



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.14407 of 2012

K.S.Ramakrishnan

...Petitioner

-Vs-

1.The Director General of Police
Tamil Nadu, Kamarajar Salai
Chennai 600 004.

2.The Joint Commissioner of Police
South Zone, Chennai Police
St.Thomas Mount, Chennai 600 016.

3.The Deputy Commissioner of Police
Adyar District, Adyar, Chennai 600 020.

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings bearing Rc. No. 91/ 005424/PR.S-(1)/2009 dt 2.5.2012 from files of the 3rd respondent and quash the same and consequently direct the 3rd respondent to regulate the period of non-employment of the petitioner strictly following the procedure laid down in Rule 54-A(2) of the Fundamental Rules and pass appropriate orders granting consequential monetary benefits and other attendant benefits within a time frame.

For Petitioner	:	Mr.K.M.Ramesh
For Respondents	:	Mr.K.Magesh, Special Government Pleader

O R D E R

The prayer sought for herein is to call for the records relating to the impugned proceedings bearing Rc.No.91/005424/PR.S-(1)/2009 dt 2.5.2012 from files of the 3rd respondent and quash the same and consequently direct the 3rd respondent to regulate the period of non-employment of the petitioner strictly following the procedure laid down in Rule 54-A(2) of the Fundamental Rules and pass appropriate orders granting consequential monetary benefits and other attendant benefits within a time frame.



2. The short facts which are required for the disposal of this writ petition are as follows. That the petitioner joined in the Police Department as Grade-II Police Constable on 25.10.1984. He was then promoted as Grade-I Police Constable on 25.07.1995. While he was working so, he was placed under suspension by an order dated 24.07.2000 pending enquiry into charges. On 25.07.2000, a charge memo stating three charges were issued against the petitioner, wherein enquiry was conducted. After enquiry, based on the Enquiry Officer's report, the disciplinary authority, having accepted the findings given by the Enquiry Officer, imposed the punishment of removal of service against the petitioner by an order dated 05.03.2001.

3. Challenging the said order of punishment, the petitioner filed O.A.No.2646 of 2001 before the Tamil Nadu Administrative Tribunal. In the said O.A., the Tribunal by an order dated 28.01.2004 having gone into the merits of the issue raised therein, was pleased to set aside the order of punishment of removal of service made against the petitioner, however directed the respondents to impose the punishment of stoppage of increment for one year without cumulative effect and also directed to reinstate the petitioner with full backwages for the non-employment period.

4. Pursuant to the said order passed by the Tribunal, having accepting the same, though the respondent Department reinstated the petitioner on 13.08.2007, however, preferred an appeal by way of a writ petition in W.P.No.21928 of 2004 only with respect to the direction issued by the Tribunal to give full backwages to the petitioner for the non-employment period.

5. The said writ petition was decided by a Division Bench of this Court by an order dated 13.02.2009, where the Division Bench was of the opinion that, while setting aside the punishment of removal of service and directing alternative punishment of stoppage of increment for one year without cumulative effect, the Tribunal ought not to have directed the Department to give full backwages to the petitioner for the non-employment period and the same, according to the Division Bench, should have been left to the discretion of the Department. Thereafter, it seems that the petitioner, in April 2009, had given a representation to the respondents to consider the case of the petitioner for giving the benefit of backwages and other service benefits, of course, pursuant to the order passed by the Division Bench.

6. Subsequently, the respondents, without issuing a show cause notice or giving any opportunity to the petitioner, passed an order dated 24.10.2010 denying the benefit of backwages and



other financial benefits and by only treating the non-employment period as eligible leave including EOL to the extent necessary as per Fundamental Rules (hereinafter referred to as F.R.) 54.

7. Aggrieved over the said order dated 24.10.2010, the petitioner again approached this Court by filing another writ petition in W.P.No.26243 of 2010, where a learned Judge passed an order on 07.04.2011, dismissing the writ petition stating that, there was no infirmity in the order dated 24.10.2010. However, the petitioner, not satisfied with the said order passed by the learned Judge, has preferred an intra-court appeal in W.A.No.1478 of 2011, where a Division Bench of this Court, by an order dated 30.06.2011, allowed the writ appeal, to the extent to remand the matter to the respondents for reconsideration afresh of course in accordance with Rule 54-A(2) of the Fundamental Rules and pass appropriate orders on its own merits.

