

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 651 of 1999

Jabalpur, this the 16th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri G. Shanthappa, Judicial Member

Jagdish Prasad Rajak, s/o, late  
Shri Kodulal Rajak, aged about 41  
years, Labour 'A', House No. 2107,  
Lalmati Chandmari Road, Jabalpur,  
presently in Gun Carriage Factory,  
Jabalpur.

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through :  
its Secretary, Ministry of  
Defence, New Delhi.
2. Chairman/Director General,  
Ordnance Factory, Ordnance  
Factory Board, 10-A, Kudiram  
Bose Marg, Calcutta.
3. General Manager, Gun Carriage  
Factory, Jabalpur.

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R (Oral)

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicant has  
sought the following main reliefs :

"(ii) to set aside the order dated 12.12.1998  
(Annexure A-5) and dated 17.2.1999 (Annexure A-6).

(iii) to command the respondents to provide all other  
consequential benefits to the applicant as if he is  
never placed under suspension and dismissed and arrears  
of pay, length of service (counting of service),  
increments, promotion and seniority and all other  
benefits arising thereto.

(iii-A) to command the respondents to provide revised  
subsistence allowance to the applicant as per the pay-  
scale prevailing pursuant to IVth Pay Commission's  
recommendations from 1.1.1986 to 13.2.1991 and pay the  
arrears with interest. Any Rule/Provision which comes  
in the way for payment of this revised subsistence  
allowance be declared ultra virus and set aside. On  
reinstatement, the respondents be directed to fix the  
applicant's pay in a position as if he drew increments  
throughout his suspension and termination period with  
all consequential benefits.

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(v) Set aside the order dt. 24.1.2000 passed by the appellate authority."

2. The brief facts of the case as stated by the applicant are that was working as Labour-A in Gun Carriage Factory, Jabalpur. While he was working as such, he was proceeded against a criminal case under Section 302, 149 and 148 of Indian Penal Code and was convicted by the Trial Court. After his arrest in the criminal case the applicant was placed under suspension. After conviction the respondents have invoked Rule 19 of the CCS(CCA) Rules<sup>1965</sup> and dismissed the applicant from service with effect from 14.2.1991. He preferred an appeal against the order of the Trial Court in the High Court of Madhya Pradesh. The Hon'ble High Court of Madhya Pradesh vide order dated 2.9.1997 acquitted the applicant on merits. The applicant has therefore filed a representation dated 12.10.1997, seeking his reinstatement in service. Thereafter the respondents have reinstated the applicant in service with effect from 7.11.1998. The applicant was suspended for the period from 1984 to 1991. In the year 1991 he was dismissed from service and was reinstated with effect from 7.11.1998. The respondents vide order dated 7.11.1998 have treated the period from the date of dismissal<sup>from service</sup> to the date of reinstatement in service as "bias non" and the period under suspension i.e. from 14th August, 1984 to 13th February, 1991 as period<sup>not</sup> spent on duty. Aggrieved by this the applicant has filed this Original Application seeking the aforesaid reliefs.

3. Heard the learned counsel for the applicant and the respondents and perused the records carefully.

4. The learned counsel for the applicant has stated that

treating the period from the date of dismissal to the date of reinstatement as dias non, the respondents have taken away the benefit of continuity in service and caused break in service. He has also submitted that during the period of suspension, there was a revision of pay scale with effect from 1.1.1986. The applicant was granted subsistence allowance on the basis of the old pay scale as per IIIrd Pay Commission. On the recommendation of the IVth Pay Commission the Government has granted new pay scales to the employees. <sup>ought to</sup> Therefore the applicant should also have been granted subsistence allowance on the basis of new pay scales from 1.1.1986. The applicant should also be granted annual increments during the period of suspension and notional increments for the period from the date of dismissal from service to the date of reinstatement in service.

4.1. The applicant has relied on the judgment of the Hon'ble Supreme Court in the case of Umesh Chandra Mishra vs. Union of India and others, 1993 (2) SCC 210 for subsistence allowance on the basis of revised scale. The Hon'ble Supreme Court has held as under :

"Service Law - Suspension - Subsistence allowance - Revision of pay scale - Effect - Held on facts, the allowance to be determined according to revised scale."

Following this judgment of the Hon'ble Supreme Court the Full Bench of this Tribunal vide its order dated 26.8.2002 J.S. Kharat vs. UOI & Ors. in OA No. 560/1996/has held that the payment of subsistence allowance on the basis of scale of pay before revision cannot be a reasonable classification keeping in view the object to be achieved in paying subsistence allowance. For the aforesaid reasons also we consider that a suspended employee is entitled for subsistence allowance on revised pay scale and his subsistence allowance which is payable month to month has to be paid on the basis of revised

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pay scale which he would have been entitled had been in  
service." The learned counsel for the applicant has also  
relied upon the judgment of the Hon'ble High Court of  
Madhya Pradesh in M.P. No. 1132/1985 - Jawaharlal Jain vs.  
Administrative Jabalpur, Municipal Corporation Jabalpur,  
decided on 2nd May, 1987, wherein the Hon'ble High Court  
has observed as under :

"6. The Division Bench case relied by the learned  
counsel for the petitioner has not considered the  
question of grant of annual increment to the  
suspended employee. In our opinion, Fundamental Rule  
54 does not prohibit granting of the annual  
increment to a suspended employee during the period  
of his suspension. The view taken by the learned  
Single Judge in the Administrator Municipal Council,  
Damoh (supra) is applicable to the facts of the  
present case and we hold that the petitioner is  
entitled to the relief claimed by him."

