

**Central Administrative Tribunal
Madras Bench**

**OA/310/00145/2019, OA/310/00148/2019, MA/310/00369/2019 (in)(&
OA/310/00474/2019, MA/310/00358/2019 (in)(&) OA/310/00475/2019,
OA/310/00579/2019 & OA/310/00581/2019**

Dated the 6th day of February Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

1. G.Venkatachalapathy .. Applicant in OA 145, 475 & 581/2019
2. S.Saravanan ..Applicant in OA 148, 474 & 579/2019

By Advocate **M/s.M.Gnanasekar**

Vs.

1. Union of India, rep. by
Chief Secretary to Government,
Government of Puducherry,
Puducherry.
2. The Director General of Police,
Government of Puducherry,
Puducherry.

..Respondents in all the OAs

By Advocate **Mr.R.Syed Mustafa**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief:-

OA 145/2019 & 148/2019:

“(i) set aside the order No.C.16013/04/2016/P1 Home (PF) dated 07.1.2019 passed by the first respondent and set aside the order of dismissal in No.OSD/DE-1/21-6/DGP/2010 dated 29.7.2016 passed by the 2nd respondent and the order in No.C16013/04/2016/Home P1 dated 22.12.2016 passed by the first respondent and consequently direct the respondents to reinstate the applicant in service by treating the period during which the applicant was out of employment, as duty for all purposes, with all monetary benefits including promotion on par with his juniors and arrears of salary and other benefits

(ii) Pass such further orders as are necessary to meet the ends of justice.

(iii) Award exemplary cost and thus render justice.”

OA Nos. 474/2019 & 475/2019:

“(i) set aside the order No.OSD/De-1/21-6/DGP/2010 dated 11.3.2019 passed by the 2nd respondent and consequently direct the respondents to reinstate the applicant in service by treating the period during which the applicant was out of employment, as duty for all purposes, with all monetary benefits including promotion on par with his juniors and arrears of salary and other benefits.

(ii) Pass such further orders as are necessary to meet the ends of justice.

(iii) Award exemplary cost and thus render justice.”

OA Nos.579:/2019 & 581/2019:

“(i) set aside the Charge Memo in order No.OSD/DE-

1/21-6/DGP/2010 dated 05.4.2019 passed by the 2nd respondent and consequently direct the respondents to reinstate the applicant in service by treating the period during which the applicant was out of employment, as duty for all purposes, with all monetary benefits including promotion on par with his juniors and arrears of salary and other benefits

(ii) Pass such further orders as are necessary to meet the ends of justice.

(iii) Award exemplary cost and thus render justice.”

2. As the issue involved in all these applications are interconnected and the relief sought for also is similar, these applications have been heard together and are being disposed off by this common order.

3. The applicants while working as Sub-Inspector of Police in the Puducherry Police Department, were placed under deemed suspension and later, following their conviction in the criminal case, they were dismissed from service on 29.7.16. On appeal against the conviction and sentence before the Hon'ble High Court of Madras, they were acquitted of all charges by order dt. 12.4.18. The applicants made representation on 03.5.18 for their reinstatement in service and for treating the period of absence as time spent on duty for all purposes. As the said representation was pending for consideration before the respondents, they filed OA Nos. 789 & 790/2018. This Tribunal by order dt. 23.6.2018 disposed off the OA with a direction to the respondents to consider the representation of the applicants dt. 03.5.2018 and pass a reasoned and speaking order thereon. Pursuant to the said order of this Tribunal, the 2nd respondent by Memorandum dt. 22.6.2018 rejected the claim of the

applicants. Hence they filed OA Nos.1003 & 1000/2018 and this Tribunal by order dt. 03.8.18 disposed off the OAs on the basis of the submission made by the counsel for the respondents that the respondents are considering the request of the applicants for reinstatement in the light of their acquittal by the Hon'ble High Court of Madras and the order passed by the Tribunal in OA Nos.789/18 & 790/2018. However, the 1st respondent, in compliance with the orders dt. 28.6.18 in OA Nos.789 & 790/2018, passed the impugned order dt. 07.1.19 rejecting the claim of the applicants. Against the said impugned order the applicants filed OA Nos. 145 & 148/2019.

4. When the matter stood thus, the 2nd respondent passed an order dt. 11.3.2019 setting aside the dismissal orders and proposing Regular Inquiry against the applicants under Pondicherry Police Subordinate Service (Discipline & Appeal) Rules, 1968 and CCS (CCA) Rules, 1964. Challenging the said order dt. 11.3.19, the applicants filed OA Nos. 475 & 474/2019. They also filed MA Nos. 358 & 369/2019 seeking an order of interim injunction restraining the respondents from conducting the enquiry proceedings in pursuance of the order dt. 11.3.2019 of the 2nd respondent.

5. Pending the above said OAs, the respondents issued charge memo dt. 05.4.2019 against the applicants under CCS (CCA) Rules, 1965 read with Pondicherry Police Subordinate Services (Discipline & Appeal) Rules, 1968, which is impugned and challenged in OA Nos.581/2019 & 579/2019.

