



**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2614/2015

This the 25th day of February, 2020

Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Mr. Mohd.Jamshed, Member (A)

Ved Pal

Age – 47 years - A/Fitter

Assistant Fitter

B. No. – 10222

Computer Section, Central Workshop-I

B.B. Marg, Delhi – 9.

(By Advocate : Mr. Sachin Chauhan)

...Applicant

Versus

1. The Delhi Transport Corporation
Through the Chairman
D.T.C., I.P. Depot
New Delhi.
2. The Manager – (R&M)
CWS – I, Delhi Transport Corporation
Central Workshop-I, B.B Marg, Delhi – 9.

..... Respondents

(By Advocate : Mr. Chandra ShekharGoswami with Mr. KaruneshTandon)

ORDER (ORAL)

Mr. R.N. Singh :

Heard learned counsels for both the parties.

2. In the present application filed under section 19 of the AT Act, 1985, the applicant has challenged the show cause notice dated 22.04.2015 whereby the applicant was given an opportunity to reply on the issue of treatment of the period of his suspension subsequent to his acquittal in the criminal case. He has further challenged the order dated 01.06.2015 whereby after considering the reply of the applicant, the respondents have passed the order to the effect that subsistence allowance which was paid to the applicant during the



suspension period was adequate. The brief facts not in dispute in the present case, are that an FIR No. 124 u/s 302/201/34 IPC was lodged at Police Station, Kundli, Sonapat, Haryana on 27.06.2008 and the applicant was proceeded in the said case/FIR. In view of the applicant's alleged involvement in the said case/FIR and he being kept in a judicial custody beyond 48 hours, the applicant was suspended by the respondents w.e.f. 27.06.2008 vide an order dated 12.09.2008. The learned Criminal Court has acquitted the applicant in the said case/FIR vide order/judgment dated 04.08.2009. The operative portion of the said order/judgment reads as under :-

“15. Thus, Complainant Prem Singh PW2, witness of last seen, namely, Satbir PW3, Naresh Kumar PW5, Vidya Devi, the mother of the deceased, PW6 and Kanwar Singh PW7, and witness of extra judicial confession Ranbir Singh PW4 have not stated even scintilla of word incriminating against the accused persons. PW3 Satbir has not supported the case of the prosecution regarding disclosure statements and identification of the place of occurrence and the place of throwing the dead body of Reena in the Yamuna River by the accused persons. Thus, the statement of the witnesses of the prosecution do not connect the accused with the commission of offence in any manner. In this way, the prosecution has miserably failed to establish the guilt of accused. As there is nothing incriminating against the accused on record, which can be put to them for recording their statements, as envisaged under Section 313 of the Code of Criminal Procedure, therefore, recording of their statements is dispensed with and they are acquitted of the charge for which they are facing trial. File be consigned to the record room after due compliance.

Announced in open court.”

3. In view of the aforesaid acquittal, the applicant's suspension was revoked w.e.f. 14.10.2009 vide Annexure – A-8. As the applicant's aforesaid suspension period was not treated as “spent on duty” and consequently he was not paid the salary for the relevant period of suspension, he approached this Tribunal through OA No. 2288/2012 which was disposed of vide order/judgment dated 08.01.2015 (Annexure A-4).



4. The learned counsels for the parties admitted before this Tribunal that the orders impugned in the aforesaid OA No. 2288/2012 required reconsideration as the same not being speaking and reasoned one. In this background, the Tribunal disposed of the OA with directions and the operative portion of the order dated 08.01.2015 passed in the aforesaid OA reads as under :-

“3. Having regards to the above, the impugned orders are quashed and set aside and the OA is disposed of with direction to the respondents to consider the applicant’s claim afresh and decide the manner in which the period of suspension till the date of reinstatement would be treated and what pay and allowances would be admissible to the applicant. The respondents shall also clarify after considering the request of the applicant whether the suspension period from 27.06.2008 to 14.10.2009 be treated as spent on duty or not for all purposes, including pay and allowances, seniority and promotion, along with consequential benefits. Respondents shall pass orders as per above in consonance with the rules and instructions on the subject within a period of three months from the date of receipt of a copy of this order and shall duly communicate the same to the applicant.

