

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 335 of 2005**

Monday, this the 23<sup>rd</sup> day of October, 2006

**C O R A M:**

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

P.P. Sayed, Ismail Koya,  
S/o. Kunhi Koya,  
Junior Engineer/Electrical,  
Electrical Sub Division, Kavaratti,  
Union Territory of Lakshadweep,  
Residing at Type III quarters,  
General Pool, Lagoon Road,  
Kavaratti, U.T. Of Lakshadweep

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

**v e r s u s**

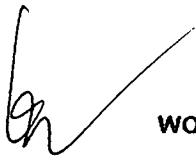
1. The Administrator,  
Union Territory of Lakshadweep,  
Kavaratti.
2. The Executive Engineer (Electrical),  
Electrical Division,  
Union Territory of Lakshadweep,  
Kavaratti.

... Respondents.

(By Advocate Mr. S. Radhakrishnan)

The Original Application having been heard on 13.10.06, this Tribunal on 23.10.2006 delivered the following:

**O R D E R**  
**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

  
On the basis of a contemplated disciplinary proceedings, the applicant, working as Junior Engineer(Electrical) was suspended by order dated

27.07.1993 vide Annexure A-1. No proceedings under the disciplinary rules were initiated, though, a criminal case No. 37/98 was filed in the Sessions (Special) Court for Lakshadweep at Ernakulam. The criminal case, however, ended in the applicant's acquittal vide Annexure A-2 judgment dated 23.10.1999. The suspension, however continued despite the applicant's representation (Annexure A-3) for revocation of suspension after the acquittal. It was by Annexure A-4 order dated 29-03-2000 that the authorities revoked the suspension. At the time of suspension in 1993, the pay of the applicant was Rs 1720/- in the grade of Rs 1400-2300 and though the respondents had fixed the pay of the applicant under the revised scale of Rs 5,000 - 8000, the pay was not fixed at Rs 5,300/- corresponding to the earlier pay of Rs 1720/- but was fixed at the minimum i.e. Rs 5,000/-. The same continues till today and the reason is that the respondents have not so far considered as to how to treat the period of suspension. In other words, according to the applicant, the mandatory provisions of Rule 54(B) of the Fundamental Rules have not been complied with. And, the applicant through Annexure A-5 representation dated 03-08-2000 specifically requested the Executive Engineer for taking necessary action in this regard but no action had been taken by the respondents. Further, failure to regularize the period of suspension also resulted in the applicant's not being considered for ACP benefits, which, if made available, would have resulted in the applicant's pay being fixed in the scale of Rs 6,500 - 10,500/-. As such, the applicant renewed his request by Annexure A-6 representation dated 05-04-2003,

followed by Annexure A-7 letter dated 04-03-2005 for regularization of the period of suspension as also for consideration of ACP benefits. As there was no response, the applicant has filed this OA and prayed for the following relief(s):-

- (a) Direction for regularization of the period of suspension from 27-07-1993 to 03-04-2000;
- (b) Direction to the respondents to fix the pay of the applicant correctly in the scale of Rs 5,000 - 8,000/- in accordance with law.
- (c) Direction to the respondents to consider the case of the applicant for ACP benefits of financial upgradation.
- (d) Direction for payment of arrears of pay and allowances arising out of the above relief with interest @ 12% for which purpose, the Tribunal may calendar time schedule.

In addition the applicant has claimed TA/DA for attending the criminal court case and also cost.

2. Respondents have contested the OA. According to them, abandonment of public duties by the applicant and certain others resulted in a shortage of 61,081 litres of HSD and 59 Nos. of empty MS barrels (worth about Rs 5.5 lakhs) detected on 03-06-93. The matter was referred to the CBI which found the applicant inter alia responsible for the said shortage and as such he was suspended along with two others w.e.f. 27-07-93. Criminal case was filed in the competent court which, by judgment dated 23-10-1999 found the applicant as not guilty and hence acquitted him. The second

accused of course died during the pendency of the proceedings. It was after ascertaining from the CBI that they they did not desire to prefer any appeal against the judgment of the Trial Court that suspension of the applicant, invoking the provisions of Rule 10(5) of the CCS (CC&A) Rules, was revoked. And, soon after the documents were received from the CBI, necessary Regular Departmental Inquiry was initiated vide Annexure R-2(a) Charge Memorandum dated 20-09-2003 . Common proceedings have been initiated and Inquiry Officer and Presenting Officer have also been appointed. Further proceedings in the inquiry could not, however, be made in view of a stay order granted in the case of two of the other charged officers. Thus, the administration has not abandoned the proceedings. As the proceedings are pending, decision in regard to regularization at this juncture is not possible and the same would be taken only after completion of proceedings. However, taking into account all relevant facts and circumstances the pay of the applicant has been fixed in the revised scale of Rs 5000 – 8000 provisionally at the minimum of Rs 5000/- w.e.f. the date of his reinstatement, which will, of course, be refixed immediately on finalization of the pending departmental inquiry. ACP benefits cannot also be considered due to the pending departmental inquiry as all the criteria prescribed for regular promotion are required to be satisfied for granting the financial upgradation under the ACP Scheme as per rules and during the pendency of proceedings no such benefits can be considered . As regards TA claims, the same could be settled only after reimbursement of the legal charges for which

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concurrence of the UPSC is required as per rules and necessary proposal has already been submitted to the Commission.

