

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 22nd day of February, 2011

**Original Application No. 191/2009**

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

M.L.Soni  
s/o Shri Ram Lal Soni,  
r/o Ram Ganj Mandi,  
Kota, presently retired  
as Sr. TOA (P) on 31.08.2007  
from the office of the  
GMTD, BSNL, Kota.

.. Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

1. Union of India  
through Secretary to the Govt. of India,  
Department of Telecom,  
Sanchar Bhawan,  
New Delhi.
2. Chairman,  
Bharat Sanchar Nigam Limited,  
Corporation Office,  
Personnal IS Section,  
Sanchar Bhawan,  
New Delhi.
3. Chief General Manager,  
Telecom Rajasthan Circle,  
Jaipur
4. General Manager,  
Telecom District,  
Kota.

42

... Respondents

( By Advocate: Mr. B.K.Pareek, proxy counsel for Mr. T.P. Sharma for resp. No1. and Mr. Neeraj Batra, for resp. No. 2 to 4)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

"8.1 That by a suitable writ/order of the direction the respondents be directed to regularize the suspension period from 3.9.79 to 5.7.1990 with full pay and the allowances for the suspension period with effect from 3.7.79 to 5.7.1990.

8.2 That the arrear of the pay and allowances be paid to the applicant with effect from 3.9.79 to 5.7.1990 with the reasonable interest on 12% on the arrears.

8.3 Any other relief which the Hon'ble bench deems fit."

2. Briefly stated, facts of the case, so far relevant, are that the applicant was arrested in a criminal case and thus was placed under deemed suspension w.e.f. 3.9.1979 and this suspension of the applicant was revoked on 5.7.1990 during pendency of criminal proceedings. However, the trial court convicted and sentenced the applicant vide judgment dated 18<sup>th</sup> October, 1984 for offence under Section 307/34 IPC. The applicant was subsequently acquitted by the Hon'ble High Court vide its judgment dated 21.4.2008. The grievance of the applicant is regarding payment of pay and allowances for the period of suspension.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that suspension period of the applicant from 3.9.1979 to 5.7.1990 has been regularized and resultantly, pensionary benefits have been granted to the applicant after duly confirmation of the

*lll*

applicant. It is further stated that applicant is not entitled to increment and promotional benefits during the period of suspension as no work has been done by the applicant during the period of suspension. However, continuity of service of the applicant for the aforesaid period has been considered only for the purpose of calculation of pension.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record. It is not in dispute that case of the applicant is governed under FR-54-B. It is also not disputed that suspension of the applicant was revoked pending finalization of the criminal proceedings. It appears that when the applicant was reinstated, since the criminal proceedings were pending, no order was passed by the competent authority regarding pay and allowance for the suspension ending with reinstatement and whether or not the said period shall be treated as period spent on duty. It cannot also be disputed that once the applicant was finally acquitted by the Hon'ble High Court, the matter was required to be reconsidered by the respondents in the light of the provisions contained in sub-rule (6) of FR-54-B and the competent authority was required to pass orders in respect of two separate and independent issues viz. a) pay and allowances for the period of suspension and b) whether or not the period of suspension should be treated as period spent on duty. The respondents have not placed on record any such order, therefore, no positive finding can

✓

be given by this Tribunal whether case of the applicant falls under FR-54-B(3) or it has to be dealt with under proviso to FR-54-B(5) and if so the order has been passed in conformity with the proviso to FR-54-B(5) after giving notice to the government servant about quantum proposed and after considering representation, if any, submitted by him, more particularly, regarding pay and allowances to which he would have been entitled had he not been suspended.

6. Thus, we are of the view that the present OA can be disposed of at this stage with direction to the respondents to communicate the order passed by the competent authority in terms of provisions contained under FR-54-B. Accordingly, the respondents are directed to communicate such decision to the applicant within a period of one month from the date of receipt of a copy of this order. We also wish to clarify that in case the aforesaid order has not been passed by the respondents in conformity with the provisions contained in FR-54-B and more particularly sub-rule (5), it will be open for the competent authority to proceed further in the matter by giving notice to the applicant regarding pay and allowances to be paid to the applicant for the period of suspension ending with reinstatement and pass appropriate order qua this aspect after considering representation of the applicant and disposal of this OA will not come in the way of the respondents to issue fresh show-cause notice expeditiously and in any case not later than six weeks from the date of receipt of a copy of this order. It is further clarified that in case the respondents are of the view that the order regarding pay and allowances to be paid to the

applicant for the period of suspension and also the period of the aforesaid absence shall be treated as period spent on duty for the purpose of pensionary purposes only, has been passed in conformity with the provisions contained in FR 54-B, it shall be open for the applicant to challenge validity of the order to be communicated by the respondents in terms of the observations made above by filing a substantive OA on all permissible grounds.

7. With these observations, the OA shall stand disposed of with no order as to costs.

*Anil Kumar*

(ANIL KUMAR)  
Admv. Member

*(M.L. CHAUHAN)*

(M.L. CHAUHAN)  
Judl. Member

R/