6. In view of the fact that both the applicant have filed OAs for similar relief and the facts are also similar, for the sake of convenience the OA 581 and 579/2019 is

taken as leading case.

7. The respondents appeared and filed a detailed common reply for all OAs admitting the filing of earlier OAs and the orders passed in them. According to the respondents, the Appellate Authority (AA) on a consideration of the circumstances of the case, decided to conduct a regular inquiry under CCS (CCA) Rules and Pondicherry Police Sub-Ordinate Services (Discipline & Appeal) Rules, 1968 on the allegation which lead to the Criminal Case and his dismissal. According to the respondents, the acquittal passed in the Criminal Case was not an “honourable acquittal” and AA decided to set aside the earlier dismissal order and set aside the order of dismissal dt. 29.7.16. According to them, the Trial Court had convicted and sentenced the applicants and they were later acquitted by Appellate Court giving the benefit of doubt. So, AA has followed the procedure as per the guidelines of DOPT OM No.F.11012/0607-Estt-I(A-III), dt. 21.7.16 which states thus:-

(b) in case of acquittal also, if the Court has not acquitted the accused honourably, charge sheet may be issued.

(c) An acquittal on technical grounds or where a benefits of doubt has been given to the accused will have no effect on a penalty imposed under CCS (CCA) Rules, 1965, as while in a criminal trial the charge has to be proved beyond reasonable doubt, in the Departmental inquiry the standard of evidence is preponderance of probability.

There is no illegality and the OA is liable to be dismissed.

8. We have heard the counsels appearing on both sides and perused the pleadings.

According to the counsel for the applicants, the applicants were acquitted of all charges in appeal by the Hon'ble Madras High Court. According to him, the acquittal given by the Hon'ble madras High Court was an honourable one (Annexure A13). The Hon'ble High Court has observed that the “Trial Court had failed to appreciate the evidence in proper perspective and prosecutor having failed to examine Tamilselvi, owner of M.O.1 (Series) this Court finds that the Trial Court judgment cannot be sustained”.

9. The learned counsel had invited our attention to the decision of the Hon'ble Apex Court in *Deputy Inspector General of Police & Another v. S.Samuthiram in Civil Appeal No.8513/2012 dt. 30.11.2012 [2013 (1) SCC 598]* wherein the term 'honourable acquittal' was explained. We quote

“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI v. Bhopal Singh Panchal*. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

10. In this case, the prosecution has failed to prove its case and applicants were acquitted. In this case the acquittal was not given in technical grounds nor on the

basis of benefit of doubt. So, no further charge can be framed against the applicants on the basis of DOPT Circular dt. 21.7.16.

11. It was also argued that the applicants are issued with charge memo on the basis of the same facts and circumstances and it is not fair to proceed again on same set of circumstances in a departmental inquiry. The counsel invited our attention to ***Caption M.Paul Anthony v. Bharat Gold Mines Ltd., & another*** to content that the action of the respondents is unjust rather oppressive to allow the proceedings to go on.

12. The counsel appearing on behalf of the respondents would contend that the Criminal Case had ended in acquittal on technical grounds and it does not amount to an honourable acquittal. The applicants were found guilty and they were convicted and sentenced by Trial Court and it was in appeal, it was found that the real owner of M.O.1 (Thali) was not examined for proving ownership and the appeal was allowed. The respondents also relies upon the same decision of the Hon'ble Apex Court in ***Deputy Inspector General of Police & Another v. S.Samuthiram [(2013) 1 SCC 598]*** in support of his case. He mainly relies on para 23 of the judgment which reads as follows:

“23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non-examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the prosecution. Considering the facts and circumstances of the case, the possibility of winning over PWs 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the prosecution had not examined Head Constable Adiyodi (No.1368) and Peter (No.1079) of Tenkasi Police Station. It was these two Head

Constables who took the respondent from the scene of occurrence along with PWs 1 and 2, husband and wife, to Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (complaint husband) is found in Ext.P-1 complaint. Further, the doctor, PW 8 has also clearly stated before the enquiry officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.”

Here in this case also, the Appellate Court has exonerated the applicants since witness Tamilselvi was not examined.

13. The respondents would also contend that even in cases of acquittal, departmental proceedings can be continued if acquittal is not an honourable one (***R.P. Kapoor v. Union of India – AIR 1964 SC 787***).

14. He has also invited out attention to para 27 of the judgment in ***Deputy Inspector General of Police's*** case where it was observed that -

“27.There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right.”

The Pondicherry Police Sub-ordinate Services (Discipline & Appeal) Rules, 1968 does not give any such right of reinstatement. So, the applicant is not entitled to any of the reliefs claimed in the OAs.

