

**(2006) 03 MP CK 0009**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 1363 of 2001**

Umashankar Choubey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 14-03-2006**

**Acts Referred:**

Arms Act, 1959 — Section 25, 29, 30  
Constitution of India, 1950 — Article 226, 227  
Penal Code, 1860 (IPC) — Section 396, 412

**Citation : (2006) 03 MP CK 0009**

**Hon'ble Judges : A.K. Patnaik, C.J;Ajit Singh, J**

**Bench : Division Bench**

**Advocate : M.R. Chandra, for the Appellant; Jayant Neekhara, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

A.K. Patnaik, C.J.—The petitioner was working in the Vehicle Factory, Jabalpur as a Grinder-B. A criminal case under Sections 396 and 412 of the IPC and under Sections 25, 29 and 30 of the Arms Act was registered against the petitioner in relation to an incident which took place on 29-7-1990 and the petitioner was arrested and taken into custody in connection with the aforesaid case on 8-12-1990. The petitioner was placed under suspension by order dated 8-12-1990 and was paid subsistence allowance during the suspension period. The Fifth Additional Sessions Judge by judgment dated 24-7-1999 delivered in Sessions Trial No. 140/1991 acquitted the petitioner of the charges. On 16-12-1999, the order of suspension was revoked and the petitioner was reinstated in service. The General Manager of the Vehicle Factory, Jabalpur, however refused to treat the period of suspension of the petitioner from 8-12-1990 to 15-12-1999 as period spent on duty and the petitioner was not paid full salary and allowances for the period of suspension. Aggrieved, the petitioner filed O. A. No. 605/2000 before the Central Administrative Tribunal, Jabalpur Bench challenging decision of the General Manager, Vehicle Factory, Jabalpur not to treat the period of suspension as spent on duty and not to pay

full salary and allowances for the period of suspension. By order dated 22nd August, 2000, the Central Administrative Tribunal, Jabalpur Bench rejected the said OA at the admission stage. Aggrieved, the petitioner has filed this writ petition under Article 226/227 of the Constitution of India.

2. Mr. M.R. Chandra, learned Counsel for the petitioner cited a decision of Central Administrative Tribunal in *S. Samson Martin v. Union of India* and Ors. 1990(12) ATC 643, wherein it has been held that whatever the circumstances of acquittal, when the Disciplinary Authority has chosen to suspend on the facts of criminal proceeding only and to wait till the end of the proceeding, it has no discretion in the matter of pay and allowances and it has to abide by the verdict of the Criminal Court. He submits that in this case since the petitioner was placed under suspension on account of the criminal proceedings and the criminal proceedings ended in acquittal, the Disciplinary Authority was bound to treat the period of suspension as spent on duty and pay the petitioner full pay and allowances in accordance with FR 54-B (3).

3. Mr. Jayant Neekhara, learned Counsel for the respondents, on the other hand, cited decision of the Supreme Court in *Smt. K. Ponnammamma Vs. State of Kerala and others*, in which the order of the authority after inquiry granting only the suspension allowance and not payment of salary to the petitioner during the period of suspension as per rules has been held by the Supreme Court to be proper. He also relied on decision of the Supreme Court in *Ranchodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat)* and Anr. in support of his contention that the petitioner was not entitled to full pay and allowance during the period of suspension.

4. The questions whether the period of suspension of the petitioner is to be treated as on duty and whether the petitioner would be entitled to full pay and allowance during the period of suspension, have to be decided in accordance with the rules applicable to the petitioner. It is not disputed that F.R. 54-B and the Administrative Instructions issued thereunder by the Government of India are applicable to the case of the petitioner. Sub-rules (1), (3) and (8) of F.R. 54-B which are relevant for deciding the questions are quoted herein below:

F.R. 54-B. (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 his 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.

F.R. 54-B. (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.

F.R. 54-B. (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.

5. It be clear from the provisions of Sub-rule (1) of F.R. 54-B quoted above that when a Government servant who has been suspended is reinstated, the Authority Competent to order reinstatement shall consider and make a specific order regarding pay and allowance to be paid to the Government servant for the period of suspension ending with reinstatement and whether or not the period of suspension is to be treated as spent on duty. A reading of Sub-rule (3) of F.R. 54-B quoted above will make it further clear that when the Authority Competent to order reinstatement is of the opinion that the suspension order 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. Sub-rule (8) of F.R. 54-B provides that the payment of allowance shall be subject to all other conditions under which such allowances are admissible. By G.I., M.F., O.M. No. F.15 (8)-E.IV/57, dated the 28th March, 1959, Administrative Instructions have been issued regarding regularisation of suspension during criminal proceedings, arrest or detention. The said instructions inter alia provide as to how the case of suspension during criminal proceedings shall be dealt with. Sub-paras (a) and (d) which are relevant for deciding this case are quoted herein below:

(a) A Government servant who is detained in custody under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or for his arrest for debt shall, if the period of detention exceeds 48 hours and unless he is already under suspension, be deemed to be under suspension from the date of detention until further orders as contemplated in the Central Civil Services (Classification, Control and Appeal) Rules. A Government servant who is undergoing a sentence for imprisonment shall also be dealt with in the same manner pending a decision on the disciplinary action to be taken against him.

