(2022) 11 TEL CK 0094

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 21950 Of 2017

B.Mallikarjuna Rao	APPELLANT
Vs	
Superintendent Of Police, Nalgonda And Others	RESPONDENT

Date of Decision: Nov. 22, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 21
- Indian Penal Code, 1860 - Section 307, 498A
- Code of Criminal Procedure, 1973 - Section 235(1)

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Advocate: A.Tirupathi Goud

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner and learned Government Pleader for Services-I.

2. This writ petition is filed to issue a writ, order or direction more in the nature of Mandamus declaring the impugned Memo No.

33518/Ser.II/A2/2012, Home Department, dated 24-05-2016 and its consequential Proceedings C.No. 33/A6-1/2008-2016, D.O.No. 1545/2016, dated

24-06-2016 issued by the 1st respondent as being illegal, arbitrary, discriminatory, unjust, contrary to the Fundamental Rules and also subversive of

Articles 14,16 and 21 of the Constitution and consequently hold that the suspension period of the applicant from 05-12-2007 to 07-03-2010 is to be

treated as on duty for all the purposes with all consequential benefits including pay and allowances, seniority and promotion etc.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner was appointed as A.R. Police Constable with effect from 02-02-1992 and was later converted to Civil Police Constable during the

year 2014 and since then continuing in the said post.

b) When the petitioner was working as AR Police Constable in Nalgonda, he was placed under suspension vide Proc.C.No. 3594/A6/2007, D.O.No.

2587/2007 of the 1st respondent on the ground that he was involved in Crime No. 268/2007 under Section 498 (A), 307 IPC of Nalgonda-II Town

Police Station for subjecting his wife to cruelty by causing injuries with blade.

c) The Sub Divisional Police Officer, Miryalaguda was appointed as Inquiry Officer vide proceedings dated 23.09.2008 and submitted report on

27.10.2009 vide Lr.No.04/OE/SDPO-M/2008 that charge was not proved against the petitioner. The petitioner was acquitted in the said criminal case

holding that the accused is found not guilty for the said offences.

d) The 1st Respondent without taking the report of the Enquiry Officer into consideration, has issued final orders dated 08-07-2010 vide proceedings

C.No.33/A6-1/OE/2008, DO.NO 1459/2010 and imposed punishment of Ã¢â‚¬ËœPPI for one year with effect on future increments and pensionÃ¢â‚¬â„¢ and

the period of suspension from 05-12-2007 to 07-03-2010 as Ã¢â‚¬Ëœnot on dutyÃ¢â‚¬â„¢. Aggrieved by the same, the petitioner preferred revision petition

before the Government on 02.12.2011, requesting for setting aside the said punishment.

e) Government, vide G.O.Rt.No. 1670, set aside the punishment of Ã¢â‚¬ËœPPI for one year with effectÃ¢â‚¬â„¢ imposed against the Petitioner. Since the

petitioner was acquitted, he made representation to consider his suspension period as Ã¢â‚¬Ëœon dutyÃ¢â‚¬â„¢, but the Government has issued Memo rejecting

the plea of the petitioner without assigning any reasons.

f) In many other instances where S.IÃ¢â‚¬â„¢s/Inspectors were caught red-handed in A.C.B cases, the Government has treated their suspension period

as Ã¢â‚¬Ëœon DutyÃ¢â‚¬â„¢ soon after being acquitted in the said cases, duly following the provisions of Fundamental Rules of 54-B (4). In the case of Sri

Mohd. Fazalur Rahaman, S.I. of Police, Hyderabad Range, who is now working as DSP, Telangana soon after his acquittal in a ACB case by the

High Court, the Government has treated his suspension period including his dismissal period as Ã¢â‚¬Ëœon DutyÃ¢â‚¬â„¢ with all consequential benefits vide

G.O.Rt.No. 234, Home, dated 23-02-2011.

g) The Government being the model employer cannot adopt differential yardsticks favouring few similarly situated persons and by rejecting the plea of

the petitioner and the same is against the doctrine of equity, justice and fair play. Hence this Writ Petition.

4. The case of the respondents, in brief, is as follows:

a) The departmental inquiry and prosecution in a criminal case are two different and distinct aspects, as the criminal prosecution is charged for an

offense while the departmental inquiry is for the criminal misconduct so as to maintain discipline in the department.

b) The Government is competent to settle the suspension period of the petitioner, and that the Superintendent is not competent to treat the suspension

of the petitioner from 05.12.2007 to 07.03.2010 as on duty. Therefore, the writ petition is devoid of merit and the same is liable to be dismissed.