3. The applicant, in his rejoinder submitted that while issuing the order of revocation of suspension vide Annexure A-4, the cardinal principles enunciated in the rules in such cases should have been followed and specific order issued in accordance with Rule 54 of the Fundamental Rules and Supplementary Rules. The applicant has also contended that the respondents are not right in not releasing the annual increments.

4. The respondents have filed an additional reply in which their contention as in the reply was reiterated and further they have annexed Annexure R2(e) and R2(f) orders relating to release of TA/DA and legal expenses. (In view of Annexure R2(e), prayer for TA/DA claims becomes infructuous.)

5. Counsel for the applicant submitted that F.R. 54(B) (1) mandates that at the time of revocation of suspension, the authorities shall pass suitable order with regard to regularization of the period of suspension and that this mandatory requirement has to be complied with even when the departmental proceedings are pending. And, when the proceedings are concluded, if need be, the earlier order passed under FR 54(B)(1) could be suitably modified as provided for in Rule 54B(6) of the F.R.

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6. Counsel for the respondents on the other hand would contend that the provisions as contained in FR 54(B) is only discretionary. Though the word, "shall" has been used in the said Rule, there are decisions to the effect that the term "shall" would mean "may". Thus, according to the counsel for the respondents, the 54-B(1) is only an enabling provision. To substantiate the same the counsel for the respondents has referred to the Government of India Instructions No. 3 below Rule 54(B) which reads as under:-

*"The Government of India have conveyed the following clarifications in regard to certain points which have been raised in connection with the application of FRs 54, 54-A and 54B:-*

*1. The decision of the competent authority under FRs 54, 54-A and 54 B is in respect of two separate and independent matters, viz (a) pay and allowances for the period of absence and (b) whether or not the period of absence should be treated as duty.*

*It is not necessary that the decision on (a) above should depend on (b) above.*

***The competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances. It has no discretion to pay full pay and allowances when the period is treated as "non-duty".***

***If no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as "non duty". In such event, the past service (i.e.) service rendered before dismissal, removal, compulsory retirement or suspension will not be forfeited."***



7. Arguments were heard and documents perused. F.R. 54B (1) and (6) read as under:-

*"54 B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -*

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement) as the case may be; and*
- (b) whether or not the said period shall be treated as a period spent on duty.*

*(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."*

8. An analysis of FR 54(B) would be essential at this juncture. Rule 54-B (1), as extracted above, stipulates that the competent authority shall, when revoking suspension, pass specific order (a) relating to pay and allowance for the period the government servant was under suspension and (b) as to the treatment of the period of suspension as 'duty' or 'non-duty'. These two, vide clarification reproduced in para 6 above are independent of each other. 54(B) (2) deals with a contingency where the government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded in which event the period between the

date of suspension and the date of death shall be treated as duty for all purposes. 54 B(3) deals with a situation where the the authority competent to order reinstatement itself is of the opinion that the suspension was wholly unjustified, in which event, the individual is entitled to full pay and allowances (subject to certain conditions as contained in the proviso) and further the entire period shall be treated as of duty. In cases other than those falling under sub rules (2) and (3), vide sub rule (5), the authority has the discretion not to pay the full pay and allowances but any portion of the same, subject to the conditions stipulated under sub Rule(8) and (9) and vide sub rule (7) in such a case i.e. case that falls under sub rule (5), the period of suspension shall not be treated as a period of duty save when the competent authority specifically passes an order to the effect that the period shall be treated as of duty.

9. Reverting back to the provisions of FR 54-B(1), with which we are now concerned, vide clarifications issued, ***the competent authority has the discretion to pay the proportionate pay and allowances and treat the period as duty for any specified purpose(s) or only to pay the proportionate pay and allowances and if no order is passed directing that the period of absence be treated as duty for any specified purpose, the period of absence should be treated as "non duty"*** This would thus mean full discretion is available in regard to passing or non passing of order relating to treatment of the period of suspension as

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of duty or non duty and absence of any such order would mean that the period should be treated as non duty. And, similarly, discretion is available to pay full or proportionate pay and allowance for the period of suspension, but there is no discretion either to pass or not to pass an order in this regard. Passing of an order relating to pay i.e. full or proportionate is mandatory and if proportionate, then equally mandatory is the issue of show cause notice as held in the case of Gopala Krishna Naidu (1968) SCR 355 as extracted in the paragraph below and in case the authority passes an order when the proceedings are pending, it shall modify the same on the conclusion of the proceedings, vide Rule 54(B)(6).

