CHAPTER XIV

ACTION AFTER REINSTATEMENT

1. Reinstatement

A Government servant will be reinstated in service:

(i) if he had been placed under suspension pending criminal or departmental proceedings against him and is acquitted by the court of law or if the departmental proceedings instituted against him are withdrawn for any reason or if he is exonerated or is awarded a penalty other than that of compulsory retirement, removal or dismissal from service;

(ii) if the penalty of compulsory retirement, removal or dismissal from service imposed upon him is set aside by a court of law or by the appellate/reviewing authority. (Please see para 10.1. of Chapter V also).

2. Order to be passed on reinstatement.

When a Government servant is reinstated in service the authority competent to order the reinstatement shall 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; and

(b) whether or not the said period shall be treated as a period spent on duty.
3. **When penalty of dismissal/removal/compulsory retirement is set aside for non-observance of procedure prescribed under Article 311 of the Constitution.**

3.1. If an order of dismissal, removal or compulsory retirement from service is held by a court of law or by the appellate/reviewing authority to have been made without following the procedure prescribed under Article 311 of the Constitution, and no further inquiry is proposed to be held, action to regulate his pay and allowances for the period of absence from duty and to specify whether the said period shall be treated as duty for any specific purpose will be taken in accordance with FR 54 or FR 54-A, as the case may be.

3.2. In such cases, if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/compulsory retirement under Rule 10(3) or (4) of the CCA Rules, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension under FR 53.

4. **When a penalty imposed in a departmental proceedings is set aside on grounds other than non-observance of procedure.**

4.1. If an order of suspension or the penalty of dismissal/removal/compulsory retirement imposed in a departmental proceedings is set aside by the appellate/reviewing authority on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution, i.e. on grounds of equity, the payment of pay and allowances for the period of absence from duty and the treatment of the period as duty or otherwise will be governed by FR 54 as set out in the following sub-paragraphs.

4.2. The authority competent to order the reinstatement of the
Government servant will first consider and decide whether, in its opinion, the Government servant has been fully exonerated or, in the case of suspension, whether it was wholly unjustified, in the light of the facts and circumstances of each case.

4.3. If the competent authority is of the opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be entitled to: -

(i) full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended, as the case may be under FR 54(2); provided that where such authority is of the opinion that the termination of proceedings had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation, 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 pay and allowances as it may determine;

(ii) the period of his absence from duty for the entire period will be treated as period spent on duty for all purposes under FR 54(3).

4.4. In cases where the competent authority is of the opinion that the Government servant has not been fully exonerated or in the case of suspension, that it was not wholly unjustified, the Government servant shall be entitled to: -

i) such amount (not being the whole) of pay and allowances to which he should have been entitled, had he not been dismissed, removed or compulsory retired, or suspended as
the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering his representation, if any; and

ii) the period of his absence from duty shall not be treated as period spent on duty unless the authority competent to reinstate the Government servant specifically directs that it shall be so treated for any specified purpose or purposes or for all purposes. If no order is passed directing that the period of absence be treated as duty for any purpose(s), the period should be treated as non-duty. The competent authority may, however, order, if the Government servant so desires, that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

5. Court cases in which penalty is set aside on grounds other than non-observance of procedure.

In cases in which a Government servant under suspension is acquitted by a court of law or where the penalty of removal, dismissal or compulsory retirement is set aside by court of law on grounds other than non-observance of procedure prescribed under Article 311 of the Constitution and the order reinstating the Government servant is passed sometime after the date of acquittal, the pay and allowances for the period of absence from duty and the counting of that period as duty should be regulated under FR 54-A as follows:

(i) from the date of suspension/ removal/ dismissal/ compulsory retirement to the date of acquittal.

(a) If the Government servant is treated as having been fully exonerated,
full pay and allowances and period to be treated as duty for all purposes.

(ii) from the date of acquittal to the date of rejoining duty.

(b) If not treated as having been fully exonerated, proportionate pay and allowances and the period to be treated as non-duty or as duty for specific purpose or purposes or for all purposes as determined by the competent authority. Here too, notice to the Government servant concerned giving him an opportunity to represent against the quantum of pay and allowances proposed is necessary before orders are passed.

Full pay and allowances and the period to be counted as duty for all purposes.