5. The facts not in dispute are as follows:

a) Vide Proceedings dated 27.11.2007 of the Superintendent of Police, Nalgonda, the petitioner had been suspended until conclusion of the disciplinary

proceedings against him.

b) The Sub-Divisional Police Officer, Miryalguda, Nalgonda District, vide Lr.No.04/0E/SDPO-M/2008, dated 27.10.2009, it was clearly observed and

finding recorded as follows :

Ã¢â‚¬Å“The O.E. charge against the charge officer is held Ã¢â‚¬Å“NOT PROVEDÃ¢â‚¬ certified that the O.E. was conducted in terms of APCS (CC&A)

Rules, 1991Ã¢â‚¬â€‹.

c) The Assistant Sessions Judge at Nalgonda in his judgment dated 18.11.2008 in Sessions Case No.205 of 2008 filed against the Petitioner under

Section 498-A and 307 IPC observed at paras 9 & 10 as follows:

Para 9 : Thus, as seen from the evidence of prosecution witnesses none of the witnesses deposed against the accused and no incriminating

circumstances have been established against the accused. Thus, from the above said circumstances, I hold that the prosecution has miserably failed to

prove the case against the accused.

Para 10 : In the result, the accused is found not guilty for the offences under sections 498-A and 307 IPC, and he is acquitted under section 235(1)

Cr.P.C. The bail bonds of the accused shall stand cancelled. MOs 1 to 6 are ordered to be destroyed after the expiry of appeal time.

d) Vide Proceedings C.No.33/A6-1/OE/2008, DO No.1459/2010, dated 08.07.2010 of the Superintendent of Police, Nalgonda passed final order

against the petitioner awarding the punishment of PPI for one year with effect on future increments and pension and his suspension period from

05.12.2017 to 07.03.2010 is treated as Ã¢â‚¬Ëœnot on dutyÃ¢â‚¬â„¢.

e) Vide G.O.Rt. No.1670, dated 13.09.2012 the Revision Petition of the petitioner dt. 02.12.2011 was considered by the Government and the

Government after careful consideration of the matter set aside the punishment of Ã¢â‚¬Å“PPI for one year with effectÃ¢â‚¬â€‹ imposed on the petitioner.

f) Vide G.O.Rt.No.1268, dt. 22.05.2013 of the Principal Secretary to Government orders had been passed to treat the period of suspension against

both individuals i.e., Sri N.Suresh Kumar, Sub-Inspector of Police, for a period from 10.12.2001 to 30.04.2004 forenoon and Sri P.Ravi Kumar, PC-

1232 for a period from 09.12.2001 to 30.04.2004 forenoon formerly at Sulurpet Police Station, Nellore District as on duty under Fundamental Rules

54(B)(4).

g) Vide G.O.Rt.No.1238, dt. 18.05.2013 the Principal Secretary to Government considered the representation of Sri G.Gurunatha Babu, Sub-Inspector

of Police and passed orders treating the period of suspension on 25.09.1998 to 02.01.2002 as on duty, under Rules 54(B)(4).

h) Vide Memo No.35518/Service-II/A2/2012, dt. 24.05.2016, the representation of the Petitioner for regularization of suspension period as Ã¢â‚¬Å“On

DutyÃ¢â‚¬ consequent on setting aside the punishment of PPI for one year with effect vide G.O.Rt. No.1670 dt. 13.09.2012 is examined and the same is

rejected.

i) Vide Proceedings C.No.33/A6-1/2008-2016, D.O.No.1545/2016, dated 24.06.2016 of the Superintendent of Police, Nalgonda, the representation of

the petitioner for regularization of suspension period as Ã¢â‚¬Ëœon dutyÃ¢â‚¬â„¢ consequent on setting aside the punishment of PPI for one year with effect is

examined and the same is rejected without assigning any reason.

PERUSED THE RECORD :

6. The order impugned Memo No.35518/Ser.II /A2/2012, dated 24.05.2016 reads as under:

Ã¢â‚¬Å“The attention of the the reference cited. He is informed that the representation of Sri B.Mallikarjuna Rao, Director General Of Police, T.S.,

Hyderabad, is invited to ARPC, 1810 of Nalgonda District for regularization of suspension period as Ã¢â‚¬Ëœon dutyÃ¢â‚¬â„¢ consequent on setting aside the

punishment of PPI for one year with effect vide reference 2nd read above is examined and the same is hereby rejected.

