

**Central Administrative Tribunal
Principal Bench**

OA No.3031/2013

Order reserved on : 11.05.2016
Order pronounced on : 02.06.2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Laxmi Chand,
R/o D-156, Gali No.4,
Jagatpuri, Mandoli Road,
PO Nandnagari, C-Block,
Shahdara,
Delhi.

...applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

DDA & Ors. through

1. The Vice Chairman,
DDA, Vikas Sadan,
Near INA, New Delhi.

2. The Commissioner (P),
DDA, Vikas Sadan,
Near INA, New Delhi.

...respondents

(By Advocate : Shri Manish Garg)

ORDER

Mr. V.N. Gaur, Member (A) :-

The present OA has been filed praying for the following reliefs:-

- i) To quash and set aside the order dated 20.02.2013 and direct the respondents to decide the intervening period as spent on duty for all purposes.
- ii) To direct the respondents to give pay and allowances to the applicant for the period

14.06.2001 to 13.05.2011 with 10% interest and issue further directions to give promotion as well as other relates benefits.

- iii) To direct the respondents to fix the seniority of applicant as UDC as on 1979 and consider and grant promotion to the applicant to the post of Head Clerk/Assistant, AD & Dy. Director with all consequential benefits including arrears of pay from the date of his juniors and similarly placed persons.
- iv) To direct the respondents to fix the pay of applicant by releasing all increments, financial upgradations under ACP/MACP Scheme and by taking into account the revision of pay as per recommendations of 5th & 6th Pay Commission.
- v) To quash and set aside the order dated 13.05.2011 to the extent the applicant has been denied arrears of pay from 14.06.2001 till the date of reinstatement.
- vi) To allow the OA with exemplary cost.
- vii) Pass any further orders as this Hon'ble Tribunal may deemed fit and proper considering the peculiar facts and circumstances of the case."

2. The facts of the case, as relevant to decide the case in the context of the prayers made by the applicant, are that the applicant, a UDC in the Delhi Development Authority (DDA) – respondent No.1, faced departmental action under the relevant Service Rules in 1997. It was alleged that while working as dealing Assistant in Seelampur Zone during 1994-95, he dealt with the case of Smt. Saira Bano, W/o Shri Aakhlak Ahmed, who were unauthorized occupants of vacant land adjacent to plot No. G-163

Seelampur and prepared fictitious notice under Sub-Section 44 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) and notice under sub-Section (3) of Section, 7 of PP Act with forged signature of Shri P.L.Nagpal, the then Assistant Director, Seelampur. He also issued two receipts, one bearing No.314373 dated 26.07.1994 for Rs.500/- and the other bearing No.314270 dated 21.10.1994 for Rs.100/- on account of damages, which gave rise to undue claim in favour of Smt. Saira Bano. The matter was enquired into and the Enquiry Officer submitted his findings on 04.09.1998, holding the charges against the applicant as proved. The respondent No.2 imposed penalty of removal from service by order dated 14.06.2001. While considering the appeal filed by the applicant, the Appellate Authority (AA) observed that respondent No.2 i.e. the Disciplinary Authority (DA), was not the competent authority to remove the applicant from service and ordered withdrawal of order of removal dated 14.06.2001 and placed the applicant under suspension from that date. When the matter was submitted to the respondent No.1 in the capacity of Appointing Authority, the respondent No.1, after considering the facts on record and finding of Enquiry Officer, finally imposed the penalty of removal from service on the applicant vide order dated 09.02.2005. The appeal filed against this order was rejected by the Appellate Authority, i.e., Lt. Governor, Delhi by order dated 22.08.2005. A review application was also rejected on 11.08.2006.

The orders passed by DA, AA and Revisionary Authority were challenged in TA No.211/2007, which was allowed by this Tribunal on 09.02.2011. The impugned orders were set aside and the respondents were directed to reinstate the applicant in service. The Tribunal further observed that applying the principle of 'no work no pay', the applicant would not be entitled to claim the back wages for the interregnum period from the date of removal to that of reinstatement. The relevant para of that Order is reproduced below:-

"12.2 Allowing the OA to the extent that the impugned orders are set aside and the respondents directed to reinstate the applicant in service. However, applying the principle of 'no work no pay', the applicant would not be entitled to claim the back wages for the interregnum period from the date of removal to that of reinstatement. However, this would not be an impediment for other admissible consequential benefits as per law. The above directions are to be complied within a period of six weeks from the date of receipt of a copy of this order. There shall be no order as to costs."

