

**(2018) 12 UK CK 0087**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/b) No. 609 Of 2018**

**Union Of India And Others @APPELLANT@Hash Chandra Pratap Mishra**

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**Date of Decision : 01-12-2018**

**Acts Referred:**

Indian Penal Code, 1860 — Section 409  
Administrative Tribunal Act, 1985 — Section 21(1)(a)  
Constitution Of India, 1950 — Article 226

**Citation : (2018) 12 UK CK 0087**

**Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Singh, J**

**Bench : Division Bench**

**Advocate : Sanjay Bhatt**

**Final Decision : Dismissed**

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## **Judgement**

Ramesh Ranganathan, CJ

1. This writ petition is preferred against the order passed by the Central Administrative Tribunal in O.A. No. 1239 of 2017 dated 27.08.2018.

2. The respondent herein invoked the jurisdiction of the Tribunal seeking a direction to the petitioner-authorities to treat the period from the date of the

dismissal order i.e. 09.10.2001 till the actual date of reinstatement i.e. on 05.12.2016 as duty period, and to pay him salary and allowances; to direct

the petitioner-authorities to pass an order for payment of salary and allowances for the period 9.10.2001 to 05.12.2016 as the dismissal order dated

09.10.2001 was set aside, and therefore the applicant was entitled for pay with interest admissible under C.C.A. Rule 2 and Financial Rule 54, which

is absolute and unconditional.

3. Facts, to the extent necessary, are that, on allegations of misappropriation of Rs. 11,593/-, the respondent-applicant was placed under suspension on

02.12.1991, and thereafter a complaint was lodged, pursuant to which an FIR

was registered on 30.01.1992 for the offence under Section 409 of the Indian Penal Code. The respondent-applicant's suspension was revoked by proceedings dated 03.06.1993, and he was permitted to join duty. He was, however, convicted of the offence under Section 409 of the Indian Penal Code by the trial Court on 19.05.2001. Pursuant thereto, the petitioners herein dismissed him from service on 09.10.2001. The respondent-applicant preferred an appeal against the order of the trial Court, and the appellate Court acquitted him by order dated 22.11.2002. Aggrieved thereby, the petitioners herein carried the matter to this Court in Criminal Revision No. 8 of 2003 which was dismissed on 16.08.2011. Aggrieved thereby, the petitioners carried the matter in appeal to the Supreme Court, and SLP No. 5012 of 2014 was dismissed by the Supreme Court by its order dated 10.03.2014. As the petitioners did not reinstate him, even after the SLP was dismissed by the Supreme Court, the respondent-applicant invoked the jurisdiction of the Central Administrative Tribunal (for short "the tribunal") filing O.A. No. 393 of 2013. The Tribunal, by its order dated 06.09.2016, directed the petitioners herein to reinstate the respondent-applicant into service. Pursuant thereto, the respondent-applicant was reinstated into service by order dated 17.11.2016. As the entire foundation of the petitioners' claim that the respondent-applicant is not entitled for back wages, till he was reinstated on 17.11.2016, is based on this order, it is necessary to extract the relevant portion thereof:

"Sri CP Mishra in his representation dated 23-11-2 and 23-09-2011 had requested to reinstate him to duty after the order of acquittal from Hon'ble Session Court and further after dismissal of revision petition No. CR08/2003 filed by the Department of Posts in the Hon'ble High Court of Uttarakhand at Nainital respectively.

Now therefore keeping in view the facts and circumstances of the case the undersigned hereby sets aside the order of dismissal from service dated 09-10-2001 of Sri CP Mishra and orders to reinstate him in service with immediate effect.

The intervening period from the date of dismissal i.e. 09-10-2001 to the date of reinstatement in service shall be treated as Non-duty and no pay and allowances be paid to the Govt. servant for the period of his absence from duty. Charge report should be submitted to all concerned."

4. Thereafter, the respondent-appellant again invoked the jurisdiction of the Tribunal by filing O.A. No. 1239 of 2017 seeking the reliefs mentioned

earlier in this order. By its order dated 27.08.2018, the Tribunal, relying on Paragraph 117 of the Postal Manual, allowed the O.A. in part and directed

the petitioners to treat the period after the acquittal of the respondent-applicant on 22.11.2002, i.e. from 23.11.2002 till the date of his joining duty

pursuant to the order dated 17.11.2016, as duty with full salary and allowances as per the rules. The period from 09.10.2001 to 22.11.2002 was

directed to be treated as on duty with continuity in service for seniority and pension. The petitioners herein were directed to comply with the order and

release arrears of salary, due to the respondent-applicant, within three months from the date of receipt of the certified copy of the order. The Tribunal

made it clear that failure on the part of the petitioners herein to release the arrears of salary, due to the respondent-applicant, within time would entail

payment of interest to the respondent-applicant at 9% per annum with the stipulation that the competent authority could recover the interest paid to the

respondent-applicant, for delayed release of his salary, from the employees / officials found responsible for such delay in releasing the payment to the

respondent-applicant. Aggrieved thereby, the present writ petition.

5. Sri Sanjay Bhatt, learned counsel for the petitioners, submits that the respondent-applicant had acquiesced to the order of reinstatement dated

17.11.2016; he had joined duty pursuant thereto; he did not even question the said order dated 17.11.2016; before the Tribunal; and the Tribunal had

erred in passing the order, impugned in this writ petition, even without there being a challenge to the said order of reinstatement dated 17.11.2016

whereby the respondent-applicant was reinstated into duty, however denying him back-wages till the date of his reinstatement.