2. The Director General of Police, TS, Hyderabad, is requested to intimate the same to the individual.Ã¢â‚¬â€‹

DISCUSSION & CONCLUSION :

7. A bare perusal of the contents of G.O.Rt.No.1268, dated 22.05.2013 of the 1st respondent clearly indicates that in similar circumstances the

suspension period of Sri N.Suresh Kumar, Sub Inspector of Police, for a period from 10.12.2001 to 30.04.2004 and the suspension period of P.Ravi

Kumar PC 1232, for a period from 09.12.2001 to 30.04.2004 FN formerly at Sullurpet Police Station, Nellore District, was treated as Ã¢â‚¬Ëœon dutyÃ¢â‚¬â„¢,

under Fundamental Rules, 54- B(4). Similar orders were also passed in respect of one G.Gurunath Babu, Sub-Inspector of police vide

G.O.Rt.No.1238, dated 18.05.2013. The petitionerÃ¢â‚¬â„¢s case also falls under similar circumstances.

8. A bare perusal of the order impugned dt. 24. 05.2016 of the 3rd Respondent vide Memo No.35518/Service-II/A2/2012 and the consequential

proceedings dated 24.06.2016 vide C.No.33/A6-1/2008-2016, DO No.1545/2016, dated 24.06.2016 clearly indicates that the same had been passed:

(1) without application of mind,

(2) without assigning a single reason,

(3) passed hastily and mechanically,

(4) without affording reasonable opportunity to the Petitioner i.e., without issuing notice to the petitioner, without following the principles of natural

justice.

9. Learned Government Pleader mainly contends that the petitioner did not prefer any appeal against the order vide G.O.Rt.No.1670 dated 13.

09.2012 and made a representation only in the year 2016 to treat the suspension period as on duty and further the petitioner should have represented in

the year 2012 itself and that the petitioner accepted the order vide G.O.Rt.No.1670 dated 13.09.2012, therefore the petitioner cannot now seek the

present relief as sought for in the present writ petition.

10. Learned Government Pleader also placed reliance on the judgment of the Apex Court passed in C.Jacob v Director of Geology and Mining and

another (2008) 10 SCC 115 and in particular paras 9, 10 and 11, which reads as under:

Ã¢â‚¬Å“7. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere

direction to consider and dispose of the representation does not involve any delay preceding the representation, and proceed to examine the claim on

merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

8. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or

barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the

department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations

with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action

or revive a stale or dead claim.

9. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter

on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or

representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of

`acknowledgment of a jural relationship' to give rise to a fresh cause of action.

11. Learned counsel for the petitioner, on the other hand, placed reliance on the judgment of the Division Bench of A.P High Court, dated 23.03.2022

passed in W.P.No.38626 of 2015 and contends that when an accused is acquitted after full consideration of prosecution case and the prosecution

miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused is honorably acquitted and therefore, as a

consequence, the petitioner is also entitled for regularization of suspension period w.e.f. 05.12.2007 to 07.03.2010 as on duty.

12. Paras 5, 6 and 7 of the counter affidavit reads as under:

5. Disagreeing with the findings of the inquiry authority, a dissenting note was issued to the petitioner vide Memo C.No.33/A6-1/OE/2008,

dated08.06.2010 duly furnishing him a copy of the minute and calling for his further representation if any. The charged officer accordingly submitted

his further explanation dated 28.06.2010. After going through the article of charge, inquiry report of SDPO, Miryalaguda further representation of the

applicant and other connected records, the disciplinary authority not convinced with the explanation, awarded him the punishment of Ã¢â‚¬Ëœ PPI for one

year with effect on future incrementsÃ¢â‚¬â„¢ and by treating his suspension period from 05.12.2007 to 07.03.2010 as not on dutyÃ¢â‚¬â„¢ vide proceeding

D.O.No.1459/2010, C.No.33/A6-1/OE/2008, dated 08.07.2010.

Aggrieved with the above punishment, the petitioner has submitted an appeal petition addressed to the Dy. Inspector General of Police, Hyderabad

Range, Hyderabad for consideration, which was rejected vide RO No.651/2010

(Rc.No.888/Appl-69/D1/HR/2010), dated 27.10.2010.

