IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 882/96

Date of Decision: 9th OCTOBER, 1997

S.C. Chandwani — Applicant.

Adv. Mr. G.K. Masand — Advocate for Applicant.

Versus

U.O.I. & Anor — Respondent(s)

Mr. M.I. Sethna — Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri P.P. Srivastava, Member(A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

V.C.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 882/96

DATED: THIS 9th DAY OF OCTOBER, 1997

CORAM: Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri P P Srivastava, Member(A)

S.C.Chandwani
9 Khanna House
2nd floor
Off Ram Krishna Mission Road
Khar, Mumbai 400052
(By Adv. Mr. G K Masand) ..Applicant

V/s.

1. Union of India
through the Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi 1

2. Commissioner of Customs
New Customs House
Ballard Estate
Mumbai 38
(By Adv. Mr. M I Sethna,
Special Counsel, with
Mr. V D Vadhavkar, Advocate) ..Respondents

O R D E R
[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the application. Heard the learned counsel for both the sides.

2. The facts necessary to dispose of this application are as follows:

The applicant was working as an Appraiser in Group B service. Disciplinary Inquiry was held against him and

an order dated 3.11.1977 under which his pay was reduced by two stages in the time scale of pay. Against that order he preferred an appeal to the President of India. When the appeal was pending the President issued a show cause notice as to why the punishment should not be enhanced and further passed an order dated 12.12.1985 under which the applicant was compulsorily retired from service. Then the applicant challenged that order by filing a Writ Petition in the High Court, Bombay, which was subsequently transferred to this Tribunal and registered as Transferred Application No.245/86. The said application came up for hearing and was allowed by this Tribunal vide order dated 1.12.92 and the order of punishment imposed by the President was set aside. The order was set aside on the ground that the President has not consulted the Union Public Service Commission before passing the final order. This Tribunal further held that the applicant would be entitled to all consequential benefits which may be permissible in law.

Since the respondents did not pay the arrears of pay etc., the applicant moved a petition for contempt in this Tribunal being C.P.No. 101/93. That petition came to be allowed with certain directions and the applicant received the arrears of salary etc. The applicant was corresponding with the respondents about the correctness of the various amounts paid to him and during this time

the respondents issued a memorandum dated 17.11.1995 calling upon the applicant to show cause as to why the amount payable to him should not be restricted to an amount equal to leave salary. The applicant gave a reply to the show cause notice. The competent authority passed an order dated 3.2.96 restricting the salary to half of leave pay. In pursuance to this order a notice has been issued by the applicant to refund the excess amount.

According to the applicant he is entitled to full pay and allowance as per the order of the Tribunal and the order of the competent authority restricting the arrears to half of leave pay is illegal. The applicant stated that the amount paid to him is not correct and that he has to get some more arrears after the increments are fixed from time to time, and that consequently there must be increase in the Pension also. The applicant has approached this Tribunal for setting aside the order dated 3.2.96, for a direction to the respondents to pay the balance amount after fixing the increments from time to time and consequential enhanced pension amount.

3. The respondents have filed a reply denying the several allegations made in the application, that the application is misconceived and not maintainable as the order of punishment imposed by the Disciplinary Authority has remained intact. By virtue of the order of the

Tribunal the Disciplinary Authority or the President were prevented from holding a fresh inquiry according to law, that the arrears due to the applicant have been correctly calculated as per F.R.54-A(2)(i), this is a case where the punishment being set aside on technical ground and not on merits the applicant is not entitled to full arrears of pay and allowances for the period in question. The order of the competent authority is perfectly valid and the applicant is bound to refund the excess amount drawn by him.

4. The short point for consideration is whether the applicant is entitled to full arrears of pay and allowances as alleged by him or only restricted to half of leave pay as contended by the respondents.

