

17

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved on: 09.12.2014

ORIGINAL APPLICATION NO. 060/00071 of 2014
Chandigarh, this the 15th day of December, 2014

...

CORAM: HON'BLE MS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

...

Isaac James, Senior Lab Technician, Department of
Immunopathology, PGIMER, Chandigarh.

...APPLICANT

BY ADVOCATE: SHRI BABBAR BHAN

VERSUS

Post-Graduate Institute of Medical Education and Research,
Chandigarh through its Director.

...RESPONDENT

BY ADVOCATE: SHRI ANIL SHARMA AND SHRI AMIT JHANJI

ORDER

...

HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J):-

The applicant had been placed under deemed suspension w.e.f. 28.07.2009 under rule 10 (2) of the CCS (CCA) Rules 1965 on his arrest in the criminal case against him for the offence of rape. He was in custody until 19.11.2011 when he was acquitted in



the criminal trial (vide the judgment at Annexure A-3). He was reinstated in service w.e.f. 01.12.2011 on revocation of the order of suspension dated 26.10.2009. The applicant was paid subsistence allowance @ 50% under FR 53 (1).

2. Besides acquittal in the criminal trial, it is significant to note that the respondent's 'Internal Committee' did not "come across any clinching documentary or oral evidence to substantiate any allegation against any of the officials of this Institute" (vide the noting dated 07.09.2009 at Annexure R-2 to the respondent's additional affidavit).

3. The present one is the second round of litigation by the applicant in regard to his claim for (a) pay and allowances for the period of absence and (b) treatment of the said period as duty. In the first round, viz., O.A. No. 1047-CH-2013, the following direction was given, vide our Order dated 29.07.2013 (Annexure A-5):

"6. Considering the above, the O.A. shall stand disposed of with the grant of a direction to the Competent Authority to take a view in the context of representation/legal notice Annexure A-4 & A-5 respectively in accordance with law by passing a reasoned and speaking order thereon. The deliberation may be concluded within three months from today. Needless to say that we have not expressed any opinion so far as the merits of the case are concerned.



7. The O.A. shall stand disposed of accordingly."

4. The respondent's communication dated 29.10.2013 (Annexure A-1) addressed to the applicant is the outcome, which is sought to be set aside in the instant O.A. Annexure A-1 reads as under:

'In compliance with the order of the Hon'ble CAT in the OA No. 1047-ch-2013 dated 29.07.2013, your representation dated 21.08.2012 and legal notice dated 20.02.2013, have been re-examined and it has been observed that an FIR NO. 266 dated 28.07.2009 under section 376 IPC was registered against Sh. Issac James at Manimajra and he was subsequently arrested by the police and sent to the Judicial Custody.

On the basis of the information received from Sr. Superintendent of Police, U.T., Chandigarh, Sh. Issac James was put under suspension vide office order dated 26.10.2009 w.e.f. 28.07.2009 i.e. the date of his detention.

As per judgment dated 19.11.2011, the Hon'ble Court of Additional Sessions Judge, Chandigarh has passed the following orders.

"So whatever facts, circumstances and evidence has come on file, from that in my opinion, the prosecution has failed to prove the charges against the accused beyond reasonable doubt. So, by giving the benefit of doubt, accused stand acquitted of the charges framed against them."

As per judgment dated 19.11.2011, Sh. Issac James has been acquitted of the charges by giving him a benefit of doubt. The judgment indicates that the acquittal is because of the fact that the "prosecution has failed to prove his charge."

12

In view of the facts stated above, keeping in view your prayer dated 21.08.2012 and legal notice dated 20.02.2013 for treating the suspension period as duty period and grant full salary for the suspension period and arrears along with interest @ 24% has been considered and after due consideration of your request, the undersigned orders that the period of suspension w.e.f. 28.07.2009 to 30.11.2011 is treated as "Not Spent on Duty" in view of the provisions contained in 54-B(7) as elaborated in Para 5(b) (3) and 5(d) (1) & (2) of Chapter-5 of Swamy's Manual on Disciplinary Proceedings.'

5. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

6. FR 54-B mandates the competent authority to take decision in respect of two separate and independent matters, viz., (a) pay and allowances for the period of absence, and (b) whether or not the period of absence should be treated as duty, as it is not necessary that decision on (a) should depend upon the decision on (b). While the aforesaid communication dated 29.10.2013 (Annexure A-1) contains the decision that 'the period of suspension w.e.f. 28.07.2009 to 30.11.2011 is treated as "Not Spent on Duty" in view of the provisions contained in 54-B(7)', there is no decision in respect of 'pay and allowances for the period of absence'.



7. Therefore, we are of the view that the instant O.A. deserves to be disposed of with a direction to the respondent to properly follow the mandate of FR 54-B and decide in respect of pay and allowances which the applicant should be paid for the period of absence. The respondent is hereby directed to pass within one month from the date of receipt of a copy of this Order, a speaking order containing the decision on the quantum of pay and allowances which the applicant should be paid for the period of absence.

8. The O.A. is disposed of accordingly. No order as to costs.

(DR. BRAHM A. AGRAWAL)
MEMBER(J)

(RAJWANT SANDHU)
MEMBER(A)

Dated: 15.12.2014
'SK'