10. The Apex Court had an occasion to discuss about a situation falling under the provisions of F.R. 54 (in the form as it then existed) in M. Gopala Krishna Naidu v. State of M.P., (1968) 1 SCR 355 and the issue therein was whether there shall be a show cause notice, if the competent authority desired to afford only proportionate pay. The three Judges' Bench of the Apex Court held,

**3. Fundamental Rule 54 on the interpretation of which this appeal depends is as follows:**

"(1) When a Government servant who has been dismissed, removed or suspended is reinstated; 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; and

(b) whether or not the said period shall be treated as a period spent on duty;

(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent allowances are admissible:

Provided that the payment of allowances under clause (2) or clause (3) shall be, subject to all other conditions under which such allowances are admissible:

Provided further that such proportion of such pay and allowances all not be less than the subsistence and other allowances admissible under Rule 53.

(4) In a case falling under clause (2), the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5) In a case falling under clause (3), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desired, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the government servant."

.....

**10.** *In our view, FR 54 contemplates a duty to act in accordance with the basic concept of justice and fair play. The authority therefore had to afford a reasonable opportunity to the appellant to show cause why clauses 3 and 5 should not be applied and that having not been done the order must be held to be invalid.*

 11. Thus, the rule relating to passing of order under Rule 54-B(1) in

regard to pay and allowances for the period of suspension is clear. There shall be a positive order passed in this regard and if there be any truncation in pay and allowances, the same shall be only after the affected individual is afforded a reasonable opportunity to show cause, before passing such an order. However, in so far as passing an order as to how to treat the period of suspension, since the same is independent of the other part of the rule, full discretion is available. In fact, it has been clarified that where no order in regard to treatment of the period is passed, the same would mean only as "non-duty" and in that event, however, the period of past services, prior to suspension is not forfeited.

12. The above rule position is now telescoped on the facts of the present case. Admittedly, on the date of revocation of suspension, there has neither been a criminal case nor any departmental proceedings pending against the applicant. In fact initially suspension order was passed on the basis of "contemplated disciplinary proceedings" and not on the basis of any contemplated criminal case against the applicant. And, the contemplation of disciplinary proceedings remained without culmination into regular departmental proceedings when suspension order was revoked in 2000. Criminal proceedings also ended in acquittal of the applicant. And, as per counter, it was only after the documents were received from the CBI that charge sheet was issued in 2003. On revocation, admittedly no specific order has been passed relating either to pay and allowances or treatment of

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the period of suspension. Of course, the pay of the applicant was fixed at Rs 5,000/- in the scale of Rs 5000 – 8000 when as per the pay drawn prior to suspension which was Rs 1720, the replacement pay works out to Rs5,300/-. In all probability subsistence allowance from 01-01-96 or immediately thereafter would have been based on the above pay of Rs 5,000/-. Thus there is a reduction in the pay of the applicant during the period of suspension. While non passing of any order relating to treatment of period of suspension could be construed as period of non duty as given in the clarification, such a provision not being available with regard to pay and allowance during the period of suspension, the authorities cannot reduce the pay and allowance save after issue of show cause notice to the applicant, vide judgment of the Apex Court in the case of Gopalakrishna Naidu (supra). To this extent the authorities have clearly erred. This error could however, be rectified by passing a suitable order taking into account the subsequent event of charge sheet issued to the applicant. Thus, the authorities have to pass an order as to what would be the pay of the applicant during the period of suspension. The pay could be full or proportionate. If full, no show cause notice need be issued; if it is proportionate, before passing orders in this regard, show cause notice shall be issued to the applicant. Again, with regard to pay and allowances for the period after revocation, there being no hurdles in granting increment, save if EB stage occurs, the respondents shall increment the pay from the date of revocation by adding the annual increment, till the EB stage is reached. Case of EB, if any shall be considered

in accordance with law.

13. Though it is the discretion of the respondents not to pass any order relating to treatment of the period of suspension as of duty or otherwise, once an order is to be passed with reference to the pay and allowances, justice demands that formal order is passed even in respect of treatment of the period of suspension. That would enable the respondents to consider the period for the purpose of working out the eligibility of the applicant for ACP.

14. The OA, therefore, is disposed of with the following directions to the respondents :

(a) The respondents shall pass suitable orders relating to pay and allowances during the period of suspension of the applicant i.e. for the period from 27-10-1993 to 29-03-2000 and in case full pay is not proposed to be paid, the applicant shall be issued with necessary show cause notice giving reasonable time to react on the same.

(b) Once the order as stated in (a) above has been passed, the applicant shall accordingly be paid the pay and allowances (after adjustment of the subsistence allowance) for the period of suspension and thereafter, the pay of the applicant shall take into account the annual increment in the scale of Rs 5,000 - 8000/-. If EB stage comes in between, the same shall be considered in accordance with law.

(c) As regards treating the period of suspension as duty or non duty, a specific order be passed and if the same is on duty, the same shall also

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be taken into account with regard to annual increments during the period of suspension.

(d) Depending upon treating the period of suspension as duty or non-duty, the entitlement of the applicant for ACP should also be considered and decision in this regard be communicated to the applicant.

15. The above drill shall be completed within a period of three months from the date of communication of this order. No costs.

(Dated, the 23<sup>rd</sup> October, 2006)



**N. RAMAKRISHNAN**  
**ADMINISTRATIVE MEMBER**



**K. B. S. RAJAN**  
**JUDICIAL MEMBER**

CVR.