BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTINGS AT PANAJI,GOA.

No. Tr. ~~60/87~~
Original Application No.231/87

Shri Chandrakant S.Parab .. Applicant

V/s

1. The Inspector General of Police,
   Panaji , Goa

2. Union of India through
   i) The Administrator of Goa,
      Daman & Diu,Secretariat
      Panaji Goa.

   ii) The Secretary to the Govt. of
      India, Ministry of Home
      Affairs, New Delhi. .. Respondents.

Appearances:-

Shri A.V.Diniz,
Adv. for the applicant
Shri M.I.Sethna,
Adv. for the Respondents. Date: 15-12-88

CORAM: Hon'ble Member (J)Shri M.B.Mujumdar
Hon'ble Member (A)Shri P.S.Chaudhuri

ORAL JUDGMENT
(Per M.B.Mujumdar,Member(J)

The applicant has filed this application under section 19 of the Administrative Tribunals Act challenging the order dated 21.11.1985 by which the period from 22.8.1983 to 24.6.1985 is directed to be treated as non-duty.

2. The relevant facts for the purpose of this application are these: At the relevant time , the applicant was working as Head Constable at Daman Police Station. For some incident which had happened on 27.1.1982 the applicant was placed under suspension on 18.2.1982. But that suspension order was revoked on 8.5.82. A departmental inquiry was held against him and 3 others, viz. S.N.Shah, K.F.Gawas and M.M.Naik, all constables

attached to the Daman Police Station. An Inquiry Officer was appointed and on the basis of his report the Superintendent of Police, Panaji dismissed the applicant and M.M.Naik, but exonerated S.M.Shah and K.F.Gawas.

3. The applicant challenged that order by filing Writ Petition No.151/84 in the Goa Bench of the Bombay High Court and by its judgment delivered on 17.4.1985 the High Court held that the departmental proceedings initiated and continued by the Superintendent of Police were without jurisdiction. Hence the proceedings as well as the order of penalty were quashed and set aside. The matter was however, remitted back to the Inspector General of Police to continue the proceedings under Rule 9 by reason of the order passed on 25.6.1982, accordingly to law. The rest of the order of the High Court dated 25.6.1982 is not relevant in this case. In pursuance to the High Court's order the applicant was reinstated in service on 24.6.1985.

4. Thereafter, a fresh inquiry was held against the applicant and the three others. The Inquiry Officer exonerated all of them but the I.G.P. disagreed with his findings and by his order dated 18.11.1986 'Censured' the applicant S.N.Shah and K.F.Gawas, but exonerated M.M.Naik.

5. The applicant had filed O.A. 230/87 challenging the order of penalty passed by the I.G.P. on 18.11.1986. However, on 29.4.1987 when that application came for admission before the Tribunal it was rejected summarily as the applicant had come to the Tribunal without exhausting departmental remedies available to him for redressal of his grievance.

6. The present application i.e. O.A. 231/87 also came for admission before the Tribunal on the same day i.e. on 29.4.1987 and by the order passed on the same day it was admitted and notices were issued to the respondents to file their reply.

7. In this application the applicant has prayed for setting aside the order passed by the I.G.P. on 18.11.1986. The operative part of the order reads as follows:

> 1. The intervening period from 22.8.1983 to 24.6.1985 of HC-1171,C.S.Parab be treated as extraordinary leave wherein no emoluments would be admissible nor would this period count towards leave,increment, pension etc.
> 2. This interim period would not be treated as break in service.

8. The respondents have filed the affidavit of Shri Premanand Vishnu Borker, Dy.S.P.,C.I.D.(S.B.) Goa resisting the application.

9. We have heard Mr.A.F.Diniz, the learned advocate for the applicant and Mr. M.I.Sethna , the learned advocate for the respondents.

10. Mr. Sethna raised a preliminary objection to the maintainability of the application. He submitted that the order challenged in this case was appealable and as the applicant has rushed to this Tribunal without exhausting the departmental remedies open to him, it should be dismissed. But, as already pointed out, we had rejected the applicant's other application, viz. O.A. 330/87 summarily as he had approached the Tribunal without exhausting the departmental remedies available to him. But on the same day, we have admitted the present application. Section 20(1) lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies under the relevant service rules as to redressal. The word "ordinarily" in this sub-section is material and in our opinion it gives a discretion to admit the application even though it might have been filed without exhausting the departmental remedies. Hence we find no force in the preliminary submission of Mr.Sethna.

11. For understanding the rival submissions made before us by the learned advocates for both the sides it is necessary to quote F.R.54 and F.R.54(A). This F.R.5 reads as under:-

> F.R.54(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated 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 reinstatement shall consider and make a specific order-
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> (a) regarding the pay and allowances to be paid to the Goverment 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
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> (b) whether or not the said period shall be treated as a period spent on duty.
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> (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 Govt. 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 compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:
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> Provided that where such authority is of opinion that the terminination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Govt. 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 the 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 inquiry is proposed to be held) the Government servant shall , subject to the provisions of sub-rules (6) 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 /of the quantum proposed and after considering 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.