8. Pursuant to the said Division Bench order, the respondents issued a show cause notice on 04.02.2012. In response to the same, the petitioner filed his reply on 07.03.2012 and he has also submitted further explanation on 02.04.2012. Considering the reply given by the petitioner, the third respondent herein has issued an order on 02.05.2012, treating the out of employment period only as eligible leave including EOL. Therefore, challenging the said order dated 02.05.2012, the petitioner has filed this writ petition with the aforesaid prayer.

9. Mr.K.M.Ramesh, learned counsel for the petitioner would submit that, as directed by the Division Bench to consider the case of the petitioner for conferment of financial benefits, the case of the petitioner was not considered in proper perspective under F.R.54-A especially under F.R.54-A(2). In this context, it is the further submission of the learned counsel for the petitioner that, if at all the Court set aside the order of penalty / punishment of dismissal or removal from service or compulsory retirement, imposed by the disciplinary authority, on the ground of non compliance with the requirement of Clause (2) of Article 311 of the Constitution of India and even if the employee is not exonerated on merits, the Government servant shall be paid such amounts of pay and allowances for which he would have entitled to had he not been dismissed, removed or compulsorily retired or suspended. By relying upon the language used in F.R.54-A(2), the learned counsel would make fervent submission that, the present impugned order, where the said non-employment period of the petitioner since has been treated as only eligible leave, has no proper disposal within the meaning of Rule 54-A and therefore it requires reconsideration.



10. Alternatively, the learned counsel for the petitioner has made a further submission that, if at all the case of the petitioner is not considered under Rule 54-A(2), the proper provision under which the case can be considered is F.R.54-A(3) and if the case of the petitioner is considered under that provision, certainly the petitioner would be entitled to get the benefits of backwages as well as other financial benefits, treating the non-employment period as duty period for which he is entitled to get backwages and other benefits.

11. In support of his plea, the learned counsel for the petitioner has relied upon a decision of this Court dated 21.03.2017 made in W.P.No.31036 of 2013, where, according to the petitioner, exactly in similar circumstances, this Court having invoked Rule 54-A(3) of the Fundamental Rules, has directed the respondents to consider the case of the employee who was similarly placed to treat his out of employment period as duty period for the purpose of all other benefits under relevant Rule except backwages.

12. Following the said judgment dated 21.03.2017, another learned Judge of this Court by order dated 18.09.2017 made in W.P.No.5622 of 2014, has also taken the similar view, where also the non-employment period was considered to be duty period for all other purposes except backwages by invoking the theory of "No Work No Pay".

13. By relying upon these two decisions as well as the rule position, the learned counsel for the petitioner would contend that, the case of the petitioner ought to have been considered at least under Rule 54-A(3) and such non-consideration, which resulted in the impugned order, is bad in law. Therefore, the impugned order is liable to be interfered with, he contended.

14. However, Mr.Magesh, learned Special Government Pleader appearing for the respondents has relied upon the following averments made in the counter affidavit.

"10. In this connection, I humbly submit that the suspension period from 24.07.2000 to 17.03.2001 and out of employment period from 18.03.2001 to 25.03.2004 has been settled as eligible leave including EOL to the extent necessary as per FR.54 (2) and 26.03.2004 to 06.04.2004 as compulsory wait under ruling 3(b) in Rule 9(b) of FR.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceeding such dismissal, removal or compulsory retirement as the case may be, and the date of judgment of the Court



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shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

11) It is humbly submitted that, the Honourable Tribunal in their order dated 28.01.2004 in O.A.No.2646 of 2001 set aside the order of the punishment of removal from service and directed to reinstate the applicant and instead shall impose the punishment of "stoppage of increment for one year without cumulative effect for the proved charges". Further, the enquiry officer in the PR who conducted oral enquiry held all the three count of the charges were proved. As per FR 54(A)(2) where the dismissal, removal or compulsory retirement of a Government Servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government Servant, shall, subject to the provision of Sub-Rule (1) of Rule 54, he paid such amount (not being the whole) of the pay and allowance to which he would have been entitled to had he not been dismissed, removed, or compulsorily retired, or suspended prior to such punishment as the case may be. This petitioners case, he was imposed with the major punishment of "stoppage of increment for one year without cumulative effect" for a grave charge. Hence, he is entitled to settle the period of suspension from 24.07.2000 to 17.03.2001 and out of employment from 18.03.2001 to 25.03.2004 as eligible leave including EOL to the extent necessary."

