

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No.2401/2003

This the 9th day of February, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

P.K. Sarin,  
S/o Shri S.N. Sarin  
492/KG-1, Vikas Puri,  
New Delhi.

... Applicant

( Applicant present in person )

-Versus-

1. Union of India through its Secretary,  
Ministry of Urban Development,  
Nirman Bhawan, New Delhi.
2. Director General of Works,  
C.P.W.D., Nirman Bhawan,  
New Delhi.

... Respondents

( By Shri N.K. Aggarwal, Advocate )

**ORDER (ORAL)**

**Hon'ble Shri V.K. Majotra, Vice-Chairman (A)**

Applicant was acquitted of an offence punishable under the provisions of Prevention of Corruption Act. Applicant had made a representation to respondent No.2 for consequential benefits on account of acquittal, such as, reinstatement, treating the suspension period as on duty, promotion etc. He had earlier on filed OA No.471/2003 which was disposed of vide order dated 3.3.2003 directing respondent No.2 to consider applicant's representation by passing a speaking order keeping in view the position of law. Respondent No.2 issued impugned orders on 1.9.2003 (Annexure-3) on applicant's representation in pursuance of Tribunal's directions dated 3.3.2003. Applicant's suspension had been revoked by order dated 27.1.2003 and his posting

orders were issued on 13/17.3.2003. Representation relating to treating the suspension period on duty, arrears of pay with interest and promotion has been turned down on the ground that the same would depend upon the outcome of the criminal appeal pending in the High Court of Delhi. In this regard applicant who appeared in person relied on **Deputy Director of Collegiate Education (Administration) Madras v. S.Nagoor Meera, AIR 1995 SC 1364**, as also **State of West Bengal & Ors. v. Hari Ramalu & Anr.**, 2000 (4) SLR 91 (Calcutta High Court).

2. The learned counsel of respondents contended that this application is not maintainable being hit by res judicata as applicant had sought the same relief in OA No.471/2003, and CP No.240/2003 in OA No.471/2003 was dismissed by order dated 9.9.2003. The learned counsel further reiterated that respondents have issued a detailed order (impugned order) in compliance of directions of this Tribunal.

3. We have considered the rival contentions.

4. CP No.240/2003 in OA No.471/2003 was dismissed finding that respondents had not committed any wilful or contumacious disobedience of the Tribunal's orders. This order does not prohibit the applicant in pursuing in the present case the relief relating to treatment of suspension period as on duty and pay and allowances thereon. for the same period. In this regard, in the impugned order, respondents have stated that this relief of applicant can be considered only after the decision in

the criminal appeal filed by the respondents against the Tribunal's orders which is pending in the high Court of Delhi.

5. In the case of **Deputy Director of Collegiate Education** (supra), the concerned Government servant had been convicted by criminal court. It was held therein that the Government need not wait for the appeal or revision, as the case may be, and if, however, the Government servant accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled had he continued in service. This conclusion has been reinforced in the case of **State of West Bengal & Ors.** (supra). It was held therein that pendency of appeal does not amount to continuation of proceedings. Suspension could be revoked with consequential benefits. Provisions of FR 54-B are also applicable to the facts of the present case, which reads as follows :

"(1) When a government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or the date of retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a government servant under

suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that termination of the proceedings instituted against the government servant had been delayed due to reasons directly attributable to the government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation if any, submitted by him, direct, for reasons to be recorded in writing, that the government servant shall be paid for the period of such delay such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In case other than those falling under sub-rules (2) and (3) the government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall

make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the government servant.

NOTE. - The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

(a) extraordinary leave in excess of three months in the case of temporary government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

6. Having regard to the discussion made above, this OA is partly allowed quashing Annexure-3 dated 1.9.2003 to the extent it relates to postponement of decision on the question of treating the applicant's suspension period as on duty, arrears with interest, increments and promotion. Respondents are directed to pass speaking orders on these questions keeping in view the provisions of FR 54-B and the rulings cited above, within a period of three months from the receipt of the certified copy of the present order. No costs.

S.Raju  
( Shanker Raju )  
Member (J)

/as/

V.K.Majotra  
( V. K. Majotra )  
Vice-Chairman (A)

9.2.04