

Central Administrative Tribunal
Jabalpur Bench

OA No.1151/04

Qualior, this the 13th day of September, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

Badri Prasad
Son of Shri Babulal Pali
Labourer 'B' (unskilled)
M.T.Sectio, Vehicle Factory
Jabalpur.
R/o 37, West Ghamapur
In front of Ram Lila Maidan
Jabalpur.

Applicant.

(By advocate Shri S.Nagu)

Versus

1. Union of India through
Secretary
Ministry of Defence Production and Supplies
South Block
New Delhi.
2. Senior General Manager
Vehicle Factory
Jabalpur.

Respondents.

(By advocate Shri S.K.Mishra)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Direct the respondents to release the unduly withheld annual increments right from July 1994 to July 2002.
- (ii) Direct the respondents to properly fix the salary of the applicant by adding the aforesaid unduly withheld nine annual increments.



- (iii) Direct the respondents to extend the benefits of one upgradation under the ACP Scheme, which accrued to the applicant after completion of 12 years of service in the scale of 2650-4000 with effect from 1994.
- (iv) Direct the respondents to grant all consequential benefits arising out of the aforesaid reliefs, including arrears of pay and allowances, fixing seniority in the upgrades scale of 2650-4000 along with arrears of salary.

2. The brief facts of the case are that the applicant was initially appointed on substantive basis as Labour (unskilled) on 11.6.1982. He was falsely implicated in an incident in which he was taken into custody on 6.11.93 and was kept in custody for more than 48 hours. Thereafter he was placed under deemed suspension with effect from 6.11.1993. The criminal prosecution culminated in acquittal of the applicant vide order-dated 28.1.2003. Consequently he was reinstated in service with effect from 24.2.2003. The period of suspension from 6.1.1993 to 24.2.2003 was regularized vide order dated 4.4.2003. However, the period of suspension was treated as not spent on duty. Aggrieved, the applicant preferred an OA No.283/2003, which was decided by the Tribunal vide order dated 3.9.2004 disallowing full salary for the suspension period. However, the Tribunal declared as under:

“However, he will be entitled to back wages from the date of acquittal and except for the purpose of denying the applicant actual payment of back wages for the period also will be counted as period of service without ay break.”

The applicant thereafter made a representation requesting for release of unduly withheld annual increments of nine years and for fixation of his pay. Reinstating the applicant in service on 24.2.2003, the respondent No.2 started paying salary to the applicant from initial stage of pay scale of 2550-3200 as if the applicant was freshly recruited, thereby washing out almost 21 years of service, which he rendered on a substantive basis from 11.6.1982 to 23.2.2003. By another order dated 10.12.2004, the respondents amended earlier orders to the extent of treating the period from the date of acquittal i.e.



28.1.2003 till the actual date of reinstatement i.e. 24.2.2003 as having spent on duty for which the applicant was declared as entitled to full salary. Another fallout of the respondents' action was that the applicant has been deprived of his first upgradation under the ACP scheme after completion of 12 years of service in the scale of 550-3200 in June 1994. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that non-release of annual increments for a period nine long years from July 1994 to July 2002 without any justifiable reason is unsustainable in law. Non-grant of benefit of upgradation under the ACP Scheme after completion of 12 years of service despite the period suspension having been declared to be treated as on duty except for full salary is an ample proof of administrative excesses, which demonstrates lack of mind and is thus arbitrary. Learned counsel further argued that due to the unlawful action of the respondents, the applicant is drawing less basic salary by Rs.1000 and less total gross salary by about Rs.2800 per month.

4. In reply, learned counsel for the respondents argued that the suspension of the applicant was revoked with effect from 24.2.2003. Since the applicant was not fully exonerated/honorably acquitted, hence vide order-dated 4.4.03 the suspension period has not been counted as period spent on duty. Except suspension allowance already received, the applicant is not entitled for salary, other allowances and benefits for suspension period. As per the direction of the Tribunal in OA No.283/03, from the date of acquittal to the date of revocation of suspension period i.e. from 28.1.03 to 23.2.03, the applicant was granted full wages vide order-dated 10.12.04. Learned counsel further argued that the applicant is not entitled to get first upgradation under ACP after completion of 12 years of qualifying service in scale of Rs.2550-3200 in the month of June 1994. Since the applicant was under suspension from 6.11.93 to 24.2.2003, the period of continuous qualifying service of 12 years is not completed immediately on his revocation of suspension i.e. on 24.2.03. The benefit of ACP will be



extended to the applicant in due course after completing the formalities. Our attention is drawn towards an order passed by the Tribunal in OA No.110/91 along with OA 698/90, decided on 6.2.1995 and the counsel argued that the action of the respondents is perfectly legal and justified.

5. After hearing learned counsel for both parties and perusing the records, we find that during the suspension period, the applicant did not perform his duties and the respondents have treated the applicant as on duty and have paid his salary after his acquittal till ~~today~~ on his reinstatement in service. But the applicant was paid only the subsistence allowances of 50% of his pay and allowance during the suspension period. According to FR 26, the following provisions prescribe the conditions on which service counts for increments in a time scale:-

- (a) All duty in a post on a time-scale counts for increments in that time-scale.

We have perused the order passed in the criminal case, which was decided on the basis of a compromise between the parties. The argument advanced on behalf of the respondents is that the applicant is ^{not} honorably acquitted by the competent judicial court. He was ordered to be acquitted on the basis of a compromise between the parties. We have perused the order-dated 6.2.95 passed in OA No.110/91 & 698/90 - in which the question was reframed by the Larger Bench and answered as follows:

<u>Question</u>	<u>Answer</u>
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 a criminal charge which ends in his acquittal by giving him the benefit of doubt?	No



It has been further held that if there is no finding that the F.I.R. was false or the prosecution itself was without foundation, the order of suspension cannot be held to be unjustified. Therefore the competent authority has only to determine if the suspension order is justified unless there is material to hold that the suspension order is unjustified. The power of competent authority under F.R.54-B restricting the payment of the subsistence allowance already paid or any other amount is not fettered under law. The aforesaid petitioners were thus dismissed. We have perused the relevant orders passed by the respondents in regard to treating the period of suspension and about non-grant of increment during the suspension period and also about non-grant of the benefit of upgradation under the ACP Scheme at the relevant time.

6. Considering all facts and circumstances, we are of the considered opinion that the OA has no merit. Accordingly, the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

aa.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पुनिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय वार एडवोकेटजन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के कार्यालय
- (3) प्रत्ययी श्री/श्रीमती/कु.....के कार्यालय
- (4) वंशपाल, के.प्र.अ., जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

21-9-05

Shri S. V. Naga H.C.J.B.P.
Shri S. K. Mishra

Filed
21/9/05