15. By relying upon the said averments made by the respondents, the learned Special Government Pleader submitted that, in fact a direction was given by the Division Bench in the very writ appeal filed by the petitioner on this issue in its order dated 30.06.2011, directing the respondents to consider the case of the petitioner only under Rule 54-A(2) of Tamil Nadu Government Fundamental Rules and accordingly the case of the petitioner was considered under the said Rule of course after giving an opportunity to the petitioner by giving a show cause notice and on consideration of the case of the petitioner under the said Rule, the natural corollary would be to deny not only the backwages and financial benefits, but also to treat the said non-employment period only as leave period for all other purposes and beyond which, no relief can be given to the petitioner as he expected, to the extent of giving backwages as well as financial benefits by treating the said period of non-employment as full duty period.



16. Therefore, the learned Special Government Pleader would submit that, the said decision taken by the third respondent, which is reflected in the impugned order, is strictly in consonance with the relevant Rule viz., 54-A(2) and 54(2) of the Fundamental Rules and also in consonance with the direction issued by the Division Bench of this Court in the order referred to above. Hence, the learned Special Government Pleader seeks dismissal of this writ petition.

17. I have given my anxious consideration to the aforesaid rival submissions made by the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and have gone through the materials placed on record.

18. The controversy now arisen in this writ petition is in a very narrow compass, whether the case of the petitioner, for the purpose of treating his non-employment period either as duty period or leave period or otherwise, is to be considered under Rule 54-A(2) or any other Rule and if it is considered under Rule 54-A(2), whether the decision taken by the third respondent, reflected in the impugned order, is correct or not.

19. To delve into the said question, this Court feels that Rule 54(2) as well as Rule 54-A(2) and 54-A(3) can be quoted hereunder.

" 54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the Government Servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances 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, as the competent authority may determine, after giving notice to the Government servant of the



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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:

Provided that any payment under this sub-rule to a Government Servant shall be restricted to a period of three years immediately preceding the date on which the judgment of the Court was passed, or the date of retirement and superannuation of such Government Servant, as the case may be.

(ii) 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 judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(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.

Rule 54(2) of the Fundamental Rules, reads thus,

54(2) Where the authority competent to order reinstatement is of opinion that the Government Servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government Servant shall, subject to the provisions of sub-rule(6) be paid the full pay and allowances 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.

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government Servant had been delayed due to reasons directly attributable to the Government



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servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication to this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons be recorded in writing, that the Government Servant, shall subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole), of such pay and allowances as it may determine."

20. If we look at the aforesaid Rules, various considerations have been stated therein, under which the case of the employee, who was suffered with the punishment of removal of service or compulsory retirement, had been subsequently reinstated either by the department in appeal or by the order of the Court, by setting aside such punishment of removal of service or compulsory retirement, shall be considered.

21. It is to be noted in this regard that there are three broad categories of cases in this nature.

- In the first circumstance, the punishment of dismissal, removal or compulsory retirement of a Government servant would be set aside, either by the appellate authority or by the Court of Law, and resultantly the employee would be reinstated.
- The second circumstance is that, either the appellate authority or the Court of law can set aside the punishment of removal from service or compulsory retirement on the ground that, the employer has not complied with the requirements under Clause 2 of Article 311 of the Constitution of India.
- In the third circumstance, either the appellate authority or the Court of law can set aside the punishment of dismissal, removal or compulsory retirement of a Government Servant on the grounds of merits.