5. It is common ground that the order of punishment passed by the President was set aside on a technical ground viz., that the President has not consulted the U.P.S.C. before passing the final order. It has been clearly stated by this Tribunal in the order dated 1.12.1992 in Tr.A.245/86, it is not a case of exonerating the applicant on the ground that he is not guilty, it may also be recorded that the Tribunal has not disturbed the order of the Disciplinary Authority under which he was found guilty and imposed the punishment of reduction in salary by two stages. The Tribunal only set aside the

order passed by the Appellate Authority under which the punishment was enhanced to compulsory retirement. Therefore, the finding that the applicant was guilty and he was given certain punishment by the Disciplinary authority was not set aside or interfered with by this Tribunal. Therefore, it is a case where we can safely say that the order of punishment imposed by the President was set aside not on merits but on a technical ground viz., U.P.S.C. though consulted once in the first instance was not consulted again after the applicant submitted his explanation to the show cause notice for enhancing the punishment. As already stated the fact that the applicant was found guilty by the disciplinary authority and suffered punishment was not disturbed by this Tribunal. In such a case the question is whether the applicant would be entitled to arrears of full pay or only that much of pay as may be determined by the competent authority. Even the operative portion of the order of this Tribunal in para 13 is as follows:

> "These petitions succeed in part. The order dated 12.2.1985 passed by the President enhancing the penalties imposed upon the petitioners are quashed. The order passed by the punishing authority in the cases of the two petitioners are kept intact. It goes without saying that the petitioners would be entitled to consequential benefits which may be <u>permissible under the law".</u>[emphasis supplied].

6. Therefore, in unequivocal terms, this Tribunal has held that whatever consequential benefits that may be

permissible under the law may be paid to him. Therefore, the only question is whether the applicant is entitled to full pay or restricted pay under the relevant rules.

7. Both the counsel are relying on F.R.54-A, but on different sub-rules. The learned counsel for the applicant relies on sub-rule (3) whereas the learned counsel for the respondents relies on sub-rule (2) of F.R.54-A.

8. According to F.R.54-A(3), on which the learned counsel for the applicant places reliance, if the punishment is set aside by the Court on the merits of the case then the entire absence from the date of dismissal or retirement or removal till the date of reinstatement shall be treated as duty and shall be paid full pay and allowances. Therefore, the decision must be on "merits of the case". In the present case we find that. this Tribunal set aside the order of punishment only on the ground that there was no second consultation with the UPSC after the applicant gave his explanation to the show cause notice and hence there was no proper inquiry and accordingly the punishment imposed by the President for compulsory retirement was set aside. It is not a case of setting aside the order of punishment on merits by holding that the applicant was not guilty. On the other hand it is a case where the applicant's guilt as held by

the Disciplinary Authority and the punishment imposed by it has been kept intact and was not even challenged before this Tribunal by the applicant. Therefore, there is no question of the punishment being set aside on merits since the applicant's punishment imposed by the Disciplinary Authority has been allowed to remain intact. Therefore, in our view Sub-Rule (3), is not at all attracted to this case and hence the applicant cannot claim full pay under this rule.

9. Now we shall examine Sub-rule (2) of F.R.54-A which provides where a punishment is set aside by the Court on the ground of non-compliance with Article 311 of the Constitution of India and where the applicant is not exonerated on merits, then such an applicant will be entitled to such amount as may be determined by the competent authority. We have already seen that this is not a case of the applicant being exonerated on merits, and that his enhanced punishment having been set aside on the technical ground; hence there is no question of exoneration at all since the finding of guilt and punishment imposed by the Disciplinary Authority has been kept intact. The learned counsel for the applicant contended that this rule is not attracted since it is not a case of challenging the punishment under Article 311 of the Constitution of India. It was argued on behalf of the applicant that the applicant in his case has not at

all challenged the violation of Article 311 while attacking the order of the President. Since the applicant was not challenging that order passed on the ground that it was not passed by the Appointing Authority and that there is no allegation that the applicant was not given reasonable opportunity of being heard in the matter.

It is not correct to say that Article 311 of the Constitution contemplates only two situations viz., order be passed by an authority other than the Appointing Authority and order being passed without affording an opportunity to the delinquent of being heard in the matter. A perusal of the case law shows that if the inquiry is vitiated in any manner then it amounts to violation of Article 311. Article 311(2) of the Constitution of India clearly states that no person can be dismissed or no person can be punished except by way of inquiry in which the delinquent is given an opportunity of being heard. That means it contemplates an inquiry and then an opportunity to the delinquent of being heard. If there is no inquiry in the eye of law then it would amount to violation of Article 311(2).

