

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 468/95
T.A. No.

199

DATE OF DECISION 17/2/2000

Bal Singh Verma Petitioner

Mr. Shiv Kumar Advocate for the Petitioner (s)

Versus

U.O.I & Ors Respondent

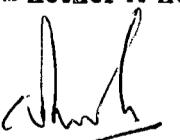
Mr U.D. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. Agarwal, Member (J)

The Hon'ble Mr. N.P. Nawani, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P. Nawani)
Member (A)


(S.K. Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.468/95

Date of order: 17/2/2000

Bal Singh Verma, S/c Shri Laxmen Singh, R/c Behind
Microwave Sangra, Tehsil Achnera, Agra, UP, employed on
the post of Grade-I Fitter at Locc Sheo, Achnera, Jaipur.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly, Churchgate, Mumbai.
2. The Chief Mechanical Engineer, W.Rly, Churchgate, Bombay.
3. The Divisional Railway Manager, W.Rly, Jaipur Divn.Jaipur.

...Respondents.

Mr.Shiv Kumar - Counsel for the applicant

Mr.U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

This Original Application has been filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to treat the intervening period from 15.7.92 to 17.8.93 as spent on duty for all purposes including pay and allowances and the impugned order dated 26.8.94 (Annex.A2) may be modified accordingly.

2. Facts of the case as stated by the applicant are that the applicant was served with a charge sheet for a major penalty and after conducting the enquiry, the applicant was removed from service w.e.f. 15.7.92 vide order dated 18.8.92. The applicant submitted an appeal which was rejected vide order dated 11.1.93. Thereafter, the applicant submitted a revision petition challenging the appellate order. The representation was decided in favour of the applicant vide order dated 6.7.93 and the applicant was reinstated in service accordingly, but the intervening period was ordered to be treated as without pay. It is stated that the applicant submitted a representation which was decided vide order dated 4.8.94 and payment was released to the applicant vide order dated 26.8.94. It is stated that the applicant was fully exonerated in this case as no punishment has been imposed upon him, therefore, the intervening period has to be treated as spent on duty for all purposes and the applicant is entitled to claim full pay and allowances for the intervening period but the same was denied, therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that this O.A

is not within limitation. The applicant was found guilty of claiming false T.A and the charge was proved against him, hence penalty of removal from service was imposed upon the applicant. The applicant preferred an appeal which was rejected. However, the Revisional Authority felt that the penalty imposed was severe, therefore, ordered that the applicant may be taken back on duty and the entire period between the date of removal to the date of reinstatement may be treated as leave without pay which was considered adequate looking to the gravity of the charge. It is stated that the applicant was never exonerated but the Revisional Authority only taken a lenient view as the applicant was at the verge of retirement. It is further stated that as per Fundamental Rule 54-B, the competent authority was within his rights to pass the impugned order, therefore, there has not been any violation of Article 14 of the Constitution and the applicant is not entitled to full pay and allowances for the aforesaid period, therefore, this O.A having no merits and deserves to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The law regarding regularisation of the period of suspension has come up before Apex Court of the country, High Courts and the Tribunals from time to time. Before K.V.Jankiraman's case, the matter seems to have been very well settled. The question is whether any authority can go into the nature of acquittal of the accused, applicant, to decide his entitlement under FR 54-A.

6. In S.Samson Martin Vs. UOI (1990) 12 ATC 643, the Full Bench of the Madras Bench of the Tribunal concluded as under:

"So the law now is well crystallised to the effect that when the suspension is wholly due to criminal proceeding, the acquittal at the end of such proceeding would render the suspension wholly unjustified and the disciplinary authority does not have to analyse the judgment of the criminal court to come to its own conclusion regarding the degree of proof in respect of the culpability."

7. Hon'ble Supreme Court also held the same proposition of law in Brahma Chandra Gupta Vs. UOI (1984) SCC(L&S) 268, that in case of acquittal the concerned person should be given full pay and allowances and that the disciplinary authority does not have the power to compute the degree of culpability of the person upon its own appraisal of the judgment of the criminal court.

8. Before Jankiraman's case, the law on the subject was well settled and it was followed that if there is an acquittal the disciplinary authority cannot probe further to find out whether the acquittal was incurable or whether it was on technical ground. The



Railway Administration also have the same preception under rules but the above proposition of law has undergone on modification after the Supreme Court order in Janakiraman's case. The principle laid down by the Hon'ble Supreme Court in Janakiraman's case extracted below:

"We are therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary... There may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceeding or acquittal in the criminal proceedings is with benefit of doubt... In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it."

9. On the basis of the above principle enunciated by the Hon'ble Supreme Court in Janakiraman's case the Fundamental Rule was amended and Rule 54-B was inserted which reads as under:

"54-B(1) When a Govt. 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 Govt. servant for the period of suspension ending with reinstatement (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."

10. In (1997) 35 ATC 130, Narayan Das Dubey Vs. UOI & Ors (Full Bench), CAT, Jabalpur, held that refusal to treat suspension period as duty because acquittal in a criminal case was not honourable was justified. In that case the applicant was arrested on a report that he was responsible for throwing acid on the face of complainant. Criminal trial proceeded against him but he was acquitted because the complainant and witnesses turned hostile. It was held that refusal of departmental authorities to treat the suspension period as duty was valid.

11. In Sulekh Chand & Salek Chand Vs. Commissioner of Police,

1994 Supp(3) SCC 674, it was held that in criminal prosecution the employee has been acquitted on merits, he becomes entitled to belated reinstatement.

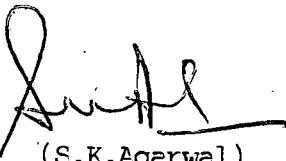
12. In Ram Kumar Yadav Vs. UCI (1995) 29 ATC 704 (FB) The law pertaining to regularisation of intervening period was considered and held that if the order passed by the authority is as per the requirement of Rule F.R. 54-B, the order is perfectly valid.

13. In the instant case, it becomes abundantly clear that the applicant was held guilty by the Enquiry Officer and in pursuance of the enquiry report, the disciplinary authority has passed a penalty of removal from service of the applicant. The applicant challenged in appeal and the same was dismissed. But in revision a lenient view was taken and the respondents were directed to take the applicant on duty. On the perusal of the pleadings of the parties, it appears that the applicant was not exonerated from the charge, therefore, in view of the provisions given in FR 54-B and the legal position as cited above, we are of the considered opinion that there is no basis to interfere with the impugned order passed by the respondents as the order appears to be in consonance with the provisions given in FR 54-B. Therefore, this O.A having no merits, is liable to be dismissed.

14. We, therefore, dismiss this C.A having no merits with no order as to costs.


(N.P.Nawani)

Member (A).


(S.K.Agarwal)

Member (J).