22. In the case in hand, it is not the case where the punishment of removal of service imposed against the petitioner was set aside by the Tribunal ie., the Court of Law on the ground of non-compliance of Clause(2) of Article 311 of the Constitution of India nor the punishment of removal of service inflicted against the petitioner was set aside by the appellate authority. In fact, the punishment awarded against the petitioner was set aside by the Court of law ie., Tribunal on merits, of course by invoking the theory of proportionality. The Tribunal, though had set aside the punishment of removal of



service imposed against the petitioner, had not fully exonerated the petitioner against the charges and such setting aside was not made by the Tribunal on the ground that the charges framed against the petitioner were not proved.

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23. However the Tribunal, while setting aside the punishment of removal of service imposed against the petitioner, has directed the respondents ie., the employer to impose alternative / minor punishment of withholding the increment for one year without cumulative effect. In addition, the Tribunal has also directed the employer to pay the full backwages to the petitioner for the non-employment period.

24. However, the said portion of the order of the Tribunal for payment of full backwages for the non-employment period was set aside by the Division Bench order referred to above and subsequently the matter was remitted back to consider those aspects in accordance with the Rules.

25. In that aspect, though initially the respondents decided the issue without giving an opportunity to the petitioner by issuance of a show cause notice, subsequently, after the matter was once again taken up by this Court, and a further order was passed, the respondents, ie., the employer has taken up the case once again and decided the same, which ended in the impugned order.

26. While deciding the case, no doubt the respondents claimed that the case of the petitioner was considered in accordance with Rule 54-A(2) of the Fundamental Rules.

27. In this context, the learned Special Government Pleader has also pointed out that, the case of the petitioner was not only considered under Rule 54-A(2), but also under Rule 54(2) of the Fundamental Rules, and that has been specifically stated in para 8 of the impugned order. To appreciate the same, the relevant portion of the impugned order is extracted hereunder.

" 8) I have gone through the order of the Honourable High Court explanation of the individual and the relevant records in detail. The Honourable High Court, though set aside the punishment of removal from service, he was imposed with the punishment of stoppage of increment for one year without cumulative effect. Hence, he was not exonerated from the charges and on a proved minute, he was imposed with the punishment of stoppage of increment for one year without cumulative effect. As per FR 54(2) the Government Servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government Servant shall be paid the



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full pay and allowance. But, K.S.Ramakrishnan, Gr.I.PC 8484 is not exonerated from the charges and he was imposed with a punishment. Hence the period of suspension from 24.07.2000 to 25.03.2004 is ordered to be treated as eligible leave including EOL to the extent necessary as per FR."

28. In view of the said stand taken by the respondents that, the case was also considered under Rule 54(2) of the Fundamental Rules, the said Rule has also been quoted herein above. However, if we look at the said Rule, this Court finds that, the said Rule may not be applicable to the present case strictly speaking because, here in the case in hand, the punishment was not set aside by the authority competent to order reinstatement. Moreover, in cases where the authority competent to order reinstatement is of an opinion that the Government Servant, who has been dismissed, removed or compulsorily retired has been fully exonerated, the Government Servant shall be paid the full pay and allowances.

29. Here in the case in hand, the punishment was not set aside by the competent authority, nor the petitioner was fully exonerated from the charges. Instead, the punishment awarded against the petitioner was set aside by the Court of law ie., the Tribunal on merits ie., on the ground of proportionality. Therefore, it is not the case where the petitioner has been fully exonerated from the charges. Therefore, Rule 54(2) cannot be invoked in the case of the petitioner.

30. If rule 54 is excluded, then the only available Rule is 54(A), under which though the Division Bench, in the aforesaid judgment has indicated that, Rule 54-A(2) can be invoked and accordingly the case of the petitioner can be decided, and the stand of the respondent also is that, the case of the petitioner mainly was decided only under Rule 54(A)(2), this Court feels that, even Rule 54-A(2) may not be the proper Rule, which therefore cannot be invoked for the purpose of deciding the issue raised by the petitioner.

31. The reason being that, if we look at the language used in Rule 54(A)(2), it clearly discloses that, where the dismissal, removal or compulsory retirement of a Government Servant, is set aside by the Court solely on the ground of non compliance with the requirements of Clause(2) of Article 311 of the Constitution of India (emphasis provided) and where he is not exonerated on merits, the Government Servant shall be paid such amounts of the pay and allowances to which he would have been entitled to had he not been dismissed, removed or compulsorily retired.



