

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 07.08.2014.

Pronounced on 25th September 2014.

Original Application No.256/2008

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Asafuddaula Khan, aged about 59 years, son of Sri Tola Khan, Resident of A-11, Shervani Nagar, Near Bilali Masjid, Post Maharishi Vidya Mandir, Sitapur Road, Lucknow.

-Applicant.

By Advocate: Sri Deepak Shukla for Sri Prashant Kumar.

Versus.

1. The Director General, Council of Scientific Industrial Research, Anusandhan Bhawan, Rafi Marg, New Delhi.
2. The Director, Central Institute of Medicinal & Aromatic Plants, Kukrail Picnic Spot Road, Lucknow.

-Respondents.

By Advocate: Sri Pankaj Awasthi for Sri A.K. Chaturvedi.

O R D E R

BY MS. JAYATI CHANDRA, MEMBER (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

“(8.i) to issue/pass any order or direction quashing the impugned order dated 14.05.1998 and 28.11.2002 (Annexure No.1 & 2 to the OA) after summoning original from the records holding such order is

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arbitrary and illegal therefore violative of provisions of the Article 14 of the Constitution of India and unsustainable in law.

(8.2). *And further direct the Respondents to grant all consequential benefits treating the order 14.05.1998 and 28.11.2002 as nonest in the eyes of law.*

(8.3). *allow this Original Application with costs in favour of the applicant, in the interest of justice, equity and fair play.”*

2. The case of the applicant is that he was initially appointed as Junior Lab Assistant (JLA) in CIMAP and subsequently, he was promoted as Senior Lab Assistant and then Junior Technical Assistant in the year 1991. On 07.03.1995, a FIR under Section 363, 366 IPC was lodged against the applicant due to malafide intention and he was detained on 22.03.1995 for more than 48 hours. As such, on 31/03/1995, the Director, CIMAP passed an order (Annexure 3) suspending him w.e.f. 22.3.1995. The applicant was tried vide Sessions Trial No.510/1995 State Vs. Asafuddaula Khan & Others). The Trial Court acquitted the applicant specifically holding in the judgment that the applicant was not involved in the crime. In the judgment dated 27.02.1998 (Annexure-4). The Session Court has held the following:-

“इस प्रकार इस साक्ष्य में यह बात स्पष्ट हो गयी कि अभियुक्त आसिपुददौला एवं विकार अली का इस अपराध में कोई हाथ नहीं है।

जहाँ तक अभियुक्त सरताज का सवाल है उस समय अपहृता की आयु 16 वर्ष से कम थी इसलिए उसने उसके संरक्षक के बिना अनुमति की उसके साथ बलात्कार करने के उद्देश्य से जबरदस्ती डरा-धमकाकर भगा ले गया इसलिए उसके विरुद्ध धारा 363 भा० दं० सं० का जुर्म साबित होता है और उसका उद्देश्य उसके साथ अवैध रूप से बलात्कार करना था इसलिए उसके विरुद्ध धारा 366 भा० दं० सं० का आरोप साबित होता है और चूंकि उसने कु० वीनू सिंह के साथ बलात्कार किया है इसलिए धारा 376 भा० दं० सं० का आरोप साबित होता है इस प्रकार

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उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि अभियुक्त सरताज के विरुद्ध लगाये गये आरोप धारा 363/366/भाद०सं० का सभी शंकाओं से परे साबित होता है लेकिन अभियुक्त आसिपुददौला एवं विकार अली पर लगाया गया आरोप धारा 363 एवं 366 भाद०सं० का साबित नहीं होता है।”

3. Consequent upon the decision of the Criminal Court, the respondents passed an order dated 6.5.1998 (Annexure-5) by which his suspension was revoked w.e.f. 2.3.1998. By another order dated 14.5.1998, the respondents citing the provision of FR-54-B ordered that the pay and allowances of the applicant during the period of his suspension shall be restricted to the suspension allowance already paid to him and the period of suspension shall be counted as period spent on duty for pensionary benefits. The applicant preferred an appeal dated 25.6.1998. The appeal of the applicant specifically mentions the aforesaid order had been passed without any disciplinary proceedings being conducted against him. Moreover, he has been acquitted in the Criminal case after full-fledged trial. However, the Appellate Authority rejected his appeal. Moreover, in order to fill-up the lacuna the respondents issued the Memorandum/ show cause notice dated 29/30.10.1999 to the applicant asking him to show cause as to why the pay and allowances of the applicant during his suspension may not be limited to subsistence allowance etc. already paid to him during the period of his deemed suspension. He replied to the said show cause notice on 09.11.1999 but by an order dated 15.5.2000 (Annexure-9), the decision taken by the letter dated 14.5.1998 was affirmed.

