

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

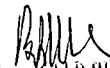
ORDERS OF THE TRIBUNAL

5.1.2009

OA 357/2007 with MA 266/2007

Mr. Sumit Khandelwal, counsel for applicant.
None present for respondents.

At the request of learned counsel for the applicant, let the matter be listed on 25.2.2009.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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25-2-09

357/207 with MA 266/207

Ms. Karita Bhat, Prosy Counsel
Mr. Sumit Khandelwal, Counsel for applicant
Mr. T. P. Sharma, Counsel for respondents

Heard learned Counsel for the parties.
For the reasons dictated separately,
the OA is dismissed.


(B.L. Khatari)
M (A)


(M.L. Chauhan)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of February, 2009

ORIGINAL APPLICATION No.357/2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Madan Lal Sharma
s/o Shri Ramdhan Panda,
r/o 31, Awadhpuri, Lal Kothi,
Tonk Road, Jaipur
(superannuated as Telephone
Supervisor, Dept. of Telecom.

..Applicant

(By Advocate: Ms. Kavita Bhati, proxy counsel for Mr.
Sunit Khandelwal)

Versus

1. The Union of India through
its Secretary to the Govt. of India,
Department of Telecom,
Sanchar Bhawan,
New Delhi.
2. Chief General Manager Telecom,
Rajasthan Circle,
Jaipur
3. Principal General Manager,
Telecom, District Jaipur
4. The Deputy General Manager (A),
Department of Telecom,
District Jaipur

.. Respondents

(By Advocate: Mr. Tej Prakash Sharma)

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O R D E R (ORAL)

The applicant has filed this OA thereby praying that respondents may be directed to decide the suspension period i.e. from 19.5.1989 to 30.11.1994 as duty for all purposes and grant full pay and allowances for the aforesaid period of suspension.

2. Briefly stated, facts of the case are that the applicant while working as Telephone Supervisor in respondent Department was placed under suspension w.e.f. 19.5.1989 which continued till he was superannuated on 30.11.1994 as he was detained in custody beyond 48 hours. It is admitted case between the parties that the applicant was allowed subsistence allowance at the rate of 50% of the basic pay for the aforesaid period and thereafter he was granted provisional pension till finalization of pending court case. However, the applicant was acquitted on technical grounds i.e. he was granted benefit of doubt by the Criminal Court. It is the case of the applicant that since he was acquitted by the Criminal Court, the aforesaid period of suspension may be treated as duty for all intended purposes and respondents may be directed to pay remaining amount of pay and allowances to the applicant for the aforesaid period.

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3. The respondents have filed reply. The facts as stated above, have not been disputed. The respondents in Para 4.5 of the reply have also reproduced order of the Criminal Court in Criminal Case No. 103/89 decided on 21.5.2002 by the Court of CJM No.6, Jaipur city, Jaipur, perusal of which shows that the applicant was given benefit of doubt. The respondents in reply affidavit have also stated that delay in release of pension/gratuity was due to the fact that copy of the order was submitted by the applicant after a lapse of one year. According to the respondents, difference of full pay/pension and all allowances and provisional pension/regular pension and other admissible allowances have already been paid to the applicant as per Ann.3. The respondents have also stated that the period of suspension has to be treated as period of duty for all intended purposes in such cases where the Government servant is acquitted on merit of the case and not in cases where the Government servant has been acquitted on technical grounds/given benefit of doubt.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The question which requires our consideration is whether the applicant is entitled to full pay and allowances for the aforesaid period of suspension. The law on the point has been settled by the Hon'ble Apex

Court in number of decisions and it has been consistently held that no precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed and it depends upon the facts and circumstances of each case. The Hon'ble Apex Court in the case of UP Brassware Corporation Ltd. and anr. Vs. Uday Narain Pandey, 2006 SCC (L&S) 250 while considering old view as well as new view has held that full back wages cannot be allowed automatically and mechanically only because an order of termination is found to be unsustainable. While granting relief it is imperative to the courts to apply its own mind and payment of full wages cannot be natural consequences where the termination order has been set-aside.

6. At this stage, it will be useful to refer to another decision of the Hon'ble Apex Court in the case of Baldev Singh vs. Union of India and ors., 2006 SCC (L&S) 35. That was a case where the appellant before the Apex Court was arrested in a criminal case and was convicted by the Trial Court. However, his appeal was accepted by the High Court and he was acquitted vide order dated 26.3.1992. After acquittal, the appellant was released from jail on 4.4.1992 and according to the appellant he reported to duty on the next day when he was reinstated. He was however, discharged from service on 30.9.1993. His grievance was that he is entitled to release of arrears of salary for the

period from 30.3.1987 (when he was arrested) to 30.9.1993 (when he was discharged). The High Court dismissed the writ petition filed by the appellant on the ground that since the appellant was in custody and facing trial upto March, 1992 and had rendered service from September, 1978 to end of March, 1987 and thus, according to the Hon'ble High Court the appellant was entitled to the salary for the period for which he has actually rendered service and not for the earlier period. The decision of the High Court was upheld by the Apex Court and it was held that since the appellant has not rendered 15 years of service, he is not entitled to pension. Viewing the matter from the law laid down by the Hon'ble Apex Court in the aforesaid cases, we are of the view that the applicant is not entitled to any relief.

7. As can be seen from the suspension order dated 26.5.1998 (Ann.A2) the applicant was under deemed suspension w.e.f. the date of detention i.e. 19th May, 1989 in terms of sub-rule (2) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and it was recorded that applicant shall remain under suspension until further orders. Admittedly, the said order was not revoked by the competent authority till his superannuation on 30.11.1994. Proceedings against the applicant were finalized on 21.5.2002, pursuant thereto the authority

concerned has passed an order dated 19.3.2004 (Ann.A1) whereby permanent pension and DCRG was released in favour of the applicant with immediate effect. Thus, in view of the fact that the applicant was not placed under suspension by the authority on account of any wrong action on their part but the applicant was placed under suspension by operation of law as the applicant was in custody for the period beyond 48 hours, therefore, in view of the provisions contained in sub-rule (2) of Rule 10 of CCS (CCA) Rules, 1965 the applicant continued under deemed suspension until such order is not withdrawn. This is the view taken by the Hon'ble Apex Court in the case of Union of India and ors. vs. Rajiv Kumar, 2003 (4) SLR 730. Thus, viewing the matter from this angle, we are also of the view that the respondents cannot be held responsible for placing the applicant under suspension so as to entitle the applicant to treat the aforesaid period as duty period. As already stated above, the applicant was placed under deemed suspension by virtue of operation of law. Thus, according to us, the aforesaid period cannot be treated as period on duty for the purpose of full pay and allowances to the applicant, more particularly, in view of the fact that the applicant was not fully exonerated by the criminal court. However, he was given benefit of doubt. Thus, we see no infirmity in the action of the respondents whereby the applicant was held entitled to 50% of pay

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and allowances for the aforesaid period of suspension and it is not for this Tribunal in exercise of judicial review to tinker with the decision taken by the authorities in this respect especially when the Apex Court has declined to grant pay and allowances even in such cases where the Criminal Court has acquitted a person on merit/termination order was set-aside.

8. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl.Member

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