In the present case the challenge is to the punishment on the ground that the President had not consulted UPSC or there was no effective consultation

with the UPSC which means that there was no inquiry as required by law. An inquiry includes the entire process of giving finding about the guilt of the delinquent and imposition of punishment. If there was no inquiry in the eye of law then it is violation of Article 311(2) of the Constitution of India. In the present case it is held that there was no effective consultation with the UPSC and thereby there was violation of Article 320 of the Constitution as argued by the learned counsel for the applicant. It means that there was no proper and legal inquiry as contemplated by law and this comes within the mischief of Article 311(2) of the Constitution. Hence in our view this is a case to which F.R.54-A(2)(i) is squarely attracted and therefore the applicant is entitled to so much of pay and allowances to be determined by the competent authority. He will not be entitled to full pay and allowances since Sub-rule (3) is not attracted in this case for reasons already mentioned earlier.

10. Learned counsel for the Applicant invited our attention to para 4 of page 257 of Swamy's Compilation of F.R/S.R. Part-I (1994 Edition). But this para 4 is based upon a Government of India circular of the year 1961-62. As rightly argued on behalf of the respondent's counsel we cannot give effect to the Government order of 1961-62 when Rule 54 was amended by adding Rule 54-A in 1971. Therefore, the earlier orders of 1961-62 will have

no force when the Rules have been amended in 1971. Particularly Rule 3 was amended in 1974. Therefore, no reliance can be placed on the old circulars of 1961-62.

11. Learned counsel for the respondent also invited our attention to two decisions - 1997(1) ATJ 665 STATE OF PUNJAB AND ANR. Vs. KALGA SINGH & ANR.. In that case the Labour Court had passed an order of reinstatement but without back wages. This was challenged before the High Court. It was contended before the High Court that once reinstatement is ordered the workman is entitle to full back wages. This contention was rejected by the High Court by observing that when the Departmental Inquiry has been set aside on technical grounds and when the applicant has made admission before the Labour Court about his guilt he cannot get the benefit of backwages. In 1997(1) SCSLJ 472 KRISHNAKANT RAGHUNATH BIBHAVNEKAR Vs. STATE OF MAHARASHTRA & ORS., the question was about payment of full backwages as a matter of course pursuant to the order of acquittal. That was a case where the delinquent official was prosecuted for having committed offences under section 409 of I.P.C. He was acquitted in the criminal case and then he was reinstated. The question was whether he was entitled to full backwages or not. The Supreme Court has observed that grant of consequential benefits with all backwages etc., would not be as a matter of course. It further observed that it is for the competent authority to regularise the period and

pass appropriate orders regarding payment of pay and allowances to the delinquent official. Therefore, we find that merely because there is an order of reinstatement the applicant is not entitled to full back wages as of right. But the allowances will have to be paid as per rules as mentioned by the Tribunal in the judgment relied on by the applicant. As per the rules we have examined F.R.54-A(2) and (3) and in our view sub-Rule (3) is not attracted and applicant's case falls under sub-rule (2) under which the competent authority has to issue show cause notice to the applicant and has discretion to restrict the amount of arrears of pay to be paid to the applicant. One of the fundamental principles of service jurisprudence is "No work, no pay". We have to examine the facts of the case to find out whether a case is made out for the pay as no work is done by the applicant during the relevant period.

12. We do not find any irregularity or infirmity in the order passed by the competent authority in restricting the amount of arrears of pay to be paid to the applicant. Once we hold that the order passed by the competent authority is correct there is no question of granting any further benefits to the applicant in the form of further increments and consequent raise in the pension. These two reliefs do not survive for consideration once we reject the main relief of the applicant for getting the arrears of full pay and allowances.

13. Another alternative submission on behalf of the applicant that in the case of deemed suspension etc., does not arise in the facts and circumstances of the case, since there is no question of holding any further inquiry after reinstatement to make out a case of deemed suspension. In the applicant's case the administration has been deprived of the right of holding a fresh inquiry by the order of the Tribunal. Therefore, deemed suspension does not arise. In our view the impugned order does not call for interference by this Tribunal.

14. In the result this application is dismissed. However, in the circumstances of the case there would be no order as to costs. Earlier interim relief granted by this Tribunal in this case is hereby vacated.

(P.P.Srivastava)
Member(A)

9/10/97
(R.G.Vaidyanatha)
Vice Chairman

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