5. On the other hand the learned counsel for the  
respondents has stated that the intervening period from the  
date of suspension from 1984 to 1991 i.e. the date of  
dismissal and the intervening period from the date of  
dismissal to the date of reinstatement is to be treated, is  
entirely within the domain of the competent authority of the  
Department. He has relied upon the judgment of the Hon'ble  
Supreme Court in the case of The Management of Reserve Bank  
of India, New Delhi vs. Bhopal Singh Panchal, AIR1994SC552.  
The Hon'ble Supreme Court has held as under :

".....  
In other words, his acquittal even if it is without  
blame or his release from detention even if his arrest  
is not on account of improper conduct on his part,  
does not automatically entitle the employee to full  
pay and allowances. The competent authority has to  
pass an order in each case taking into consideration  
all circumstances to treat the period of absence as  
period on duty before full pay and allowances become  
admissible to the employee. The Regulations vest the  
power exclusively in the Bank to treat the period of  
such suspension on duty or on leave or otherwise. The  
power thus vested cannot be validly challenged. During  
this period, the employee renders no work. He is  
absent for reasons of his own involvement in the  
misconduct and the Bank is in no way responsible for  
keeping him away from his duties. The Bank, therefore

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cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

The learned counsel for the respondents has also relied on the judgment of the Hon'ble Supreme Court in the case of Union of India and others vs. Jaipal Singh, 2003 AIR SCW 663 wherein the Hon'ble Supreme Court has held as under :

"Reinstatement with backwages - Validity - Respondent, public servant dismissed on conviction in criminal case - Reinstated on his subsequent acquittal - Backwages cannot be granted as department cannot be found fault with for having kept him out of service - Order of High Court insofar as it directed payment of backwages - Is erroneous and liable to be set aside."

As regards the issue of granting of subsistence allowance of which on the basis of revised pay scale and in support of the was relied/placed by the applicant on the judgment of the Full Bench of this Tribunal, referred to above, the learned counsel for the respondents has stated that following the Full Bench judgment, in an another Original Application, the Tribunal has granted the benefit of subsistence allowance during the suspension period on the basis of revised pay scale. That order of the Tribunal has been challenged in the Hon'ble High Court of Madhya Pradesh and the Hon'ble High Court has granted stay to that order.

6. We have very carefully considered the rival contentions made on behalf of the parties. In this case we find that the applicant was involved in a criminal case under Section 302, 149 and 148 of IPC. He was convicted by the Trial Court and thereafter he preferred an appeal in the Hon'ble High Court of Madhya Pradesh and the Hon'ble High Court has acquitted him. In pursuance of his arrest in the criminal case, the applicant was placed under

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suspension in the year 1984. The respondents have thereafter invoked Rule 19 of CCS(CCA) Rules and have dismissed the applicant in the year 1991, after he was convicted by the Trial Court. He has been reinstated in service on 7.11.1998, after he was acquitted by the Hon'ble High Court. The respondents have treated the period of suspension from the date of dismissal as not spent on duty and the intervening period to the date of reinstatement has been treated as dies-non. By treating the period as dies-non, this will amount to break in service and the period will not be counted for grant of any service benefits to the applicant. In view of the law laid down by the Hon'ble Supreme Court in the case of The Management of Reserve Bank of India, New Delhi (supra), it is exclusively within the domain of the respondents Department to regulate the intervening period from the year 1984 to 1998. The applicant's prayer for the backwages of the pay and allowances during the period from 1984 to 1998 is rejected in view of the judgment of the Hon'ble Supreme Court in The Management of Reserve Bank of India, New Delhi (supra). As regards the grant of increment during the period of suspension, we are bound by the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Jawaharlal Jain vs. Administrative Jabalpur, Municipal Corporation Jabalpur (supra). Hence the respondents are directed to grant increment to the applicant during the period of suspension. With regard to the prayer of the applicant for payment of subsistence allowance during the period of suspension from the year 1984 to 1991, we find that in view of the decision of the Full Bench of the Tribunal the applicant is entitled to get the same. However the learned counsel for the respondents contended that the issue involved before the Full Bench has been challenged before the Hon'ble High Court of Madhya Pradesh in a Writ Petition. He has not



however

given the details of the said writ petition. In view of the forgoing discussion we direct the respondents to pay the applicant the subsistence allowance in terms of the revised pay scale as per the directions given by the Full Bench of the Tribunal. However this will be subject to the outcome of the pending Writ Petition as stated by the learned counsel for the respondents. The respondents are directed to comply with the above orders within a period of four months from the date of receipt of copy of this order.

7. Accordingly, the Original Application stands disposed of. No costs.

*G. Shanthappa*  
(G. Shanthappa)  
Judicial Member

*M.P. Singh*  
(M.P. Singh)  
Vice Chairman

"SA"  
पृष्ठांकन सं. ओ/ब्या..... जबलपुर. दि.....  
पतिलिपि अवृंदित:-  
(1) सचिव, ३८८ व्यायालय वार एकेडमीशन, जबलपुर  
(2) अधिकारी ओ/विभागीय/कु..... के काउंसल S. Paul  
(3) अधिकारी ओ/विभागीय/कु..... के काउंसल B. daslva  
(4) अधिकारी ओ/विभागीय/कु..... के काउंसल  
सूचना एवं आवश्यक कार्यवाही देने  
R. B. Jagannad

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