4. Applicant shall have liberty to initiate appropriate legal proceedings thereafter, if so advised.”

5. In purported compliance of the directions of this Tribunal in order dated 08.01.2015, the respondents have issued the show cause notice dated 22.04.2015 (Annexure A-2) and in response to such show cause notice, the applicant has made a comprehensive representation dated 01.05.2015 (Annexure A-3). In the said representation, we find that the applicant has taken various grounds, has quoted the provisions of the FR 54(B) and has also given example of few persons, who allegedly in similar circumstances, have been granted the benefit of full pay and allowances and their relevant period of suspension has been treated as “spent on duty”. He has also quoted the relevant portion of the judgment of the Ld. trial Court and has also placed reliance upon the judgment of the Hon’ble High Court of Delhi to substantiate his claim.



6. In purported compliance of the reply of the applicant in pursuance of the show cause notice and the order/judgment dated 08.01.2015, the respondents have passed order dated 01.06.2015 (annexure A-1) impugned in the present OA and the same reads as under :-

“The reply submitted by Shri Ved Pal, A/fitter, B. No. 10222 P.T.No. 47934 in response to the Show Cause Notice No. CWS-I/PFC/Court Case/2015/558 dated 22.04. has been considered thoroughly by the undersigned but the same has not been found satisfactory. The proposed action as per Show Cause notice is hereby confirmed as he had actually done no service for the corporation:

“Subsistence allowance which was paid to him during the
“Suspension period is adequate.”

7. The learned counsel for the applicant, Mr. Sachin Chauhan argues that from bare perusal of the impugned order dated 01.06.2019, it is evident that the same is a result of non-application of mind and also ignorance of the directions of this Tribunal in the order 08.01.2015, inasmuch as, though the respondents were duty bound to consider the relevant rule position while passing the orders, they without considering any rule position or any binding instructions, have passed the impugned order in a mechanical manner.

8. Mr. Chauhan further argues that once the applicant has been exonerated by the Ld. trial Court honourably inasmuch as no supporting evidence was found by the Ld. trial Court to connect the applicant with the offences alleged against him, his being put in custody, cannot be attributable to him. He also adds that if, because of such custody, the applicant has been deprived of the opportunity of discharging his official duties, he cannot be held responsible for the same. In this background, he argues that the applicant is entitled to be paid the full salary and allowances and other consequential benefits for the period he remained under suspension.



9. Further he has placed reliance upon the judgment of a Division Bench of Hon'ble High Court of Delhi dated 02.07.2015 in WP (C) No. 6152/2015 titled ***Union of India vs. Jagdamba Singh***. In the said case, while the respondent was working as Khalasi, on 25.08.2011 an FIR No. 68/2011 was registered against him u/s 376/506 IPC at Police Station Sonia Vihar, Delhi. On criminal prosecution, the accused in the said case/FIR was acquitted on the ground that prosecution could not prove that respondent committed the offence. The said accused employee was put under suspension on 07.06.2011 and after the suspension was revoked, he was not paid the full salary and other admissible benefits. He approached this Tribunal and the Tribunal allowed the OA No. 603/2014 vide order dated 15.12.2014. On challenge before the Hon'ble High Court, the Hon'ble High Court of Delhi, after taking into consideration various judgments of the Hon'ble Supreme Court, has ruled as under :

“16. Further in the case of ***Bhag Singh v. Punjab and Sind Bank***, reported at 2006 (1) SCT 125, the Tribunal has taken note of the observations made by a Division Bench of Punjab and Haryana High Court. Relevant portion of the judgment reads as under:

“In both the cases, inspite of the clear observations that there was no evidence against the petitioner, the trial court observed that the accused are given benefit of doubt and acquitted of the charges framed against them. Relying on the aforesaid observation, the respondents have denied the benefit of full pay and allowances to the petitioner. In our opinion, the mere use of the expression "benefit of doubt" or "not proved beyond reasonable doubt" by the trial Court or the appellate court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of "Honourable Acquittal", "fully exonerated" or "acquitted of blame" are all unknown to the Criminal Procedure Code, 1973. Therefore, the term "benefit of doubt" cannot detract from the impact of the acquittal.”

17. In the case of ***Andhra Bank v. W.T. Seshachalam***, reported at 2004 (2) SLJ (SC) 254, it has been held that when criminal proceedings are launched after investigation by an outside agency and the employee is acquitted of the criminal charge, he would be entitled to full pay and allowances as subsistence allowance for the period of suspension.



