



2026:DHC:1148-DB



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 445/2019**

BHUVANESH VYAS

.....Appellant

Through: Mr. Jitendra Kumar Singh, Ms. Shivpriya, Ms. Harshita Singh, Ms. Anjali Kumari and Mr. Dilip Vyas, Advs.

versus

**INDIRA GANDHI NATIONAL
OPEN UNIVERSTIY**

.....Respondent

Through: Mr. Aly Mirza, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

%

10.02.2026

C. HARI SHANKAR, J.

1. The present appeal assails order dated 23 April 2019 and order dated 24 May 2019 passed by a learned Single Judge of this Court in WP (C) 104/2008 and Review Petition 232/2019, respectively.

2. The case in question throws up an interesting issue relating to interpretation of FR 54-A (3)¹.

¹ (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.



2026:DHC:1148-DB



3. The appellant, who was confirmed as Senior Software Engineer in the respondent Organisation² with effect from 11 July 1990, applied for 90 days leave to visit USA on 4 September 1992. His leave was approved on 7 September 1992. He further sought extension till 12 July 1993 *vide* application dated 6 December 1992. On 15 February 1993, he was informed that his request for Earned Leave and Extra Ordinary Leave had not been sanctioned. He was directed to report for duty within 30 days, failing which his services would stand terminated with effect from 22 September 1992. The appellant applied on 23 February 1993 for extension, submitting that he was not physically fit. He returned to India on 22 March 1993 and informed the Registrar of the IGNOU that he was still not in a position to join duties, annexing therewith a medical certificate. He resumed duty on 1 June 1993. He was permitted to join duty and mark attendance.

4. On 3 June 1993, the appellant represented for regularisation of his leave period but was informed, on 11 June 1993, that his services have been terminated with effect from 22 September 1992 *vide* order dated 7 April 1993 which had been sent to him at his US address.

5. The appellant represented against the said termination on 17 June 1993. On finding no succour from the respondent at the departmental level, he petitioned the High Court of Rajasthan by way of WP (C) 5023/1993, which was dismissed for want of territorial jurisdiction. Civil Special Appeal No.488/2005, preferred thereagainst was also dismissed by the Division Bench of the High Court of Rajasthan on 28 November 2007 affirming the decision of the learned



Single Judge.

6. The learned Single Judge had, in his order dated 16 August 2005, granted liberty to the appellant to approach the appropriate forum.

7. The appellant, therefore, approached this Court by means of WP (C) 104/2008³.

8. A learned Single Judge of this Court allowed the appellant's writ petition by judgment dated 23 April 2019. We deem it appropriate to reproduce the findings of the learned Single Judge in *extenso* thus:

“13. It is not in dispute that vide order dated 06.02.1991, the services of the petitioner was confirmed as Senior Software Engineer in the pay scale of Rs.3700-125-4950-150-5700 w.e.f. 11.07.1990. It is also not in dispute that the post of the petitioner is Group A post. As per appointment letter, services of the petitioner is to be dealt with CCS (CCA) Rules, 1965. Rule 14(1) of the Rules provides as under:

“14. ***Procedure for imposing major penalties:***

No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this Rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850, (37 of 1850), where such inquiry is held under that Act.”

14. There is a mandate that none of the major penalties can be imposed unless an inquiry has been held in the manner provided in the rules. This is also the mandate of Article 311 of the Constitution and this protection is available to the employees to whom CCS(CCA) Rules apply. Article 311(2) of the Constitution is reproduced as under:



“No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

(Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :)”

15. In view of above, it seems that the respondent has completely violated these provisions in the Constitution and also in the Rules. The impugned order, on the very face of it, being violative of the Rule of natural justice and against the specific provisions made in the rules which is legally not sustainable in law.

