

**Central Administrative Tribunal Lucknow Bench Lucknow**

**O.A. No. 129/2006**

**Lucknow, this the 19<sup>th</sup> day of May, 2009.**

**HON'BLE MR. M. KANTHAIH, MEMBER (J)  
HON'BLE DR. A.K. MISHRA, MEMBER (A)**

Virendra Mohan Tiwari son of late Kripa Shanker Tiwari c/o Mahavir Pd.  
Pandey, r/o 322/3, Moti Nagar, Unnao

Applicant.

**By Advocate Sri D. Awasthi.**

**Versus**

1. Union of India through the Secretary, Ministry of Commerce, Udyog Bhawan, New Delhi.
2. Zonal Joint Director of Foreign Trade, 6-7 Ashif Ali Road, New Delhi.
3. Director General of Foreign Trade, Udyog Bhawan, New Delhi.
4. Respondents.

**By Advocate None**

**Order**

**By Hon'ble Dr. A.K. Mishra, Member (A)**

The applicant has not challenged any specific order but has claimed that consequent on issue of order dated 3.4.2003 of respondent No.2, the earlier punishment order dated 3.10.2002 has become null and void. He has prayed for declaring the punishment order of compulsory retirement dated 3.10.2002 as null and void and further for a direction to treat the period from 31.5.2000 till the date of filing of the application as on duty and that he should be paid regular salary and other consequential benefits for this period.

2. In essence, he is challenging the compulsory retirement order dated 3.10.2002 but he has not filed a copy of that order along with application. His reasoning is that the order of respondent No.2 under FR-54-B made on 3.4.2003 should be deemed to be an order for his reinstatement in service as, according to him an order under FR-54 is issued only in respect of reinstatement in service. A plain reading of the rule would suggest otherwise. Therefore, FR-54 B(1) is extracted below:-



"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"

3. Rule 54-B(5) speaks about the cases other than those which came under sub Rule (2) (3) where the competent authority should decide the quantum of pay and allowances payable to the Govt. servant after giving due consideration to the representation of the employee.

4. It is a total misconception on his part that an order of Rule 54-B will be passed only in the event of reinstatement of a Govt. servant. On the other hand, the rule clearly mentions that such an order is also required in respect of employees who have retired either normally or pre-maturely. This is a rule which casts an obligation on the competent authority to make an order as to how to treat the period of suspension and about the pay and allowances which should be paid to the employee for the period of suspension ending either with his reinstatement or retirement as the case may be.

5. The respondents have given the history of litigations indulged in by the applicant. He had earlier challenged the punishment order dated 3.10.2002 before the Allahabad Bench of this Tribunal in O.A. No. 470/2003 which was dismissed. The Tribunal in its order dated 2.4.2004 held that the conduct of the applicant was subversive of discipline and that the punishment of compulsory retirement could not be held to be shockingly disproportionate to the charges established against him. All his efforts through review application and writ petition to set aside the punishment order ended in failure. Earlier, he had filed O.A. 96/2005 before Lucknow Bench of this Tribunal asking for a direction for payment of leave encashment and bonus for

the period under deemed suspension. This application was dismissed as withdrawn. It is contended that the order dated 3.4.2003 was about how to treat the period of his suspension not about his reinstatement in service. It was clearly mentioned in this order that the period of suspension, will not be treated as duty and that he would be paid @ subsistence allowance + Rs. 100/- for the period under suspension. The penalty imposed on him has already acquired a finality. It is unfortunate that he is indulging in vexatious attempts at filing fresh application on a matter which has already been decided by this Tribunal as well as the High Court.

6. In the circumstances, this application is dismissed as misconceived.

*A. K. Mishra* 19/05/09  
(Dr. A. K. Mishra)

Member (A)

*M. Kanthaiah*  
(M. Kanthaiah)  
Member (J)

HLS