumstances beyond the respondents' control. The application is therefore, liable to be dismissed, according to the respondents.

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4. We have heard Shri M.R.Hariraj, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC for respondents.

5. Shri Hariraj, learned counsel for the applicant would invite our attention to the provisions of FR.54-A and contend that the applicant's case was not covered by FR.54-A, because the applicant was reinstated in the first place and the period of absence was treated as spent on duty. According to him, since the entire intervening period from 14.12.98 onwards was treated as on duty and he was held to be entitled to all service benefits, he is eligible for full pay and allowances for the said period. A-3 order of the 2nd respondent is therefore in full compliance with the Tribunal's order and therefore, A-1 order inasmuch as it denies full pay and allowances for the period spent on duty and reduces the same to 75% thereof is unsustainable. Shri C Rajendran, learned SCGSC would contend that the applicant was not entitled to full pay and allowances for the period during which he was neither engaged nor any duty done nor any work put in. Since he did not contribute any work to the organisation during the period in question, the grant of consequential benefits directed to be given by the Tribunal had to be quantified in accordance with the existing statutory rules and regulations. He would maintain that the impugned A-1 order does not transgress or over run the orders of the Tribunal. The pay and allowances for the period between 14.12.98 to 7.8.2001, were correctly determined by the respondents in accordance with FR.54.A(2)(1), in view of the fact that the penalty order

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was set aside by the Tribunal purely on the ground of noncompliance with the provisions of Article 311 of the Constitution. It was not the case of the applicant that he was exonerated on merits. The respondents were given the liberty to proceed as per sub rule 21(a) of CCS(CCA) Rules, 1985. In such a situation, the respondents had the duty to pay such amount (not being the whole) of pay and allowances to which the applicant would have been entitled had he not been removed from service, the learned SCGSC would urge.

6. We have gone through the material on record and have carefully considered the contentions put forward by the learned counsel for the applicant and the learned SCGSC. We find that the original order of removal from service impugned in O.A.799/99 was set aside by this Tribunal on the basis of the incompetence of the authority who issued the impugned order. It is true that this Tribunal did not go into the other rival contentions of the parties. Thus, the applicant does not appear to have been exonerated on merits. The provisions concerning regularisation of the period of absence on duty and the pay and allowances to be paid to a Government servant who has been reinstated in the light of a court's order setting aside the order of his dismissal or removal or compulsory retirement are contained in FR.54-A. The relevant provisions are quoted below:

"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 regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub

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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 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 judgement of the Court shall be regularised 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."

(Emphasis supplied)

It would be clear from the above provisions that if the order of dismissal or removal or compulsory retirement of service is set aside by a court of law (in this case the Tribunal) and the Government servant is reinstated, the period of his absence from duty has to be regularised and his pay and

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allowances for such period has to be determined in accordance with the provisions of sub rule(2) or (3) of FR.54(A), subject to the directions, if any, of the court. Thus, it would be apparent that the provisions of sub rule 2 and 3 quoted above should be applied only with reference to the court's directions, if any. In other words, in a case where the court has not given any directions, the authorities concerned could proceed to consider regularisation of the period of absence and determine the pay and allowances payable to the Government servant purely in accordance with the provisions of FR.54-A(2) and FR.54-A(3). In this case, this Tribunal has evidently directed the respondents to reinstate the applicant in service forthwith with all consequential benefits, as if the impugned orders have not been issued. No doubt, this Tribunal has further made it clear that the 1st respondent in that case was entitled to proceed in accordance with the provisions of sub rule 21(a) of Rule 14 of CCS(CCA) Rules, 1965 and forward the inquiry report and its findings to the competent higher disciplinary authority for appropriate action. By A-3 order dated 8th August, 2001, the 2nd respondent is seen to have implemented the Tribunal's order. The operative part i.e. Para.6 of A-3 order is quoted hereunder:

2. "6. Now, therefore the undersigned hereby orders that Shri S.Radhakrishna Pillai is reinstated in service with effect from 14th Dec. 98 i.e., the date from which Shri S.Radhakrishna Pillai was imposed with the penalty of "Removal from Service". It is further orders that the entire period i.e. from 14 Dec. 98 onwards is to be treated as on duty and also entitled for all service benefits."