3. The respondent No.1 in compliance of the Orders of this Tribunal dated 09.02.2011 reinstated the applicant in service with all consequential benefits. It was further ordered that for the interregnum period from 14.06.2001 to the date of reinstatement, the applicant shall not be entitled for back wages on the principle of 'no work no pay'. In view of the reinstatement order issued by the respondent No.1, the Contempt Petition filed by the applicant earlier in April, 2011 was closed but the liberty was given to the applicant to make representation, if there was any deficiency in the actual implementation of the order dated 09.02.2011. While

deciding the representation of the applicant, the respondents issued a Show Cause Notice on 16.11.2011 to the applicant for treating the suspension period w.e.f. 14.06.2001 to 09.02.2005 as *dies non*.

4. Aggrieved by the Show Cause Notice, the applicant filed an MA for revival of CP No.401/2011. The CP was, however, closed with the liberty granted to the applicant to submit reply to Show Cause Notice for treating the suspension period as *dies non*. The applicant then approached the Hon'ble High Court of Delhi in WP(C) No.5809/2012, which was disposed of as withdrawn vide Order dated 10.05.2013 with liberty, as the Hon'ble High Court was informed that during the pendency of the Writ Petition, respondent No.1 – Vice Chairman DDA had passed an order on 11.02.2013 to the effect that the Show Cause Notice dated 16.11.2011 as also subsequent order passed thereon stood superseded. The applicant has filed this OA on 20.08.2013 for allowing the period from 14.06.2001 to 13.05.2011 to be treated as spent on duty and payment of full pay and allowances along with 10% interest, and to fix the seniority of the applicant as on 1979 and to consider grant of promotion including arrears.

5. The mainstay of the argument of the learned counsel for applicant was the provision contained in FR 54 A (3), which provides that if the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on merits of the

case, the period intervening between the date of suspension and the date of reinstatement shall be treated as duty for all purposes and the Government servant shall be paid the full pay and allowances for the period according to his entitlement. According to the learned counsel, the Tribunal in TA No.211/2007, while agreeing with the contentions of the applicant, had set aside the order imposing the penalty of dismissal from service and ordered reinstatement. However, the Tribunal fell into an error by not giving the benefit of FR 54 A(3) to the applicant and applied the order of 'no work no pay' and denied him the back wages. On one hand, the Tribunal directed the sanctioning of all the consequential benefits, as per law and on the other it specifically denied the benefit of back wages which was admissible under the existing law to the applicant. It was further argued that in its order dated 10.05.2013, the Hon'ble High Court had virtually set aside the Order of this Tribunal dated 09.02.2011 to the extent the principle of 'no work no pay' had been applied, as was evident from the liberty given to raise all the pleas, which were raised in the Writ Petition to claim challenge to the Show Cause Notice dated 16.11.2011. The learned counsel quoted the judgment of Hon'ble Supreme Court in **State of Kerala Vs. E.K. Bhaskaran Pillai**, JT 6 (2007) and **Jasvir Singh Vs. Punjab and Sind Bank**, SCC 1(2007) 566 in support of his claim for back wages. He also referred to **S.M. Matloob Vs. Director General, Indian Council**

for Cultural Relations in WP(C) No.5226/2014, in which Hon'ble High Court of Delhi, in its order dated 21.05.2015, had ordered 50% of the back wages to the petitioner in that case for the period he was removed from the service.

6. Strongly contesting the claims of the applicant, the learned counsel for respondents submitted that the Order of the Tribunal, granting all consequential benefits to the applicant, did not include the payment of back wages, as suggested by the learned counsel for applicant, since by specific mention the Tribunal had denied back wages to the applicant in Order dated 09.12.2011. The respondents have, therefore, not committed any error or illegality while allowing the applicant all the consequential benefits, except the back wages. According to the learned counsel, the interpretation of FR 54 A (3), as given by the applicant, is misleading as the Rule restricts the benefit to a situation where the dismissal, removal or compulsory retirement of a Government Servant is set aside by the court on the merits of the case. In the case of the applicant, the Tribunal, in its Order dated 09.02.2011, had ordered reinstatement not on merits but on account of various procedural lapses and technical latches on the part of the respondents in passing the orders. In such a case, the benefit of FR 54 A (3) cannot be given to the applicant.