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4. By a separate order dated 26.6.1998 (Annexure 10), the applicant's explanation was sought for his absence during the period 13.3.1995 to 21.3.1995. He was further asked to explain as to why the unauthorized absence may not be treated as "Dies-non". The applicant replied to the said shows cause notice on 16.7.1998, stating therein that he had applied for earned leave for the aforesaid period by his letter dated 16.7.1998. The representation including his request for grant of earned leave was rejected by an order dated 28.8.1998. Consequently, the period w.e.f. 13.3.1995 to 21.3.1995 treated as 'Dies-non'. The applicant preferred an appeal on 19.5.1999 against the order dated 28.8.1998. This appeal was also rejected by the second impugned order dated 22.11.2002.

5. The applicant has basically challenged the first impugned order dated 14.05.1998 by which pay and allowance for his suspension period was limited to the subsistence allowance on the ground that the provision of FR-54 B as invoked by the respondents applied to the case of disciplinary proceeding and not to the Criminal proceedings. Further, the question of emoluments/pay for the deemed suspension period was examined in the OA No.1706/2004. The Tribunal allowed the said OA holding therein that after acquittal by the Criminal Court the deemed suspension period is to be treated to be duty with all consequential benefits. In the order dated 11.2.2005 the Tribunal had discussed the view hold by **Full Bench of the Tribunal in the case of Ram Kumar Yadav Vs. Union of Indian & Others (1994-1996) ATFB-177** and had relied upon the judgment of **Hon'ble**

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Apex Court passed in the case of State of Punjab & Others vs. Shyambhu Nath Singhla & Others (1996)

32 ATC-237 wherein it has been held that on acquittal during the suspension period one is entitled to full salary and allowances. In the same order of the Tribunal passed in O.A.o.1706/2004 reference has also been made to the judgment of the **Hon'ble Apex Court in the case of Andhra Bank v. W.T. Seshachalam 2004 (1) SC SLJ-264=2004 (2) SLJ-254 (SC)**. In the above case the Hon'ble Apex Court had held that when a criminal proceeding is launched after investigation by an outside agency employee is acquitted of the criminal charge, he would be entitled to full pay and allowances as subsistence allowance for the period of suspension.

6. The respondents have filed their objections to the maintainability of the OA on the ground of limitation. Their contention is that the applicant challenged two O.Ms. dated 14.5.1998 and 28.11.2002. Earlier, the applicant had filed Writ Petition No.2839 (S/S) of 2004 before the Hon'ble High Court of Allahabad Judicature at Lucknow Bench. The writ petition was filed two years after the second impugned order. Further, the same was dismissed as withdrawn with liberty to approach the proper forum by judgment and order dated 08.05.2008. Thus, the delay in filing the writ petition goes beyond the period of limitation as laid down in Section 21 of the Administrative Tribunal Act, 1985.

7. Even after the order passed in writ petition on 08.7.2008 the present OA has been filed after two months later on 17.7.2008. They have also pointed out the fact that the OA is defective. The applicant has not

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sought quashing of the order dated 14.5.1998 by which pay and emoluments of the suspension period determined without challenging the order dated 15.5.2000 (Annexure-9) by which the same was affirmed. Thus, no effective relief can be granted to the applicant in respect to the pay and allowances during the deemed suspension period with the existence of order dated 15.5.2000.

8. The applicant has further sought quashing of the second impugned order dated 28.11.2002 by which the decision of the Appellate Authority had been communicated in the matter of limiting of pay and allowances during the period of suspension to the subsistence allowance and also regarding treatment of unauthorized absence w.e.f 13.3.1995 to 21.7.1995 having being held 'Dies-non'. In this matter the applicant has not challenged the order of the Appellate Authority dated 28.8.1998 (Annexure-12). Thus, in the absence of challenging the O.M. dated 15.5.2000 in the matter of subsistence allowance and O.M. dated 28.8.1998 in the matter of "Dies-non" for the period of unauthorized absence no effective relief can be given to him.

9. Coming to the merits of the case in the matter of pay and allowances during the deemed suspension period, the respondents have cited the judgment of the Full Bench of this Tribunal in the case of **Ram Kumar Yadav Vs. Union of India & Others reported in Full Bench Judgment (CAT) Vol.III passed in O.A.No.110/1991 and O.A.No.698/1990 of CAT, Jabalpur Bench** in which the two issues arose which are as follow:-

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“Para-17.