15. We have gone through the judicial pronouncement produced from either side to ascertain whether applicants are entitled to be considered as having obtained an honourable acquittal. In ***R.P. Kapoor v. Union of India's*** case (referred supra), the

Hon'ble Supreme Court held that even if the accused is acquitted in Criminal Case, the Departmental Proceedings can follow if the acquittal is not honourable. The Hon'ble Supreme Court in *Deputy Inspector General of Police's* case (referred supra) in para 26 had held that -

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

In para 27 of the above judgment it is mentioned that -

“27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such case, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

In the case in hand, the Pondicherry Police Subordinate Services (Discipline &

Appeal) Rules, 1968 has no such provision. On a reading of the judgment in Criminal Appeal No.389/392 of 2014 dt. 12.4.18, it can be seen that the offence alleged against the accused therein was under Prevention of Corruption Act. The allegation is that the applicants herein had demanded illegal gratification from Palani, husband of Tamilselvi, for releasing the Thali Chain recovered by the Police. If we go through para 27 of the judgment, we can see that the demand of illegal gratification of Rs.10,000/- is spoken to by Palani (PW2) the defacto complainant in that case. The 2nd demand of illegal gratification and receipt of the same on 19.7.10 was spoken to by PW2. The Appellate Court has expressed some doubts regarding the presence of PW3 there. In para 30, the Appellate Court has opined as follows:-

“30. Independently, the recovery of M.O1 thali chain is assessed and analysed. First of all, the prosecution should have established the ownership of the thali chain. The key witness could have been Tamilselvi from whom it is alleged that A1 has taken away the thali chain. There is no explanation or reason attributed by the Investigating officer why he has not examined Tamilselvi and why she was not brought to the Court to depose about the ownership of the thali chain and how it went to the hands of A1 and in turn it went to A2.”

The defence had examined two witness as DW1&2. In para 34, the Appellate Court has given the actual reason for entering into an acquittal in the case as follows:-

“Based on the unreliable evidence of PW-2(Palani), conviction of the trial court cannot be sustained. Since the trial court has failed to appreciate the evidence in the proper perspective and the prosecution having failed to examine Tamilselvi the owner of MO-1 (series), this Court finds that the trial court judgment cannot be sustained.”

16. On going through the judgments, it can be seen that there was some evidence against the applicants. But owing to the non-examination of Tamilselvi (wife of

PW2) there was no conclusiveness in evidence and hence the conviction was set aside. So, it is clear that the applicants were acquitted on a technical ground i.e. non-examination of Tamilselvi who was wearing the thali (MO1).

17. So, we are of the view that the acquittal of the applicants in CA Nos. 389/14 and 392/14 dt. 12.4.18 was not an “honourable acquittal” as claimed by the applicants in this case.

18. The applicants in these two OAs (OA 579/19 & OA 581/19) had sought to quash the charge memos dt. 05.4.19 and to reinstate them in service treating the period during which the applicants was out of employment as duty for all purposes, with all monetary benefits including promotion on par with their juniors and arrears of salary and other benefits.

19. From the discussion in the earlier paragraphs, we find that the applicants are not entitled to get the relief sought. The respondent department has a right to proceed against the applicants even if they were acquitted in the Criminal Proceedings. They are also not entitled to get an automatic reinstatement into service as there is no such provision in the service rules. The respondents had issued the charge memo following the guidelines issued by DOPT OM No.F.11012/0607-Estt-I(A-III), dt. 21.7.16 and there is nothing arbitrary in it. So, OA Nos. 579/2019 and 581/2019 are liable to be dismissed.

20. With regard to OA Nos. 145/19 and 148/19, these OAs were filed against the order of rejection of reinstatement after the acquittal of the Criminal Case. In the

discussion of OA Nos. 579 & 581 of 2019, we have dealt with the question whether the applicants are entitled to a reinstatement into service on the ground of acquittal in the Criminal Case. The service rule of the applicants does not provide for an automatic reinstatement into service on an acquittal from Criminal Case. The decision of the Hon'ble Supreme Court in ***Deputy Inspector General of Police's*** case (referred supra) clearly lays down the principle in para 23. So, we are of the opinion that the applicants in these two OAs have no right to get reinstated as claimed by them. So, these two OAs are liable to be dismissed.

21. In so far as OA Nos. 475 & 474/2019 is concerned, these OAs were filed against the order of setting aside the order of dismissal when the applicants were acquitted in Criminal Case. The respondents imposed the order of dismissal on the applicant when they were convicted and sentenced by the Sessions Court. The said order of conviction was set aside by the Appellate Court. The applicants seeks to set aside the said order dt.11.3.19 and also seeks an injunction against initiating Departmental Proceedings.

22. The Hon'ble Apex Court in ***R.P. Kapoor v. Union of India's*** case (referred supra), has held that even if the Criminal Case ends in an acquittal, the department can proceed with departmental action. Here, we have discussed the nature of acquittal passed by the Appellate Court in OA Nos. 579 & 581 of 2019 and we have found that the acquittal passed was only on technical ground and not an honourable acquittal. It is for the Department to decide based on the materials in hand to decide

whether to proceed with departmental inquiry or not.

23. In view of the above, there is no merit in the challenge made against the order dt. 11.3.19 setting aside the earlier dismissal order. Hence the applicants are also not entitled to get any injunction as sought in MA Nos. 358 & 359 of 2019. So, these two OAs alongwith MAs filed by the applicants are liable to be dismissed.

24. In the result, we hereby dismiss the OA Nos.145, 148, 474, 475, 579 and 581 of 2019. Consequently MA Nos. 358 & 369/2019 will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

06.02.2020

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