6. When acquittal by a court of law may be treated as exoneration or suspension can be said to be wholly unjustified.

In law, the expression “full exoneration” is not recognised or made use of. It is for the authority competent under FR 54-A to determine from the circumstances of each case whether acquittal by a court of law should be taken to mean full exoneration or not. For example:

(i) If the entire available evidence was placed before the court and the court after due consideration thereof came to the conclusion that the Government servant concerned was not proved to be guilty on that score, he could ordinarily be deemed to have been acquitted of blame and fully exonerated;

(ii) If the order of acquittal is recorded on grounds of technical flaw in the prosecution, (e.g., want of sanction to prosecute, misjoinder of charges, want of court’s jurisdiction to try the case, etc.) or if the matter is not proceeded with merely on technical grounds, the Government servant can not be treated as fully exonerated. Likewise, if the available evidence could
not be produced before the court, for example, owning to the death or unavailability of the material witnesses or destruction or unavailability of relevant documents and the prosecution for that reason failed to bring home the guilt of the accused, the acquittal can not be regarded as honorable and the accused Government servant cannot be said to have been fully exonerated;

(iii) When a Government servant who is detained in custody under any law providing for preventive detention and who is deemed to be under suspension on that account is subsequently reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under FR 54-B, i.e. if the detention is held by the competent authority to be unjustified, the case may be dealt with under FR 54-B(3) and (4); otherwise it should be dealt with under FR 54-B(5) and (7). In the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and re-instatement of the Government servant and if it comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed;

(iv) In the case of a Government servant against whom proceedings had been taken for his arrest for debt but who was not actually detained in custody and who is placed under suspension on that account but ultimately it is proved that his liability arose from circumstances beyond his control, the case may be dealt with under FR 54-B (3) and (4); otherwise under FR 54-B(5) and (7).
(v) When departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty the suspension can be said to be wholly unjustified in terms of FR 54-B and full pay and allowance should be paid to the concerned employee.

7. Applicability of law of limitation.

In all cases falling under paragraphs 4 and 5, where full pay and allowances is allowed under FR 54(2), or FR 54-A (3), as the case may be, while paying the arrears of pay and allowances for the period from the date of dismissal/removal/compulsory retirement/suspension to the date of reinstatement, the law of limitation i.e. restricting the payment to a period of three years prior to the date of reinstatement need not be invoked.

8. Deductions of other earnings made, if any, during the period of absence.

In all cases covered by paragraphs 4 and 5, any payment made to the Government servant on his re-instatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible are equal or less than the emoluments earned during the employment elsewhere, nothing shall be paid to the Government servant.

9. Conversion of the period of absence from duty into leave.

9.1. Under the provisions of FR 54, FR 54-A and FR 54-B, if the
Government servant so desires, the period of absence from duty may be allowed by the competent authority to be converted into leave of any kind due and admissible to the Government servant. Any order passed in this regard by the authority competent to reinstate the Government servant is absolute and the sanction of any higher authority will not be necessary for the grant of extraordinary leave in excess of three months in the case of temporary Government servants, and leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

9.2. On the conversion of the period of absence from duty in such cases into leave with or without allowances, if it is found that the total amount of subsistence and compensatory allowances drawn during the period of suspension exceeds the amount of leave salary and allowances admissible the excess will have to be recovered.

10. **Filling up of vacancies caused by dismissal etc. of Government servant.**

10.1. A permanent post vacated by the dismissal, removal or compulsory retirement of a Government servant should not be filled substantively until the expiry of the period of one year from the date of such dismissal, removal or compulsory retirement, as the case may be. The period of one year has been prescribed so as to cover the time that usually elapses before the Government servant prefers an appeal and orders are passed on it by the competent authority. Where, on the expiry of the period of one year, the permanent post is filled and the original incumbent of the post is reinstated thereafter, he should be accommodated against any post which may be substantively vacant in the grade to which his previous substantive post belonged. If there is no such vacant post, he should be accommodated against a supernumerary post which should be created in that grade with proper sanction and with the stipulation that it would be terminated on the occurrence of the first substantive vacancy in that grade.
10.2. It is not necessary to keep a post vacant for a period of one year to provide for the contingency of subsequent reinstatement and confirmation in respect of a Government servant who at the time of dismissal, removal or compulsory retirement was not holding substantively a permanent post but would have been considered for confirmation but for the penalty imposed.