There is not even a whisper regarding the intention of the respondents to exercise the liberty to proceed further in the matter as observed by the Tribunal in the order extracted above. On the other hand, it gives a clear impression that the applicant has been reinstated in service from 14.12.98 and that the entire period of his absence from duty was treated as spent on duty and that he was entitled for all service benefits. In our considered opinion, any subsequent action taken by the respondents to revive the enquiry proceedings and which eventually might have led to the compulsory retirement of the Government servant concerned could not take away the effect of this Tribunal's directions which according to us were faithfully implemented in the A-3 order. Thus, we see no reason why the applicant's entitlements should have been reduced in accordance with the provisions of FR.54-A. The respondents allege that they had some doubt regarding the directions issued by this Tribunal and that is said to be the reason why a M.A.107/2002 in O.A.799/99 seeking clarification was filed on 31.1.2002. This Tribunal's directions contained in the order dated 19.6.2001 were apparently implemented by the 2nd respondent as per A-3 order dated 8.8.2001, i.e. before M.A. seeking clarification was filed. The proposal to fix the quantum of the applicant's pay and allowances at 75% of the pay to which he would have been otherwise entitled was communicated as per A-7 dated 8.12.2001, again well before the M.A. was filed. Apparently, this was in response to the applicant's representation dated 20.9.91(A-4) for disbursement of the arrears of pay and allowances from December 1998 onwards. In our view, if the respondents had intended to

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proceed further in the matter, that fact ought to have been mentioned while implementing this Tribunal's orders, i.e. in A-3 order or immediately thereafter by any other suitable communication. A-3 makes it clear beyond doubt that the applicant had been reinstated on the understanding that he was on duty for the entire period of absence on account of the penalty order which was subsequently set aside and that he was entitled for all service benefits. This Tribunal had not directed the respondents to proceed against the applicant. The Tribunal had simply observed that the respondents were entitled to proceed in accordance with the provisions of sub rule 21(a) of Rule 14 of the CCS(CCA) Rules and forward the inquiry report in accordance with law. Even after a lapse of considerable time from the date of his reinstatement, no communication regarding the initiation of inquiry or any other related matter was brought to the notice of the applicant. The applicant was informed about the proposed reduction of his normal pay for the intervening period only when he asked for the arrears which were still outstanding. In this connection, it is pertinent to refer to Government of India, MHA OM No.F.2/9/59-Ests.(A) dated 27.5.61 and 30.5.62 available at pages 231 and 232 of Swamy's Compilation of FR-SR Part I General Rules, 4th Edition dealing with Regulation of pay on reinstatement on grounds quoted of equity or court judgement etc.) The relevant portion is quoted below:

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"(4) Regulation of pay on reinstatement on grounds of equity or Court judgement, etc. - The following questions in connection with the reinstatement of dismissed/removed/discharged Government servants or the Government servants whose service had been terminated, came up for consideration:-

1) Whether before the Government of India decide to reinstate an individual on grounds of equity, concurrence of the Ministry of Finance should be obtained for payment of pay and allowances for the intervening period; or whether the administrative authorities, could themselves, after following the prescribed procedure, e.g. consultation with the Union Public Service Commission, etc., reinstate the person and sanction payment of pay and allowances under FR 54.

2) Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

2. As regards question (1) above, it has been decided that the concurrence of the Ministry of Finance will not be necessary for reinstating a Government servant if the authority which reinstates the Government servant is competent to appoint him. The question as to what pay and allowances should be allowed for the intervening period and whether or not the period should be treated as duty, will be dealt with under FR 54.

3. Regarding question(2) stated in Para.1 above, it has been decided that FR 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service is held by a Court of Law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution. In such cases-

(i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under Rule 12(3) or 12 (4) of Central Civil Services (Classification, Control and Appeal) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

ii) if the Government servant is not "deemed" to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory, provided that where the reinstated Government servant has secured employment during any

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period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him nothing shall be paid to him:

Provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the Court regarding arrears of salary.

4. As the termination of service of a Government servant without following the procedure laid down in the Central Civil Services(Classification, Control and Appeal) Rules, the Central Civil Services (Temporary Service) Rules, the CSR or the terms of his appointment, etc., results in the payment of arrears by way of pay and allowances, the need for meticulously observing the "proper procedure" in such cases is once again impressed on all concerned."