Aggrieved with the above rejection, the petitioner has submitted a revision petition to the Inspector General of Police, Hyderabad Range, Hyderabad

for set aside the punishment, where it was also rejected vide RO No.136/2011

((Rc.No.21/PR/Revn-21/2011), dated 13.05.2011.

6. Aggrieved with the above rejection, the petitioner has submitted a mercy petition to the Government for set aside the punishment. The Government

have set-aside the punishment of Ã¢â‚¬Ëœ PPI for one year with effectÃ¢â‚¬â„¢ against the petitioner vide G.O.RtNo.1670/Home (Sec.II) dated 13.09.2012.

Accordingly follow up action has been taken to implement orders of Government.

7. The petitioner has now submitted a representation to the Government of Telangana, Hyderabad, with a request to treat the suspension period as on

duty, which was rejected by the Government vide Memo No.35518/Ser-II/A2/2012, dated 24.05.2016,Communicated by Chief Office

Endt.L.Dis.No.66/T1/2014, dated 7.06.2016. Basing on the above, the rejected order vide DO No.1543/2016 C.No.33/A6(1)/2008-2016, dated

24.06.2016 was issued.Ã¢â‚¬â€‹

13. In the present case, admittedly, as borne on record, the order impugned does not reflect any show cause notice having been issued to the petitioner

or the petitioner having been afforded a reasonable opportunity prior to passing of the order impugned.

14. The judgment relied upon by learned counsel for the petitioner does not directly apply to the relief as sought for by the petitioner and it is limited to

the extent of the principle laid down that in view of the fact that the petitioner was acquitted and hence, the petitioner should be entitled for all benefits

eventually due to the petitioner including regularization of the period of suspension of the petitioner as contended by the counsel for the petitioner and

the judgment relied upon by learned Government Pleader that the representations need not be answered by giving specific reasons and that too stale

representations cannot come to the rescue of the respondents either in view of the simple fact as borne on record that the order vide memo

No.35518/Ser-II/A2/2012, dated 24.05.2016 refers to the representation of the petitioner in reference No.3, dated 30.11.2012 itself therefore, it cannot

be said that the petitioner is guilty of latches.

15. As borne on record it is evident that the punishment imposed against the petitioner dt.08.07.2010, has been set aside vide G.O.Rt.No.1670, dated

13.09.2012 on the petitionerÃ¢â‚¬â„¢s revision petition dated 02.12.2011 and the representation of the petitioner dated 30.11.2012 seeking for

regularization of suspension period as on duty consequent on setting aside the punishment of PPI for one year with effect vide reference dated

13.09.2012, had been examined and rejected vide the impugned proceedings Memo No.35518/Ser.II/A2/2012, dated 24.05.2016 of the 3rd Respondent

the plea of the Respondent that the representation of the petitioner seeking regularization of suspension period as on duty is a delayed representation

and that the respondent authority is not under any obligation to assign any specific reasons while rejecting the said representation of the writ petitioner

is unsustainable, in view of Fundamental Rule 54.

16. Fundamental Rule 54-B Sub-Rule (3) (4) AND (5) read as under:

Ã¢â‚¬Å“(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 the 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 communication to this regard is served o 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 (only 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 cases 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.

17. The Apex Court in a judgment reported in AIR 1968 SC 240 between M.Gopal Krishna Naidu v State of M.P. AIR 1968 SC 240 and

P.J.Agarwal v State of U.P (1973) 1 SLR 194 reported in (1973) 1 SLR 194 and B.H.Marwaha v Union of India (1973) 2 SLR 315 reported in (1973)

2 SLR 315 held that where an order proposed to be passed in FRs which causes pecuniary loss, an opportunity must be given to the employee likely to

be affected.