32. Therefore, only in respect of cases which fall under the category where there has been a non-compliance of Clause(2) of Article 311 of the Constitution of India, Rule 54-A(2) can be invoked. Here in the case in hand, the punishment was not set aside and reinstatement was not ordered solely on the ground of non-compliance of Clause(2) of Article 311 of the Constitution of India. Instead, the Tribunal having gone into the merits of the case, ie., the nature of the charges ie., proven charges as well as the punishment, ultimately came to the conclusion, of course by invoking the theory of proportionality, that the punishment of removal of service awarded against the petitioner was not incommensurate with the charges. Therefore, the Tribunal set aside the punishment and directed the respondents to inflict the minimum or alternative punishment of withholding the increment without cumulative effect. However, though the Tribunal has also given a direction to give backwages, that portion was set aside by the Division Bench of this Court.

33. Therefore, in that circumstances, if at all the case of the petitioner is to be considered for exploring the possibility as to what further relief can be given to the petitioner, this Court feels that, the proper Rule to be invoked is Rule 54(A) (3), which has already been quoted herein above.

34. In this context, as has been rightly relied upon by the learned counsel appearing for the petitioner, at least two decisions have been made by this Court one is in W.P.No.31036 of 2013 dated 21.03.2017 in the matter of "N.Panneerselvam -Vs- The Commissioner of Police and Another" , followed by the decision in W.P.No.5622 of 2014 dated 18.09.2017 in the matter of "P.Raju -Vs- The Director General of Police and Others".

35. In order to appreciate what has been said in the two decisions, let me take the relevant portion of the first judgment ie., "N.Panneerselvam -Vs- The Commissioner of Police and Another". To appreciate the facts of the said case, following portion of the said judgment is extracted.

"2. The short facts leading to filing of this writ petition is that the petitioner had joined the police services as Grade II Police Constable on 27.02.1986 in Armed Reserve, Chennai. He had absented from duty without leave or permission between 25.06.1993 to 15.07.1993. He was on Medical Leave with permission from 10.06.1993 to 24.06.1993. However, he was declared as deserter for absenting from duty for 21 days. For the said violation, an enquiry was conducted under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955.



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2.1. Pursuant to the enquiry, a punishment of removal from service was inflicted on the petitioner on 29.07.1994. Challenging the said punishment the petitioner had filed O.A.No.5885/1994 before the Tamil Nadu State Administrative Tribunal. On 19.03.2002, the Tribunal had allowed the O.A.No.5885/94 by setting aside the order of removal from service. However, the Tribunal has imposed a modified punishment of stoppage of increment for one year with cumulative effect and also denied backwages to the petitioner. In the said order, the Tribunal had specifically directed that the period of absence shall be regularised as per Rules.

2.2. Pursuant to the orders passed by the Tribunal, the petitioner was reinstated on 16.10.2002 with modified punishment of reduction of pay by one stage for one year with cumulative effect without backwages. 2.3. According to the petitioner, he had rejoined duty on 14.02.2003. Thereafter, by show cause notice dated 19.03.2003, the petitioner had been asked to give explanation as to why the period of non-employment between 25.06.1993 and 13.02.2003 should not be regularised as eligible leave including leave without pay. On 28.03.2003 the petitioner had given explanation, whereby, he had requested that his out of employment period shall be treated as duty for all purpose without backwages.

2.4. However, the second respondent had passed the impugned order on 16.04.2003, treating the period from 25.06.1993 to 13.02.2003 only as eligible leave including leave without pay (LWP) as per F.R. 54.

2.5. Challenging the said order the petitioner has approached this court with the aforesaid prayer."

36. With the said facts, this Court, having considered the Rule position has held that, the correct Rule which should be invoked in respect of the case of the petitioner in the case referred supra is 54(A)(3). In this context, the following observations and the decision made by this Court in the said decision are usefully extracted hereunder.