16. Apart from the impugned order being illegal and violative of Article 311 (2) of the Constitution and Rule 14 of CCS (CCA) Rules, it suffers from glaring infirmities as enumerated as under:

i The order of termination can never be retrospective. It can only take effect from the date the appropriate disciplinary authority passes such an order. In the present case, the impugned order is dated 07.04.1993 but has been made effective from 22.09.1992. Thus, the respondent has betrayed his ignorance of the provisions of the Indira Gandhi National Open University (IGNOU) Act, 1985 wherein Statute 19(5) relating to removal of employees of the University, it has been clearly stipulated that the removal shall take effect from the date on which the order of removal is made.

ii The contention of the respondent that leave was not sanctioned is belied from the records of the respondent department. As per the relevant rules, earned leave of more than 30 days duration can be granted only by the Vice Chancellor. This statement is apparently false which is clearly established by Annexure R-1 which shows that the powers have been delegated for grant of leave, Item no.3 relates to earned leave. Registrar (Admn.) has been delegated full powers in respect of Group ‘A’ and ‘B’ officers except Directors of Schools and Heads of Divisions.

17. It is seen from Annexure P-16 that earned leave for the period from 22.09.1992 to 21.12.1992 has been sanctioned. Thus, it is clear from the said Annexure that based on this sanction, office



note No.AD/2/NA/1216/17 dated 28.01.1993 had been issued. This also includes sanction of EOL for 203 days from 22.12.1992 to 12.07.1993. It is apparent that on recommendation from the Registrar, leave upto 12.07.1993 had been sanctioned by the Vice Chancellor. The petitioner has also been paid salary upto January 1993.

18. An extract of PBR pertaining to the year 1992-93 clearly establishes that salary was paid upto January 1993. The impugned order ignores all these aspects, as it appears that some senior functionaries of the respondent department approached the entire issue with pre-made-up mind just to get rid of the petitioner, the reasons for which are best known to them.

19. As per Annexure P-16 collected under provisions of RTI act reveals that Assistant Registrar (Admn.) had mentioned that the Director (Computer Division) has already sanctioned leave for 91 days i.e. from 22.09.1992 to 21.12.1992 and forwarded the extension of EOL for consideration. It has been proposed that the leave may be sanctioned by the Registrar as powers for such sanction have been delegated to him and for that further sanction of EOL for 203 days, i.e. 22.12.1992 to 12.07.1993, the Vice Chancellor may be requested to sanction. On this note, Registrar has made a noting:

“Submitted for kind consideration and for sanction of EOL from 22.12.1992 to 12.07.1993.”

20. Apparently, he had sanctioned the leave from 22.09.1992 to 21.12.1992 and for sanction of further extension, he submitted the proposal to the Vice Chancellor through PVC(G).

21. It is not in dispute that the petitioner being Group A Officer and his service conditions are under the CCS(CCA) Rules which has not been taken care while terminating the services of the petitioner in the present case.

22. In view of above discussion, I hereby set aside the order dated 07.04.1993 which was communicated vide letter dated 11.06.1993. Since the petitioner has attained the age of superannuation and has already been retired, therefore, the petitioner has not worked, the petitioner is entitled for 50% back wages till the age of superannuation.

23. Needless to state that if the petitioner is entitled for pensionary benefits, order to that effect shall be passed as per the rules.”

9. Contending that he was entitled to full back wages, the



2026:DHC:1148-DB



appellant filed Review Petition 232/2019 before the learned Single Judge which was dismissed by the following brief order dated 24 May 2019:

“Vide the review petition, the petitioner seeks 100% back wages, till the age of superannuation.

In paragraph 22 of the judgment dated 23.04.2019, it is noted that since the petitioner has attained the age of superannuation and has already been retired, therefore, the petitioner has not worked. Therefore, the petitioner is entitled for 50% back wages, till the age of superannuation.

In view of the above, I find no ground in the present review petition.

The same is dismissed, accordingly.”

10. It is in these circumstances that the appellant has filed the present appeal essentially asserting his entitlement to full back wages.