18. Further in the case of *Commissioner of Police and Others v. Om Prakash and Others*, reported at 2004 (3) SLJ 272, it was held that if one is acquitted by the Court, the entire period of suspension is to be treated as duty for all purposes.

19. In our view there is no infirmity in the order passed by the Tribunal. The Tribunal has correctly applied the law to the facts of the present case.

20. Having carefully examined the judgment passed by learned Central Administrative Tribunal, we find no grounds to entertain the present petition, the same is without any merit and is dismissed accordingly.”

10. Mr. Chauhan argued that the claim of the applicant in the present OA is squarely covered by the judgment of Hon’ble High Court of Delhi in the case of Jagdamba (supra).

11. Per contra, the learned counsel for the respondents, though does not dispute the factual matrix noted hereinabove, contends that as the applicant has not discharged the official duties, assigned to him during the said suspension period, to treat the period of suspension on duty or not on duty, falls under the exclusive discretion of the competent authority. He further argues that in view of the provisions of FR 54 (B), the respondents have rightly passed the impugned order dated 01.06.2015. He places reliance upon the judgment dated 20.11.2007 of the Single Bench of the Hon’ble High Court of Delhi in WP (C) No. 977/2005 titled **Prem Singh Vs. Delhi Transport Corporation** wherein it was ruled as under :-

“14. It must be borne in mind that vide order dated 18.03.2003 the punishment of censure was imposed upon the petitioner. It has not been called into question in these proceedings. It has attained finality. Succinctly stated the petitioner was not in actual service for the period in dispute. Acquittal does not automatically entitle him to get salary for that period. This is more so on logic of no work no pay. The respondent/department was well within its rights to deny back wages to the petitioner for the period he was not in service. The respondent/ department cannot be made liable to pay for the period for which it could not avail his services. This view neatly dovetails with authorities reported in Ranchhodji Chaturji Thakore Vs. Supdt. Engineer, Gujarat Electricity Board (1996) II SCC 603, Union of

India Vs. Jaipal Singh (2004) I SCC 121 and Baldev Singh Vs. Union of India (2005) 8 SCC 747.”



12. We have perused the pleadings on records and have also considered the submissions made on behalf of the parties, carefully. It is not in dispute that while passing the impugned order dated 01.06.2015, the respondents have not indicated consideration of any rule, provisions or any binding instructions on the subject. They have also not considered the contention of the applicant as to why similarly placed persons, particularly named by the applicant in his reply dated 01.05.2015 Annexure A-3), have been treated differently. In their reply also, the respondents have not given any cogent reason for not acceding to the request of the applicant for grant of full salary and other related service benefits for the period of suspension.

13. Further, we are of the view that the judgment of Hon'ble High Court of Delhi dated 20.11.2017 is a judgment of Single Bench and that too apparently in different circumstances, inasmuch as, in that case the concerned employee was though acquitted from the criminal charges was, however, punished by inflicting the penalty of 'Censure' in the departmental proceedings. On the other hand judgment dated 02.07.2015 in **Jagdamba** (supra) referred and relied upon by the learned counsel for the applicant, is a subsequent judgment and that too of a Division Bench of the Hon'ble High Court of Delhi, after considering the various judgments of the Hon'ble Supreme Court. However, the respondents have neither referred to any rule position in their impugned order nor in the counter reply while rejecting the claim of the applicant.

14. In view of the aforesaid, we are of the considered view that the impugned order dated 01.06.2015 deserves to be quashed with liberty to the respondents to consider the matter afresh and to pass a reasoned and



speaking order. However, inspite of such directions given by this Tribunal earlier in its order dated 08.01.2015, the respondents have not bothered to take into consideration any of the rule position while passing impugned order, we further are of the view that some cost should be imposed against the respondents.

15. In view of the aforesaid facts and circumstances, the impugned order dated 01.06.2015 (Annexure A-1) is quashed and set aside with liberty to the respondents to consider the matter afresh by taking into view all the relevant rules and all the grounds taken by the applicant in his reply dated 01.05.2015 and pass a reasoned and speaking order. The respondents shall also make payment of Rs. 5000/- to the applicant as cost. The aforesaid exercise shall be completed by the respondents as expeditiously as possible and in any case within four weeks of receipt of certified copy of this order.

(Mohd.Jamshed)
Member (A)

(R.N. Singh)
Member (J)

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