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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.134/2003

Monday, this the 18th day of August, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

ASI Tilak Ram No. 224/NE
(Now No. 5440/PCR)
s/o Shri Khadag Singh
r/o village Bassi
PO & PS - Khekra
Distt. Meerut (Now Baghpat)
UP

..Applicant
(By Advocate: Shri Arvind Singh)

Versus

1. Union of India
through its Chief Secretary,
through Joint Commissioner of Police/
Northern Range, Police Head Quarters
IP Estate, New Delhi
2. Additional Deputy Commissioner of Police/
Central District,
Near Delhi Gate, Darya Ganj,
Delhi

..Respondents
(By Advocate: Smt. Renu George)

O R D E R (ORAL)

Shri Justice V.S. Aggarwal:

The sole prayer made by the applicant is that he should be paid full pay and allowances from 4.6.1993 to 5.3.2001.

2. The relevant facts in this regard are that the applicant earlier had faced departmental proceedings and was dismissed from service vide the order passed by the disciplinary authority dated 4.6.1993. His appeal was dismissed. He had filed OA-181/99. This Tribunal had on 23.10.2000 set aside both the said orders and directed:-

"9. The OA partly succeeds. The impugned order of the disciplinary authority, which was passed on the

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premise that all the allegations were proved is wholly vitiated and it is accordingly set aside. But as we held as article No.1, i.e., the applicant's absented fro duty w.e.f. 3.7.92 to 5.8.92, has been rightly proved, the matter is remitted and the disciplinary authority shall pass afresh order treating that the only article No.1 has been proved. This order shall be passed within a period of two months from the date of receipt of a copy of this order. The OA is accordingly disposed of. No costs."

3. Thereafter, the disciplinary authority had passed a fresh order which reads:-

".... His absence period from 3.7.92 to 5.8.92 and the intervening period from the date of dismissal to the date of issue of this order is treated as period not spent on duty for all intents and purposes and hence, the same are not being regularised in any manner under the principal of no work no pay. However, the intervening period from the date of issue of this order to the date of joining will be treated as leave of kind due."

4. In appeal, the said order was modified and the final order so passed by the appellate authority reads:-

"8. In view of the above circumstances, the appeal is partially allowed and the orders of the disciplinary authority is modified to the extent that intervening period from 4.6.93 to 5.3.2001 be treated as period under suspension and the subsistence allowance for this period be given to him as applicable under the rules. This period will, however, continue to be treated as period not spent on duty."

5. Learned counsel for applicant contends that since the order dismissing the applicant from service has been set aside by the Tribunal in terms of Fundamental Rules 54 A (3), he is entitled to full pay and allowances.

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6. On behalf of the respondents, our attention has been drawn to the decision of the Supreme Court in the case of M.P. State Electricity Board v. St. Jarina Bee, JT 2003 (5) SC 542. Perusal of the cited judgment clearly shows that the Supreme Court was concerned with payment of back wages with respect to a discretionary element in this regard. The Supreme Court held that in such like matters full pay and allowances will not be permissible.

7. The cited decision is clearly distinguishable because herein the matter is governed by the Fundamental Rules 53 A (3), which reads as under:-

"(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 reinstatement 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 or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."

8. Perusal of the same clearly shows, as is in the present case, that dismissal order of the applicant has been set aside by the Tribunal, therefore, he has to be treated on duty for all purposes and is entitled to full pay and allowances for the said period. The language of the said Rule is clear and unambiguous. The applicant was prevented from attending the duty not at his

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discretion but because of the order of the respondents which has been set aside. Therefore, for the said period, the applicant must be held entitled to full pay and allowances.

9. Resultantly, we quash the impugned orders and direct that the applicant would be entitled to full pay and allowances for the period referred to above. No costs.

Naik

(S.K. Naik)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sunil/