(d) When a Government servant who is deemed to be under suspension in the circumstances mentioned in Clause (a) or who is suspended in the circumstances mentioned in Clause (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54-B, i.e., in the event of his being acquitted of blame or (if the proceeding taken against them was for his arrest for debt) its being proved that his liability arose from circumstances beyond his control or the detention being held by any Competent Authority to be wholly unjustified, the case may be dealt with under F.R. 54-B (3); otherwise it may be dealt with under proviso to F.R. 54-B (5).

Para (a) of the Administrative Instructions in the O.M. dated 28th March, 1959

quoted above states that a Government servant who is detained in custody as a result of proceedings on a criminal charge shall, if period of detention exceeds 48 hours, be deemed to be under suspension from the date of detention until further orders as contemplated in the CCS (Classification, Control and Appeal) Rules. Para (d) of the Administrative Instructions in the OM dated 28th March, 1959 further states that when a Government servant is deemed to have been under suspension in the circumstances mentioned in Clauses (a) and (b) is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under F.R. 54-B, i.e., in the event of his being acquitted of blame, the case may be dealt with under F.R. 54-B (3). It is thus clear that where a Government servant is deemed to be under suspension on account of his detention exceeding 48 hours for a criminal charge and he is acquitted of the charges, he is to be given the same treatment as a Government servant is given under Sub-rule (3) of FR 54-B, Sub-rule (3) of F.R. 54-B provides that the Government servant shall, subject to provisions of Sub-rule (8) be paid full pay and allowance to which he would be entitled, had he not been suspended. In the present, since the petitioner has been acquitted of the charges by the judgment of the Sessions Court in the Sessions Trial, he would be entitled to full pay and allowances to which he would have been entitled had he not been suspended subject to the provisions of Sub-rule (8) of F.R. 54-B.

6. In *S. Samson Martin v. Union of India and Ors.* (supra), a Bench of as many as three members of Central Administrative Tribunal, has also taken a similar view that whatever the circumstances of acquittal may be, when the Disciplinary Authority has chosen to suspend on the fact of criminal proceedings only and to wait till end of the proceedings, it has no discretion on the matter of pay and has to abide by the verdict of the Criminal Court. In the present case, the Disciplinary Authority has placed the petitioner under suspension only because of his detention for more than 48 hours in a criminal charge and the said criminal proceeding has ended in acquittal. Admittedly, the Disciplinary Authority has not initiated separate disciplinary proceedings and has waited for the decision of the Sessions Court in the criminal case and has also reinstated the petitioner in service pursuant to the judgment of acquittal of the Sessions Court in the criminal case. This being the position, the petitioner was entitled for same treatment as per Sub-rule (3) of F.R. 54-B as if the suspension was wholly unjustified and he would be entitled to full pay and allowances to which he would have been entitled had he not been suspended.

7. The decision of the Supreme Court in *Smt. K. Ponnammamma v. State of Kerala and Ors.* (supra) cited by Mr. Neekhara, is based on Rules 55, 56 and 57 of Kerala Service Rules which conferred a discretion on the Disciplinary Authority as to how he will consider the period of suspension of the Government servant and decide as to whether he would be entitled to full pay and allowances. The decision of the Supreme Court in *Ranchodji Chaturji Thakore v. The Superintendent Engineer, Gujarat Electricity Board* (supra) cited by Mr. Neekhara states that each case requires to be considered in its own backdrops. In the said case, there were no

rules providing for payment of back wages for a period of suspension and the Supreme Court held in the facts of that case that the employee was not entitled to back wages after his acquittal. In the present case, on the other hand, we find that there are clear Administrative Instructions issued under the O.M. dated 28-3-1959 to the effect that Government servants deemed to be under suspension on account of a criminal charge when reinstated on acquittal would be entitled to full pay and allowance during the period of suspension in accordance with Sub-rule (3) of F.R. 54-B.

8. It is well settled in law that administrative or executive instructions can supplement the statutory rules though they cannot supplant the statutory rules. Since the Administrative Instructions in the O.M. dated 28th March, 1959 are clear that the petitioner would be entitled to full pay and allowances in accordance with Sub-rule (3) F.R. 54-B, we quash the impugned order dated 25-2-2000 (Annexure P-7) passed by the General Manager, Vehicle Factory, Jabalpur and direct him to give the petitioner the benefit of full pay and allowances for the period of suspension in accordance with Sub-rule (3) of F.R. 54-B within a period of two months from today.

9. The petition is allowed.