18. In a judgment of the Apex Court reported in AIR 1968 SC page 240 in M.Gopal Krishna Naidu v The State of Madhya Pradesh, the HonÃ¢â‚¬â„¢ble

Apex Court at paras 5 and 7 observed as under:

Ã¢â‚¬Å“(5) Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Under F.R. 54 where a government servant is reinstated, the authority has to consider and make a specific order (i)

regarding pay and allowances payable to him for the period of his absence from duty and (ii) whether such period of absence should be treated as one

spent on duty. The consideration of these questions depends on whether on the facts and circumstances of the case the Government servant had been

fully exonerated and in case of suspension whether it was wholly unjustified. If the authority forms such an opinion the Government servant is entitled

to full pay and allowances which he would have been entitled to had the order of dismissal, removal or suspension, as the case may be, not been

passed. Where the authority cannot form such an opinion the Government servant may be given such proportion of pay and allowances as the

authority may prescribe. In the former case the period of absence from duty has to be treated as period spent on duty for all purposes and in the latter

case such period is not to be treated as period spent on duty. But the authority has the power in suitable cases to direct that such period of absence

shall be treated as period spent on duty in which case the government servant would be entitled to full pay and allowances.

(7) Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦The order as to whether a given case falls under CI. 2 or CI. 5 of the Fundamental Rule must depend on the examination by

the authority of all the facts and circumstances of the case and his forming the opinion therefrom of two factual findings; whether the employee was

fully exonerated and in case of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect the

government servant adversely if it is one made under CIs. 3 and 5. Consideration under this rule depending as it does on facts and circumstances in

their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary

loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act

judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the present case,

the order Is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice.Ã¢â‚¬â€‹

19. The Division Bench of the Apex Court in a recent judgment dt 23.03.2022 reported in 2022 SCC online SC 378 in Civil Appeal No.2386/2022 in

State of Rajasthan & Another vs. Mangat Lal Sidana 2022 SCC online SC 378 dealing with a similar situation at paras 16 to 24 observed as under :

Para 16 : Rule 54 with which we are concerned contemplates an amalgam of situations which deal with disciplinary proceedings culminating in

dismissal, compulsory retirement and removal and it also deals with absence from duty on account of suspension. In other words, when an employee

at the end of the disciplinary proceedings is punished in terms thereof and as a result of the order passed is reinstated, then the competent authority is

called upon to consider and pass specific order regarding the pay and allowances to be paid for the period for absence from duty. The Rule appears to

separately contemplate the duty to provide for the pay and allowances for the period of suspension ending with the date of retirement on

superannuation as the case may be. In other words, the Rule in its application contemplates a situation wherein a Government servant being dismissed,

removed, compulsory retired or suspended is reinstated. It also takes in a case where but for his retirement, he would have been reinstated while

under suspension. In both these cases, the duty of the competent authority is to pass the order within the contemplation of Rule 54(1)(a) and (b). This

means that apart from dealing with pay and allowances, as to whether the period of absence is to be treated as duty must be dealt with. This flows

from Rule 54(1)(b). The manner in which the authority is to pass the order is regulated by subsequent provisions in Rule 54. Sub-rule 54(2)

contemplates that the competent authority must examine the proceedings, apply its mind, and find whether it is a case where the Government servant

at the end of the day has been fully exonerated. In the case of suspension where a person being under suspension is reinstated, the duty lies on the

competent authority to consider the question as to whether the suspension was justified or wholly unjustified. If the suspension was wholly unjustified,

the Government servant would be entitled to be paid the full pay and dearness allowance which he was entitled to had he not been suspended. The

same is the case of the Government servant visited with the penalty of dismissal, removal or compulsory retirement. If it is found that at the end of the

day that the penalty was wholly unjustified in that, on merit it is found that the employee stands completely exonerated, he would be entitled to get full

pay and dearness allowance. Rule 54(3) is the residuary clause. The provisions of Rule 54(2) and (3) are mutually exclusive. In other words, if an

employee is not fully exonerated, he is to be given such proportion of the pay and allowances as the competent authority may prescribe. Sub-rule (4)

of Rule 54 is relatable to sub-rule 54(1)(b). In other words, whenever there is re-instatement in the circumstances attracting Rule 54, the authority is to

pass a specific order relating to the pay and allowances to be paid and also as to whether the period of such absence is being treated as period spent

on duty. Both these aspects must be reflected in the order.

Para 17 : In the case where there is full exoneration, the rule-maker had made it clear that the period of absence is to be treated as duty for all

purposes. However, the provisions of Rule 54(5) contemplate a situation where the employee is not fully exonerated and therefore is governed by

Rule 54(3). Then the period of absence is not to be treated as duty unless the authority specifically directs that it shall be duty for any specified

purpose. The proviso to Rule 54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted into leave of

any kind due and admissible for Government servant. This would appear to be the scope and purport of Rule 54.