" 8. The Tribunal has set aside the punishment of removal of service. However, the Tribunal itself has given a modified punishment of stoppage of increment for one year with cumulative effect. The Tribunal also denied backwages to the petitioner for the period of unemployment. Therefore in respect of these aspects, since the Tribunal has given a clear verdict, the respondents do not have any



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discretionary power to give relief in accordance with their assessment of the case. However, in so far as the question of regularising the absence period of the petitioner for ten years is concerned, it was the direction of the Tribunal that the period of absence shall be regularised as per Rules. Therefore, it is also unavoidable to regularise absence period of the petitioner. But the only thing is that, under which rule such regularisation shall be made.

9. In this regard, the learned Government Advocate would submit that Rule 54(1) and (2) would be the opt rule. Only by invoking the said Rule, the present impugned order has been passed. The said rule has been extracted above and on a perusal of the same, this Court feels that the said Rule 54(1) and (2) is not the relevant Rule to be invoked in the case on hand. At the same time, as has been rightly pointed out by the learned counsel appearing for the petitioner, Rule 54-A.(3), which has also been extracted herein above, would make it clear that, if any punishment of dismissal, removal or compulsory retirement of the Government servant is set aside by the Court of Law on the merits of the case, the intervening period between the date of dismissal and the period of suspension preceding such dismissal and the date of reinstatement shall be treated as duty for all purposes and he shall be paid full pay and allowances. Here in the case on hand, the punishment of removal from service has been set aside by the court law. Once the said punishment is set aside as per the import of Rule 54-A.(3), then, certainly the petitioner shall be entitled to claim full pay and allowances for the period between dismissal or removal and reinstatement. However, in this case since the Tribunal itself has given a modified punishment and also denied backwages, such benefit cannot be conferred on the petitioner and he would also not entitled to seek the same.

10. However, in so far as the said absence period on the part of the petitioner is concerned, whether it is to be treated as duty period without backwages or to be treated as leave period without pay is concerned, the said Rule 54(1) and (2), as has been quoted by the learned Government Advocate, on a perusal and in the opinion of the Court, may not be applicable to the present facts of the case.



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11. Then, the only option available to the second respondent is to invoke F.R. 54-A.(3) and if the said Rule is invoked without giving any backwages, the said absence period shall be treated as duty for all purposes. If it is treated as duty for all purposes, it goes without saying that the petitioner shall be entitled to get other service benefits for which, he is entitled to, as per the Rules, which are in force except backwages.

12. In view of the above Rule position and the discussions made, this Court is of the considered view that the impugned order is liable to be set aside.

13. In the result, the impugned order is quashed. The petitioner's period of absence between 25.06.1993 and 15.07.2003 shall be treated as duty period for all purposes. However, the petitioner shall not be entitled for any backwages or monetary benefits for the said period, which has been regularised now. It is needless to mention that in view of this, the petitioner shall be entitled to seek other service benefits.

14. With these directions, the writ petition is allowed to the extent indicated above. No costs."

37. The said decision has been followed by another learned Judge of this Court in "P.Raju -Vs- The Director General of Police and Others" cited supra, where also the learned Judge has held as follows.

"8. In view of the above ruling by the learned single Judge, the learned counsel for the petitioner would submit that the present petitioner is also entitled for the benefit as given in F.R.54 A(3) of the Fundamental Rules.

9. Upon notice, Mr.A.Zakkir Hussain, learned Government Advocate entered appearance on behalf of the respondents and filed a detailed counter affidavit. He would vehemently oppose the grant of relief to the petitioner on the ground that the punishment has not been set aside on merits but it was set aside only on the ground that the same is being disproportionate and excessive and further more, liberty was also granted to the Department to proceed against the petitioner for imposing any other penalty. Thereafter, by order dated



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13.08.2012, the penalty of reduction in rank for a period of two years had been imposed and therefore, the petitioner is not entitled to the benefit of F.R.54 A (3) of the Fundamental Rules. Since the disciplinary action had ended in punishment, protection given under the Fundamental Rule cannot be given to the petitioner.