In our opinion, the question formulated by the Division Bench should be re-framed as follows:-

- (i). Whether a Government servant is entitled as a matter of right to payment of full salary and allowances for the period he remains under suspension on account of criminal charge which ends in his acquittal by giving him the benefit of doubt?
- (ii). Whether in view of F.R. 54-B it is competent for the concerned authority to deny payment of full salary and allowances for the aforesaid period on a consideration of the totality of circumstances including the fact that the acquittal was made by giving the benefit of doubt?

Para-18.

Our answers to the aforesaid two questions are as follows:-

- (i). No.
- (ii). Yes.”

10. The applicant was placed under deemed suspension w.e.f. order dated 31.3.1995 as the applicant had been detained in Police custody for more than 48 hours. The applicant was acquitted by the judgment and order dated 26.7.1998. Under provision of FR-54 'B' an O.M. dated 14.5.1998 was issued to the effect that the pay and allowances will be restricted to the amount already paid to him during the suspension period. The applicant preferred an appeal dated 26.4.1998, which was decided by the Appellate Authority by its order dated 26.11.2002 and was communicated to the applicant by an order dated 28.11.2002. It is relevant to point out that during the pendency of the appeal of the applicant was issued show cause notice dated 28.10.1999 which the applicant replied on 09.11.1999. A second O.M. dated 15.5.2000 was also issued to him but the applicant has not challenged this O.M.

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11. Coming to the subject of unauthorized absence, the applicant had remained unauthorisedly absent from 13.3.1995 to 21.3.1995 as reported by the controlling officer. Through, the O.M. dated 20.3.1995 the applicant was directed to report for duty failing which an appropriate disciplinary action would be taken against the applicant (Annexure-CR-5). Subsequently, the applicant submitted an application dated 21.3.1995 praying for earned leave w.e.f 13.3.1995 till 31.3.1995 (Annexure-CR-6). Subsequently, Sri Hari Singh an official of CIMAP informed the respondents that the applicant is an accused in Case Crime No.143 of 1995 under Section 363/366 IPC at Police Station, Gazipur District Lucknow. The report dated 30.03.1995 from Police Station, Gazipur District Lucknow was received with the information that the applicant is in the custody since 22.03.1995. Hence, under Rule 10 of the CCA (CCS) Rules, 1965 the applicant was placed under suspension and the period of unauthorized absent w.e.f 13.3.1995 to 21.3.1995 was separately dealt-with as explained above.

12. No RA filed in this case.

13. We have heard the learned counsel for both the parties and perused the entire material available on record.

14. The respondents have raised technical objection regarding delay on the ground that the applicant had filed Writ Petition No.2839 (S/S) of 2004 before the

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Hon'ble High Court of Judicature at Allahabad at Lucknow Bench after passing the impugned order i.e. Office Memorandum dated 28.11.2002. This involves a delay of 2 years even after the dismissal order dated 08.05.2008. This OA has been filed more than 2 months thereafter. In this case the question with regard to the limitation at the time of filing the writ petition lay within the jurisdiction of Hon'ble High Court, who granted liberty to the applicant to approach the proper forum by judgment and order dated 08.05.2008. Thereafter, the OA has been filed on 16.07.2008. The two months intervening period much of which can be explained in formalities to be completed with regard to paper work is condoned.

15. From the list of documents as provided by the two parties, the applicant has been issued with two set of orders dealing with two different periods. The period between 22.3.1995 to 02.03.1998 has been subject matter of a). order dated 14.5.1998 by which the pay and allowances were limited to the subsistence allowance already paid, b). order dated 15.5.2000, by which the order dated 14.5.1999 was upheld and c). Appellate Authority order dated 26.11.2002. Admittedly, there is a technical flaw in not challenging the order dated 15.5.2000 but in the event of order dated 14.4.1998 is quashed the order dated 15.5.2000 become infructuous. The operative portion of the said order is as follows:-

"However, it is reiterated that the decision, as already communicated vide Memorandum of even number dated 14.5.1998 that Pay & Allowances for the suspension period shall be limited to the Subsistence Allowance already paid to him during the period of his deemed suspension, still holds good."

J. Choudhury

Hence the technical objection has no merit.

16. There is a separate relief inherent in seeking the quashing of Appellate order dated 28.11.2002 i.e. the issue of Dice-non. With regard to the question of "Dies-non" for the unauthorized absence between 13.3.1998 to 21.3.1995 the operative order are dated 28.8.1998 by which the Director, CIMAP, Lucknow had held that the said period be treated as "Dies-non" after issuing show cause to the applicant. This order has not been challenged. Therefore, no order can be passed against the same.