/ Servant

(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 a 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.

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-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 allwoances 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 judgment of the court shall be regularised in accordance with provisions contained in sub-rule(5) of Rule 54).

(3) If the dismissal, removal or compulsory retirement of a Government /set aside by the court on the merits of the case, the period intervening between the date of dismissal, /servant 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.

(4) The payment of allowances under sub-rule(2) or sub-rule(3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a 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 dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

12. In the present case the order of dismissal passed by the Superintendent of Police was set aside by the High Court and it was in pursuance of the decision of the High Court that the applicant was reinstated in service on 24.6.1985. In view of this fact, in our opinion F.R.54 will not be applicable in this case. The relevant provision will be F.R.54(A)(2). It is in view of clauses (i) and (ii) of F.R.54(A)(2) that the I.G.P. has passed the impugned order. Clause (i) says, inter alia, that the government servant shall, subject to the provisions of sub-rule (7) of F.R. 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, etc. This clause lays down that the order under that clause has to be passed after giving notice to the government servant about the quantum proposed and after considering the representation

submitted by him. Such a notice was in fact given to the applicant and the applicant had also submitted his representation. What sub-rule (7) of F.R.54 says is that the amount determined under the proviso to sub-rule(2) or under sub-rule (4) of F.R.54 shall not be less than the subsistence allowance and other allowances admissible under F.R.53.

13. Mr. Sethna relied on the reference to sub-rule(2) and sub-rule (4) in F.R.54(7) in order to support the impugned order. But, in our opinion, sub-rule(2) and sub-rule(4) of F.R.54 have no application in this case because the applicant's dismissal from service was not set aside as a result of a departmental appeal or review. The dismissal of the applicant from service was set aside by the High Court. Hence, the provisions of sub-rules(2) and (4) of F.R.54 shall have to be ignored in this case. Moreover, there is nothing in these sub-rules which would help the respondents in supporting the impugned order.

14. Bereft of the words which are not relevant in this case, what the sub-rule (7) lays down is that the amount to be paid to the delinquent should not be less than the subsistence allowance and other allowances admissible to him. Again it should be noted that subsistence allowance and other allowances was the minimum that the Inspector General of Police was required to give. The maximum could be something less than the entire pay and other allowances.

15. Coming to the facts of this case, though as a result of the first departmental proceedings the applicant was dismissed from service, in the fresh enquiry which was held after the decision of the High Court the Inquiry Officer had exonerated the applicant as well as the three others. The I.G.P. disagreed with

the findings of the Inquiry Officer and awarded the penalty of 'Censure' to the applicant. Moreover, though the applicant was initially placed under suspension on 18.2.1982 that suspension order was revoked on 8.4.1982. In view of the revocation of suspension and ultimate penalty awarded to the applicant it cannot be doubted that the mis-conduct of the applicant was not so grave. Now for the misconduct, the applicant is already penalised by awarding the penalty of 'Censure'. The provisions of F.R.54-A(2) in our opinion cannot be used for penalising a person. The order under F.R.52-A(2) has to be passed after taking into consideration the facts and cirumstances of the case.

16. In Dahyabhai Jivanbhai Chauhan v.Union of India & Ors. ATR 1988(2) CAT 496 we have taken the view that if the departmental proceedings against an employee who was placed under suspension for the imposition of major penalty culminates in the imposition of a minor penalty, then the suspension is wholly unjustified and the delinquent is entitled to all the benefits due to him according to the rules. It is true that in this case the applicant's suspension was revoked on 8.4.1982 and thereafter he was never placed under suspension. But if the suspension of a delinquent becomes unjustified if he is ultimately awarded a minor penalty as a result of the departmental proceedings, then there is no reason why a delinquent who was not placed under suspension during the departmental proceedings but was, instead, dismissed from service and subsequently reinstated in service should not be entitled to the same benefits if as a result of the proceedings eventually only a minor penalty is awarded to him. Of course, we do not mean to say that the impugned order could not have been passed in view of F.R.54-A(2) read with sub-rule (7) of F.R.54. But, at the same time, we are of the view that the discretion given to the competent authority

by these provisions has to be exercised by him properly by taking into consideration all the facts and circumstances of the case. In our view the impugned order passed by the I.G.P. is too harsh a penalty, if the facts and circumstances are taken into consideration. We are therefore, of the view that in the present case the applicant is entitled to ask for quashing the impugned order. In other words the period from 22.8.1983 i.e. the date on which the applicant was dismissed from service to 24.6.1985 i.e. date on which he was reinstated in service in view of thejudgment of the High Court shall have to be treated as on duty except for the purpose of leave.

17. In result we allow the application partly. The impugned order passed by the I.G.P. on 18.11.1986 is quashed and set aside and it is hereby directed that the period from 22.8.1983 to 24.6.1985 shall be treated to be on duty with all consequential benefits, except regarding leave. The arrears which may be due to the applicant in view of this order shall be paid to him within 4 months from the date of receipt of a copy of this order. There will be no order as to costs.

(P.S.CHAUDHURI)
MEMBER (A)

(M.B.MUJUMDAR)
MEMBER(J).