10.This Court has considered the rival submissions of the learned counsels appearing for the parties and also considered the relevant materials and the pleadings placed on record. This Court has to first see whether the order passed by the learned Judge dated 21.03.2017 in W.P.No.31036 of 2013 can be applied to the factual matrix of the present case. After going through the order, this Court is of the view that the petitioner's case is similarly circumstanced and therefore, the order passed by the learned single Judge in the aforesaid writ petition has to be applied in toto. Moreover, as rightly contended by the learned counsel for the petitioner, this Court originally set aside the order of removal from service which was set aside only on the ground that such punishment was not warranted, in which case, the petitioner is entitled to the benefit incorporated in the aforesaid F.R.54 A(3). However, while granting the benefit of the said Fundamental Rule, this Court has to see whether the petitioner is entitled to pay and allowances for the period of his non-employment from 20.03.2004 till 17.08.2012. Admittedly, the petitioner was not on duty during the said period and therefore, by applying the principle of "No Work No Pay", the petitioner is not entitled to the backwages. As stated by the learned single Judge in the aforesaid decision, the petitioner is also entitled for other service benefits except backwages for the said period.

11.In the aforesaid circumstances, the impugned order in C.No.D1/Q/6613/2007:DOQ/1027/2013 dated 28.11.2013 is set aside and the writ petition stands allowed. The respondents are directed to pass consequential order regularising the period of non-employment of the petitioner as directed above and the order shall be passed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.



38. If we look at the facts of the case cited supra ie., "N.Panneerselvam -Vs- The Commissioner of Police and Another", it is exactly the same as that of the petitioner herein, where also the maximum punishment of removal of service imposed against the petitioner was set aside and alternative / minimum punishment of withholding the increment without cumulative effect was imposed. However, backwages was not ordered. In the present case also, the punishment of removal from service was set aside and alternative or minimum punishment of withholding increments for one year without cumulative effect was directed to be imposed. However, backwages also was allowed, but the backwages portion was subsequently set aside by the Division Bench of this Court.

39. Therefore, this Court feels that, the present case, in view of the exact facts as that of the case quoted above, shall fall only under Rule 54(A)(3) of the Fundamental Rules. If the case of the petitioner is considered by invoking the said rule, the decision taken by the third respondent in the impugned order to treat the non-employment period of the petitioner only as leave period, may not be justifiable.

40. If at all the non-employment period of the petitioner is to be taken into account for the purpose of service benefits, it shall only be treated as duty period and further, in view of the period being taken as duty period, the employee / petitioner would be entitled to get various financial benefits and service benefits. But, at the same time, admittedly since the petitioner was out of service during the non-employment period, though he claims that he is entitled to get backwages, that has been specifically denied by the aforesaid two judgments, where also the petitioners therein were similarly placed. Therefore, this Court feels that, in this case also, the petitioner's contention that, he is entitled to get backwages for the non-employment period if it is treated as duty period, is liable to be rejected.

41. In view of the aforesaid discussion and the rule position, and by following the decisions of this Court cited supra in Panneerselvam's case and Raju's case, which have become final, as it has been informed across the Bar that, both the judgments have been complied with by the respondents, the impugned order is liable to be set aside.

42. In the result, the following orders are passed. That the impugned order is set aside. Consequently, there shall be a direction to the respondents to treat the period of absence on the part of the petitioner both during the suspension period as well as during the dismissal period, as duty period, for all



purposes except for backwages. It is needless to mention that whatever benefits accrued on the petitioner ie., service benefits, which includes financial benefits, except backwages the petitioner shall be entitled to get, and therefore the same shall be extended to the petitioner. With these directions, this writ petition is allowed to the extent indicated above. No costs.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

KST
To

- 1.The Director General of Police
Tamil Nadu, Kamarajar Salai
Chennai 600 004.
 - 2.The Joint Commissioner of Police
South Zone, Chennai Police
St.Thomas Mount, Chennai 600 016.
 - 3.The Deputy Commissioner of Police
Adyar District, Adyar, Chennai 600 020.
- +1 CC to Mr.K.M. Ramesh, Advocate sr 9301.
+1 CC to The Government Pleader sr 9499.

W.P.No.14407 of 2012

RGN(CO)
SP(09/08/2021)