7. We have heard the learned counsels and perused the record. The main contention of the applicant is that the respondents should

have decided the question of back wages by keeping in view FR 54 A(1)(3) and FR 54 B and various other laws, as laid down in the judgments of Hon'ble Supreme Court and Hon'ble High Court cited by him. For easy reference, the text of FR 54 A (3) is reproduced below:-

“(3) If the dismissal, removal, or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of re-instatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, as the case may be.”

8. The aforesaid rules envisage that the Government servant shall be entitled for full pay and allowances for the period of dismissal, removal or compulsory retirement, if the same has been set aside by the court on the merits of the case. The key words here are “merits of the case”. The applicant had challenged the penalty of removal from service before the Hon'ble High Court of Delhi in WP(C) No.18982/2006, which was transferred to this Tribunal as TA No.211/2007. The impugned action had been challenged in the TA on the following legal grounds:

- “a) Appointment of Inquiry Officer (IO) by an incompetent authority and hence the inquiry and the consequent penalty being void ab initio.
- b) While remanding the case by the AA, the whole proceeding from the stage of appointment of IO should have been set aside.

c) Appointment of a retired officer as IO not being in consonance with law; hence the inquiry would be a nullity.”

9. (i) After considering the arguments for and against, and various judicial precedents, the Tribunal came to a conclusion that none of the basic legal objections challenging the validity of the disciplinary action were found to be sustainable. The applicant had raised several other procedural and substantive contentions as such:

- (a) The enquiry report was sketchy and cryptic;
- (b) The Enquiry Officer did not consider the submissions made by the defence.
- (c) The Enquiry Officer exhibited undue hurry in winding up the proceedings.
- (d) The applicant had not been permitted to cross examine the departmental witnesses.
- (e) Submissions of the CO in his written defence brief : (i) questioning the charge about being forged notice being based only on photocopies, the authenticity of which could be doubtful; (ii) denial of the signatures being of the applicant and, therefore, the need of the same being approved by the hand writing expert.

(ii) The Tribunal after examining the aforesaid contentions observed that:-

“Without bringing the complicated Laws of Evidence; purely applying the principle of a common prudent man acting reasonably: we do not find the basis of holding the charges as proved as satisfying the test of reasonableness.”

(iii) The Tribunal also recorded that the Vice Chairman though dealt comprehensively with the issues of competence of the authority and stage of resuming the proceedings; but did not deal with other host of contentions, both procedural and substantive, raised in the representation dated 01.08.2001.

The para 9.2 reads follows:-

“9.2 What we find is that while passing the penalty order (dated 9.2.2005) second time (Annex A/28), the Vice-Chairman though dealt comprehensively with the issues of competence of the authority and the stage of resuming the proceedings; but did not deal with the other host of contentions both procedural as well as substantive raised in the earlier representation dated 1.8.2001, some of which have already been referred in the foregoing paragraphs.”

(iv) The Tribunal further in para 11 observed as follows:-

“11. We find a similar non-consideration of the defence submissions in the Revision Petition (Annex. A/34) in the order of the Revisionary Authority, as decided by the Lt. Governors order dated 11.8.2006.”

(v) Finally, the conclusion arrived at was recorded in para 12.1 as reproduced below:-

“12.1 To conclude in view of the foregoing, in the present case the inquiry report is found to have been vitiated by patent non-consideration of the defence submissions, besides being cryptic in nature. Without even resorting to reappraisal of evidence, we also find the conclusive findings not satisfying the test of reasonableness and logicality. The orders of DA as well as AA and RA are also not found to have duly considered the defence submissions and give an impression of a pre-determined decision.”