17. The fact of the case have been elaborated in para 2,3,4,5,6 and 8 above therefore they may not be reproduced again. The main cause of action is that the applicant was placed under deemed suspension on fulfilling the condition as laid down in Rule 10 of CCS (CCA) Rules, 1965, which reads as follows:-

"10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a)

(aa)

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

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- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

18. The applicant was reinstated after the conclusion of the criminal trial. The period of his deemed suspension between 22.03.1995 to 2.3.1998 the respondents have dealt with the question of determination of pay etc. in accordance with Rule 54 B of the FRSR Rules. The Full Bench of this Tribunal case of Ram Kumar vs. U.O.I. & Others (Supra) had held that the government servant is not entitled to full salary for the period he remained on suspension, after his acquittal on the ground of benefit of doubt. Further, it was also held that the employer is competent to deny the payment of full salary and emoluments. A careful reading of the second issue as framed by the full bench reveals that the denial of full salary and emoluments during the suspension period is subject to "on a consideration of the totality of circumstances including the fact that the acquittal was made by giving the benefit of doubt."

19. This requirement of consideration of the totality of circumstances reflects the Administrative Instructions appended with FR-54 'B' as available in Swamy

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Compilation FRSR 18th Edition 2006. These instructions are based on [G.I., M.F., O.M. No.F.15(8)-E.IV/57 dated 28.03.1959, as amended. The instructions reads as follows:-

"(1). Regularizing of suspension during criminal proceedings, arrest or detention-

The cases of suspension during pendency of criminal proceedings or proceedings for arrest for debt or during detention under a law provided for preventive detention, shall be dealt with in the following manner hereafter:-

(a). A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in the /central Civil Services (Classification, Control and Appeal) Rules. A Government servant who is undergoing a sentence for imprisonment shall also be dealt with in the same manner pending a decision on the disciplinary action to be taken against him.

(b). A Government servant against whom a proceedings has been taken on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension by an order of the competent authority under the Central Civil Services (Classification, Control and Appeal) Rules. If the charge is connected with the official position of the Government servant or involving any moral turpitude on his part, suspension shall be ordered under this rule unless there are exceptional reasons for not adopting this course.

(c).

(d). When a Government servant who is deemed to be under suspension in the circumstances mentioned in Clause (a) or who is

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suspended in the circumstances mentioned in Clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under FR 54-B, i.e., in the event of his being acquitted of blame or (if the proceeding taken against him was for his arrest for debt) its being proved that his liability arose from circumstances beyond his control or the detention being held by any competent authority to be wholly un-justified, the case may be dealt with under FR 54-B (3); otherwise it may be dealt with under proviso to FR 54-B (5)."

20. FR 54 B (3) reads as follows:-

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:

21. FR 54 B (5) reads as follows:-

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the full pay and allowances to which he would have been entitled had he not been suspended, 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.

22. In this case, it is noticed that no disciplinary proceedings were even initiated against him. He was not served with any notice prior to order dated 14.05.1998. The show cause notice dated 29/30.10.1999 had been

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issued to him after passing of the order dated 14.8.1998 therefore, the condition as laid down in FR 54 B (5) have not been followed. Thus, on the basis of discussion above, we are inclined to quash the impugned order dated 14.5.1998 and Appellate order dated 28.11.2002 as it applies to the payment of suspension allowance.

23. The second part of the Appellate order also deals with the period of 'Dies-non'. In this case, the chronology of events reveals that by letter dated 20.3.1995 the applicant was directed to join his duties. He applied for leave on 21.03.1995 but the same was never sanctioned. Leave cannot be claimed as a matter of right. They have again issued show cause notice on 26.6.1998 to the applicant. The applicant has not specifically brought out any legal infirmity in the said notice. He replied by letter dated 16.7.1998. The Disciplinary Authority passed his orders on 28.8.1998. Therefore, there is no illegality in the order of the Disciplinary Authority and the Appellate Authority treating the period of 13.3.1995 to 21.03.1995 as Dies-non.

24. In view of the above, the OA is partly allowed. The order dated 14.5.1998 is quashed. The order dated 28.11.2002 is also quashed only with regard to the issue as incorporated in Memo dated 14.5.1998 (i.e. the payment of suspension period). The applicant is entitled to all consequential benefits. No costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)
Amit/

V.R. Groawal
(Navneet Kumar)
Member (J)