11. We have heard Mr. Jitendra Kumar Singh, learned Counsel for the appellant and Mr. Aly Mirza, learned Counsel for the IGNOU at some length.

12. Mr. Singh predicates his case on FR 54-A (3), submitting that as the appellant’s termination from service was set aside by the learned Single Judge on merits, he would be entitled to full back wages from the date of removal till the date of his superannuation.

13. Mr. Mirza, contesting the case, first drew our attention to FR 54⁴ and FR 54-B⁵. Clearly, neither of these provisions would apply as

⁴ **FR 54:** (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on



FR 54 applies in a case where the dismissal, removal or compulsory retirement of the government servant is set aside in appeal or review and FR 54-B applies in a case where the officer was under suspension and retires during the period of suspension.

14. The only provision which, therefore, applies in a case where the order of dismissal, removal or compulsory retirement is set aside by a Court of law is FR 54-A.

15. Mr. Mirza further submitted that, while FR 54(1) and FR 54-B (1) deal with circumstances in which the officer would have been reinstated but could not be reinstated owing to other reasons, a deemed reinstatement would be treated as having taken place. There is no such provision in FR 54-A.

16. This submission, to our mind, cannot really influence our understanding of FR 54-A, which has to be read on its own terms. Keeping in view the fact that FR 54-A is the only provision which deals with a circumstance in which the order of removal, dismissal or compulsory retirement is set aside by a Court of law, and that is what has happened in the present case, we are required to examine whether

superannuation while under suspension or not, 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 his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

⁵ **FR 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.



2026:DHC:1148-DB



in terms of FR 54-A, the appellant would be entitled to full back wages.

17. Mr. Mirza then draws our attention to the concluding caveat in FR 54-A(1)⁶ which makes the entitlement of the government servant to pay and allowances in accordance with FR 54-A(3) subject to the directions of the Court. He, therefore, submits that the entitlement of the government servant whose order of dismissal, removal or compulsory retirement may be set aside by a Court of law, to full back wages, is not absolute but is subject to the directions of the Court. He, therefore, submits that FR 54-A saves the discretion of the Court to award less than full back wages and that, in such circumstances, no error can be found to have been committed by the learned Single Judge.

18. We would have been inclined to countenance the said submission, had there not been a separate provision in FR 54-A(3) which deals with a case where a Court of law sets aside the order of removal, dismissal or compulsory retirement *on merits*. FR 54-A(1) does not specifically deal with a situation in which the order of dismissal, removal or compulsory retirement is set aside on merits. Applying the well known principle *generalalia specialibus non derogant*⁷, FR 54-A(3) would call for invocation in a situation in which the order of removal, dismissal or compulsory retirement is set

⁶ **FR 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 regularized 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.

⁷ Things general do not derogate from things special; refer _____



2026:DHC:1148-DB



aside on the merits of the case.

19. In the present case, a bare reading of the paragraphs of the order dated 23 April 2019, extracted in para 9 *supra* makes it clear that the learned Single Judge has not merely set aside the order of termination of the appellant from service on the ground of violation of Article 311 of the Constitution of India but has also set it aside on the merits of the matter.

20. It is not in dispute that the order dated 23 April 2019 stands undisturbed and has, therefore, attained finality.

21. In that view of the matter, to our mind, the case is squarely covered by FR 54-A(3).

22. The rule making authorities clearly chose to deal with a case in which the order of dismissal, removal or compulsory retirement – which would include termination – of the government servant is found to be unsustainable *on merits* differently. This is a wholesome provision, which has to be given full effect. If the Court finds that, on merits, the officer concerned has unnecessarily not been allowed to render service on account of his dismissal, removal or compulsory retirement, the rule making authorities clearly found no reason why he should be denied full back wages. A case of where the order of dismissal, removal or compulsory retirement is found to be unsustainable on merits would, therefore, clearly stand on a different pedestal, from one where the order is set aside merely on technical grounds or for violation of natural justice etc.