10. From the above analysis of the reasons that was given by the Tribunal while arriving at the conclusion and directions given in TA No.211/2007, it is apparent that it was the procedural and technical lapses in the enquiry, in passing the orders of DA, and AA that led the Tribunal to quash the impugned order. The Tribunal had not gone into the merits of the allegations against the applicant, or examined the evidence to decide whether in the departmental proceedings the charges against the applicant were rightly proved or not. In view of this conclusion, we are of the view that the applicant cannot claim the benefit of FR 54 A (3).

11. We have also perused the judgments cited by the applicant, namely, **E.K.Bhaskaran Pillai** and **Jasvir Singh** (supra) and find that these are not applicable in the background of the facts of this case. In the first case the appellant was promoted with effect from 11.5.1979 but in the background of facts of the case wherein his juniors were promoted but he was not, the Hon'ble High Court allowed the back wages from the date of filing the petition i.e. 15.06.1972 and not from 15.09.1961 as he claimed. The Hon'ble Supreme Court upheld the order of the High Court. In the second case the appellant was acquitted in a criminal case by the court of Chief Judicial Magistrate with an observation that a confession was extracted from him by the bank officers in a very cruel manner. In parallel proceedings departmentally the charges were proved

against the applicant. The Hon'ble Supreme Court in the background of the departmental proceedings being quashed in the wake of the findings of the Court of CJM, allowed the back wages.

12. In **S.M. Matloob** (supra), the Hon'ble High Court had considered a peculiar situation where the petitioner was transferred to Lucknow but not allowed to join by the Director, Regional Office, ICCR, Lucknow and he could not join back at the Headquarters also because he was, by that time, dismissed from service. The Hon'ble High Court, after considering various other mitigating factors, allowed 50% of back wages in that case.

13. The question of back wages in a situation where the appellant was reinstated on technical grounds, was dealt by Hon'ble Apex Court in the case of **Vijay Singh Vs. U.O.I. & Others**, AIR 2007 SC 1384 wherein, after having interpreted the Rule 15(1) and (2) of Delhi Police (Punishment and Appeal) Rules, ruled as under:-

“6. A reading of Rule 15 (1) & (2) together and the language employed therein clearly discloses that a preliminary enquiry is held only in cases of allegation, which is of weak character and, therefore, a preliminary enquiry is to be held to establish the nature of default and identity of defaulter; to collect the prosecution evidence; to judge quantum of default and to bring relevant documents on record to facilitate a regular departmental enquiry. In cases, where specific information is available, a preliminary enquiry is not necessary and a departmental enquiry may be ordered by the disciplinary authority straightforwardly. It is because of this reason sub-rule 2 of Rule 15 is couched in such a way as a defence to the delinquent officer. The Additional Commissioner of Police being higher in hierarchy next to DGP, the requirement of his approval is mandatory, so that the delinquent officer is not prejudiced or harassed unnecessarily in a departmental enquiry. Such approval, if any, must also be accorded after due application of mind. It is a case of violation of mandatory provisions of law. Therefore, the appeal must succeed. The

appellant was dismissed by an order dated 21.1.1998 preceded by an enquiry. The order of dismissal is set aside. The appellant shall be re-instated forthwith. The orders of the Appellate Authority, the Revisional Authority and the High Court are set aside.

7. This takes us to consider as to what relief the appellant is entitled to. The appellant was dismissed on 21.1.1998 and since then he is out of service till date. The appellant would be attaining the age of superannuation on March 31, 2012.

8. Having regards the facts and circumstances of this case and the nature of misconduct that is alleged to have been committed by the appellant as a police officer and **applying the principle of 'no work no pay' he shall not be entitled to back wages from 21.1.1998 till re-instatement.** Also keeping in view the nature of misconduct said to have been committed by the appellant, as a police officer, this order would not preclude the disciplinary authority to initiate a fresh proceeding from the stage of obtaining prior approval of the Additional Commissioner of Police, if so advised. In the event of the authority so decide to hold fresh enquiry from the stage of obtaining prior approval from Additional Commissioner of Police, they may resort to the principle laid down by this Court in paragraph 31 in Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727. Subject to the aforesated observation, this appeal is allowed. No costs”.

14. Considering the facts of this case and for the reasons discussed in the preceding paras, we do not find any illegality in the impugned order passed by the respondents on 20.02.2013. Accordingly, the OA is dismissed being devoid of merits. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S. Sullar)
Member (J)

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