From sub clause 2 and 3 above, it would appear that the applicant's reinstatement, regularisation of the period of absence, and declaration of his entitlement became absolute with the issue of A-3 order dated 8.8.01. There is no material to show that the applicant was placed under suspension or deemed to be placed under suspension as mentioned in the above OM. Therefore, the payment of full pay and allowances for the intervening period and the treatment of that period as duty for all purposes will be automatic and compulsory. Respondents have not been able to rebut the submission made by the applicant with regard to his employment during the intervening period and the claim that he did not receive any remuneration during the said period. The applicant's claim for full pay and allowances for the entire period has to be upheld in terms of this Tribunal's order and the A-3 order that followed. With regard to the applicant's

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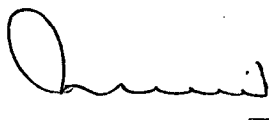
claim for interest, we find that the Tribunal's order (A-2) in O.A.799/99 is dated 19.6.2001 and that by A-7 order dated 8.12.2001, the first respondent communicated the proposal of the competent authority to fix the quantum of the applicant's pay and allowances at 75% of his normal pay. Having regard to the fact that the applicant furnished necessary particulars and filed a representation A-8 dated 20.12.2001, we hold that the applicant is entitled to interest on the full amount of pay and allowances pertaining to the intervening period with effect from 1.1.2002 till the date of actual payment.

7. In view of the facts and circumstances explained above, we dispose of the application in the following manner:

The impugned A-1 order being unsustainable, is set aside. The applicant is entitled to full pay and allowances for the period 14.12.98 to 7.8.2001. The respondents shall allow interest to the applicant on the amount of arrears of pay and allowances pertaining to the period 14.12.98 to 7.8.2001 calculated at the rate of 6% per annum from 1.1.2002 till the date of actual payment thereof. The respondents are directed to carry out the above directions at an early date, and in any case, not later than three months from the date of receipt of copy of this order.

8. There is no order as to costs.

Dated, the 5th July, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

APPENDIX

Applicant's Annexures

1. A-1: True copy of the order No.CS/2691//113(PC) dated 12.3.2002 issued for the 2nd respondent.
2. A-2: True copy of the final order of this Tribunal dated 19.6.2001 in O.A.799/99.
3. A-3: True copy of the order No.CS2691/113(PC) dated 8.8.2001 issued by the 2nd respondent.
4. A-4: True copy of the representation dated 20.9.2001 submitted by the applicant to the 1st respondent.
5. A-5: True copy of the order No.PA/03/2690/05(SRP) dated 21.9.2001 issued by the 1st respondent.
6. A-6: True copy of the representation dated 26.9.2001 submitted by applicant to the 1st respondent.
7. A-7: True copy of order No.PA/03/260/05(SRP) dated 8.12.2001 issued for the 1st respondent.
8. A-8: True copy of the representation dated 20.12.2001 submitted by the applicant to the 1st respondent.
9. A-9: True copy of the representation dated 2.1.2002 submitted by the applicant to the 1st respondent.
10. A-10: True copy of the order dated 31.1.2002 in M.A.107/2002 in O.A.799/99 on the file of this Tribunal.
11. A-11: True copy of the representation dated 6.3.2002 addressed to the 2nd respondent.
12. A-12: True copy of the letter dated 10.10.2001 issued by the Kerala Housing Board.

Respondents' Annexures:

13. R-1: True copy of relevant extract of FR 54-A(2)(1)
14. R-2: True copy of Competent Higher authority's order No.CP(L)/5302/11 dated 29.1.02 imposing penalty of compulsory retirement to the applicant.
15. R-3: True copy of letter No.PA/01/2750/01 dated 3.4.2002 issued by Naval Ship Repair Yard, Kochi under which Supply bill of the applicant forwarded to JCDA(Navy), Kochi.
16. R-4: True copy of letter No.PA/01/2750 cash dated 15.4.2002 issued by the Naval Ship Repair Yard, Kochi to the 1st applicant.
17. R-5: True copy of news item appeared in Malayala Manorama daily on 6.8.2000.

18. R-6: True copy of letter No.PA/03/2690/05(SRP) dated 8.4.2002 issued by Naval Ship Repair Yard, Kochi to the applicant.
19. R-7: True copy of letter No.CP(L)/5302/11 dated 3.10.2001 issued by the Naval H.Q. to the applicant.
20. R-8: True copy of letter dated 7.11.2001 submitted by the applicant, addressed to Director Civilian Personnel, Naval H.Q, New Delhi.
21. R-9: True copy of Navy Order(CIV) 2/80 regarding submission of representation to the higher authorities.