6. In granting the respondent-applicant the relief of payment of back-wages from the date of his acquittal, the Tribunal relied on Paragraph 117 of the

Postal Manual which reads as under:

117. If an employee is reinstated after dismissal or removal, he shall be entitled to back wages from the date of his reinstatement to the date of his dismissal or removal.

In the case where neither of the courses mentioned above is followed, a formal order should be made setting aside the previous order of dismissal or

removal or compulsory retirement. The period between the date of dismissal and the date on which he resumed duty should be dealt with under F.R.

54. But in doing so, he should be deemed to be entitled to full pay and allowances from the date of acquittal, and the period counted as duty for all purposes and from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he been under suspension.â??

7. The respondent-applicant was a Postal Assistant, and was therefore governed by the conditions stipulated in the Postal Manual. Paragraph 117

stipulates that the period between the date of dismissal and the date on which he resumed duty should be dealt with under F.R. 54 but, in doing so, he

should be deemed to be entitled to full pay and allowances from the date of his acquittal, and the period should be counted as duty for all purposes; and

from the date of dismissal till the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had

he been under suspension. F.R. 54(1) stipulates that when a Government employee, who has been dismissed from service, is reinstated as a result of

appeal or review, the authority competent to order re-instatement shall consider and make a specific order regarding the pay and allowances to be

paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal; and whether or not

the said period shall be treated as a period spent on duty. F.R.54(2) stipulates that when the authority, competent to order reinstatement, is of the

opinion that the Government servant, who had been dismissed, has been fully exonerated, the Government servant shall, subject to the provisions of

F.R. 54(6), be paid full pay and allowances to which he would have been entitled had he not been dismissed. Clause (6) of F.R. 54 stipulates that

payment of allowances, under sub-rule (2), shall be subject to all other conditions under which such allowances are admissible. F.R.54 obligates the

authorities to record their opinion as to why an employee, who has been fully exonerated, should not be paid full pay and allowances to which he is

entitled to.

8. In the order of reinstatement dated 17.11.2016, the petitioners herein have neither referred to F.R. 54 nor to Paragraph 117 of the Postal Manual.

The only ground on which the respondent-applicant was denied salary and allowances, from the date of his acquittal, is on application of the principle

of â??No work no payâ??.

9. As noted hereinabove, Paragraph 117 of the Postal Manual requires the period between the date of dismissal and the date of reinstatement to be dealt with under F.R.54. However, the said Paragraph 117 also makes it clear that, even in doing so, the employee would be deemed to be entitled to full pay and allowances from the date of his acquittal. In the present case, the respondent-applicant has not been granted the benefit of salary and allowances from the date of his dismissal i.e. from 09.10.2001 till the date of his acquittal by the appellate Court on 22.11.2002. All that the Tribunal has directed, by the impugned order, is to ensure compliance with Paragraph 117 of the Postal Manual which requires an employee to be paid full pay and allowances from the date of his acquittal which, in the present case, is 22.11.2002.

10. While it is no doubt true that the respondent- applicant did not specifically question the order of reinstatement dated 17.11.2016, to the extent he was denied back-wages on the principle of "No work no pay", it is evident, from the original application itself, that he had, in Paragraph 18 thereof, referred to the petitioners having passed the reinstatement order on 17.11.2016 in compliance with the order of the Tribunal dated 06.09.2016; the petitioners had set aside the order of dismissal dated 09.10.2001 permitting the respondent-applicant to join service but, at the same time, they had passed the order that the period from the date of dismissal dated 09.10.2001 till the date of joining duty on 05.12.2016 should be treated as not on duty, and no pay and allowance should be paid to the respondent-applicant for the period of absence from duty. Again in Paragraph 19, of the original application, the respondent-applicant has stated that he had joined the services in the post of Assistant in Head Post Office, Ranikhet, Almora on 05.12.2016 with protest prayer and the order of reinstatement dated 17.11.2016 was being filed along with the O.A.

11. Having violated Paragraph 117 of the Postal Manual, the petitioners cannot now seek a direction from this Court basing their claim on hyper-technicalities. While the reliefs sought by the respondent-applicant, in the O.A., is for payment of salary and allowances from the date of his dismissal till the date of his reinstatement, the Tribunal has granted the respondent-applicant the benefit of salary and other allowances only from the date of his acquittal, and has denied him salary and allowances for the period prior thereto i.e. from the date of his dismissal on 09.10.2001 till 22.11.2002. It is not

as if the respondent-applicant belatedly invoked the jurisdiction of the Tribunal. While the order of reinstatement was passed on 17.11.2016, he filed

O.A. No. 1239 of 2017 on 22.09.2017, well within the one year period of limitation prescribed under Section 21(1)(a) of the Administrative Tribunal

Act.

12. In the exercise of its certiorari jurisdiction, under Article 226 of the Constitution of India, this Court would be justified in interference only if the

order impugned in the writ petition suffers from an error apparent on the face of record (Syed Yakoob Vs. K.S. Radhakrishnan and others AIR 1964

SC 477). We are satisfied that the order, impugned in this writ petition, does not suffer from a patent error, much less an error of law apparent on the

face of record.

We see no reason, therefore, to interfere with the order passed by the Tribunal.

13. The writ petition fails and is, accordingly, dismissed.