Para 18 : We have seen the order passed in the leading case.

Para 19 : This is a case where the respondents have not been fully exonerated as such. The proof of the same is to be found in the fact that they have

been visited with a penalty as the disciplinary proceedings have admittedly culminated in the penalty being passed which may be a minor penalty.

Para 20 : The other aspect of the matter is about the observance of principles of natural justice. The employee must be given an opportunity before

any order is passed. The matter is no longer res integra. [See M. Gopalakrishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240]. It does not

need reiteration that even under Rule 54, the position is the same. Observance of principles of natural justice is of cardinal importance for the

employee whose very life will be at stake for he would on the one hand if he is heard get an opportunity to pursuade the competent authority that his

case would fall under Rule 54(2) and not under Rule 54(3). Denial of opportunity can have very serious consequences. In this case, the finding is that

the principles of natural justice were not complied with. On this ground, the respondents would support the judgment.

Para 21 : Dr. Manish Singhvi, learned Additional Advocate General appearing for the appellants would point out that in such circumstances, the course

to be adopted would be to remit it back to the competent authority so that the competent authority may ensure that the respondents appear before the

authorities and then the case is decided. In fact, we find that the course adopted by this Court finally in M. Gopalakrishna Naidu was to remit the

matter back to the competent authority to pass an order after hearing the employee. But then, learned counsel for the respondent would point out that

the respondent is aged 76 and at this stage, remitting back the matter would be highly inequitable. In the leading case, we notice, at the time of

admission, this Court had passed an order of stay subject to payment of 50 per cent of the backwages.

Para 22 : Having heard the learned counsel for the parties, we are of the view that the following conclusions can be arrived at.

Para 23 : The disciplinary proceedings against the respondents in both the cases have not culminated in a situation where it could be said that they

have been completely exonerated. This would take their case outside the four walls of Rule 54(2) of the Rules. Their suspension may not fall in the

category of unjustified suspension. This inevitably and necessarily would bring their cases within the scope of Rule 54(3). This would necessarily mean

that the exact amount of pay and allowances to be paid is to be less than the full pay and allowances. However, this exercise can be done only after

notice to the employee. Admittedly, there is a failure by the appellants in this regard. But, at the same time, to remit it back for this purpose in our view

would be inequitable. Hence we would rather adopt the middle path by directing that in the facts and circumstances of the case, the respondents be

paid pay and allowances fixed at 50 per cent of the pay and allowances which they would have drawn for the period of their absence. Accordingly,

the appeals are partly allowed. We direct that the respondents in both the cases will be paid the pay and allowances at 50 per cent of the amount

which they would be entitled for the period in question.

Para 24 : The appeals are allowed as above.

No orders as to costs.

20. This Court opines that in similar circumstances orders have been passed vide G.O.Rt.No.1238, dated 18.05.2013 and vide G.O.Rt.No.1268, dated

22.05.2013 treating the period of suspension in the said cases as on duty under Fundamental Rules 54(B)(4) by the 3rd Respondent herein. However,

no relief has been given to the petitioner herein though the Government has set aside the punishment of PPI for one year with effect imposed against

the petitioner vide G.O.Rt.No.1670 dated 13.09.2012 under 54-B(3), the Government however admittedly as borne on record did not issue any notice

to the petitioner and did not pass specific orders treating the period of suspension of the petitioner as a period spent on duty for all purposes as per 54-

B(4), having extended the said benefit to similarly situated persons like the petitioner, the same has been denied to the petitioner for no rhyme or

reason.

21. Taking into consideration of the above referred facts and circumstances and the law laid down by the Apex Court in the judgments referred to and

discussed above, this Court opines that the orders impugned cannot be sustained and accordingly, the writ petition is allowed setting aside the order

impugned of the 3rd respondent vide Memo No. 33518/Ser.II/A2/2012, Home Department, dated 24-05-2016 and its consequential Proceedings C.No.

33/A6-1/2008-2016, D.O.No. 1545/2016, dated 24-06-2016 issued by the 1st respondent and the respondents are further directed to regularize the

suspension period (out of employment period) of the petitioner from 05.12.2007 to 07.03.2010 as on duty for all purposes including the arrears of pay

and allowances, increments and promotion etc. in terms of FR 54(B)(4) and pass appropriate orders within a period of one month from the date of

receipt of the copy of the order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.