Signature Not Verified

Digitally Signed By: AUPA 445/2019
KUMAR
Signing Date: 11.02.2026
19:16:48

Page 9 of 13



2026:DHC:1148-DB



23. The present case being one in which the order of termination of the appellant from the services of the IGNOU have been set aside by the learned Single Judge on merits, the appellant would to our mind be clearly entitled to full back wages in terms of FR 54-A(3).

24. During dictation, Mr. Mirza interjected to advance some further submissions, which, too, we have considered.

25. Mr Mirza sought to contra-distinguish FR 54 and FR 54-B with FR 54-A on another ground as well. He submits that under FR 54-A and FR 54-B, the authority concerned is conferred the discretion to decide on the quantum of back wages to which the employee, on reinstatement, would be entitled.

26. He submits that, if FR 54-A(3) is to be so interpreted that the Court would be denied such discretion, it would result in the administrative authorities being clothed with discretion even superior to the Court, which would be *ex facie* incongruous.

27. The submission is, to our mind, misplaced. FR 54-A does not completely divest the power of a Court, which sets aside an order of dismissal, removal or compulsory retirement, to decide on the quantum of back wages to which the employee would be entitled. Nor does it impose a cast iron obligation on a Court, to award, in every case, 100% back wages. *That obligation arises only under FR 54-A(3) where the order is set aside on merits.*



28. We do not find any such reference in FR 54. Mr. Mirza seeks to interpret the words “fully exonerated” in FR 54(2)⁸ as including a case of exoneration on merits.

29. In case the rule making authority desire to treat FR 54(2) as a case of complete exoneration on merits, it could have done so, especially where it has used the said expression in FR 54-A(3).

30. In any case, this aspect does not really call for discussion in the present case.

31. We are not here concerned with whether there is any dichotomy between FR 54 or FR 54-A. FR 54-A to our mind is clear in its terms. It has to be understood and interpreted as it stands. The clear words of FR 54-A cannot be read down by reference to FR 54, FR 54-B or any other provision.

32. We may here note that in fact FR 54-A(2)(i) specially talks of a case where the government servant is not exonerated on merits. Thus, the rule making authority consciously provided for different dispensations in a case in which the government servant is exonerated on merits and where the government servant was not exonerated on

⁸ (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 servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to 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.



2026:DHC:1148-DB



merits. Where the order of dismissal, removal or compulsory retirement was found to be unsustainable on merits, the case squarely falls within FR 54-A(3).

33. We, therefore, reiterate our view that the appellant was entitled to full back wages.

34. We are informed by the appellant that no payment has been made to the appellant consequent to the orders of the learned Single Judge. We express our serious displeasure at this. Mr. Mirza has candidly acknowledged that LPA 390/2020, which was preferred against by the IGNOU against the order of the learned Single Judge was also dismissed by a Division Bench of this Court by judgment dated 14 November 2024. We do not see why the appellant was not paid even the amount of 50% as per the order of the learned Single Judge even after the LPA was dismissed.

35. The Court cannot countenance brazen disobedience of orders passed by it. Though we deprecate the respondent's inaction in complying with the order of the learned Single Judge even to the extent of payment of the amounts granted to the appellant thereunder despite dismissal of the LPA, we, for the present, do not take any more serious note thereof.

36. Accordingly, the impugned judgment dated 23 April 2019 and order dated 24 May 2019 insofar as they reject the appellant's claim for full back wages is quashed and set aside.



2026:DHC:1148-DB



37. We hold that the appellant would be entitled to full back wages from the date of his termination from service till the date when he superannuated. The appellant would also be entitled to pensionary benefits in accordance with law.

38. The amount payable to the appellant as per the order of the learned Single Judge would carry interest at the rate of 8% per annum from the date of dismissal of LPA 390/2020 on 14 November 2024.

39. The remaining amount payable to the appellant, as per this judgement, would carry interest at the rate of 8% per annum if not paid within a period of six weeks from today.

40. The appeal is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 10, 2026/aky