

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1141/98

New Delhi, this the 6th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

14

In the matter of:

1. Nathu Singh
S/o Shri Inderjeet
R/o Village & P.O. Morta,
Distt. Ghaziabad (UP).
2. Rewati Prasad
S/o Shri Gangu Ram
R/o Village & P.O. Morta,
Distt. Ghaziabad (UP).
3. Chaman Singh @ Chiman
S/o Shri Inder
R/o Village & P.O. Morta,
Distt. Ghaziabad (UP). Applicants
(By Advocate: Mrs. Meera Chhibber)

Vs.

1. Union of India
through Secretary,
Ministry of Defence,
New Delhi.
2. General Manager,
Central Ordnance Factory,
Moradnagar, Ghaziabad (UP). Respondents.
(By Advocate: Sh. V.S.R. Krishna)

J U D G M E N T

By Hon'ble Shri T.N.Bhat, Member (J)

1. All the three applicants in this O.A. are aggrieved by the orders passed by the respondents refusing to pay to them back wages for the period they remained under suspension as also for the period they were out of job in view of their conviction in a criminal case. The competent authority has by the identical three impugned orders dated 20.12.1997 ordered that the deemed suspension w.e.f. 30.3.1983 to 7.4.1983, the suspension period w.e.f. 5.5.83 to 30.4.1985 and the "unemployment period w.e.f. 1.5.1985 to 8.4.1997" shall neither be treated as

[Signature]
6.5.99.

on duty nor as on leave except the unemployment period which will count as extraordinary leave. It has further been directed that the order would not result in any break in service. The only reason given is that after the applicants were convicted by the trial court, the appellate court, namely, the Hon'ble High Court of Allahabad acquitted them only on the ground of "benefit of doubt".

(15)

2. Aggrieved by the aforesaid three orders passed on one and the same date the applicants have filed this OA claiming the following reliefs:

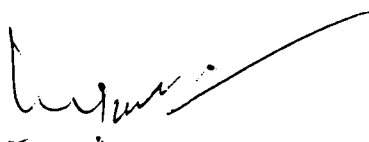
"(i) Direct the respondents to grant all consequential benefits (viz full pay and allowances as period spent on duty) to applicants on reinstatement as done in case of Chanderpal, another co-accused;

"(ii) To quash the orders dated 20.12.1997 (Annexure P-Colly);

"(iii) In the alternative to grant them pay and allowances from December onwards after they were acquitted by the Hon'ble High Court;

"(iv) And/or to pass such order/orders that your Lordship may deem fit & proper".

3. The contention of the applicants is that although the appellate court had used the words "benefit of doubt" their acquittal in appeal was in fact a clean



acquittal and not an acquittal on the ground of benefit of doubt. That apart, according to the applicants, as per FR 54-B and Rule 19 of the CCS (CCA) Rules, the applicants were entitled to back wages for the entire period of deemed suspension followed by suspension and unemployment period due to their dismissal from service in consequence of their conviction by the trial court.

16

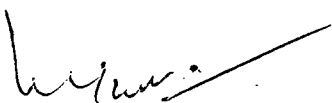
4. Another point raised by the applicants is that one Chander Pal who was a co-accused with them but was working in the Excise Department was granted all the back wages by his department while the respondents have denied the similar benefits to the applicants.

5. In their counter the respondents have taken the plea that since the acquittal of the applicants by the appellate court was based upon some doubts in the prosecution evidence and the appellate court acquitted the applicants by giving them the benefit of doubt they were not entitled to any back wages.

6. The applicants have also filed a rejoinder in which they have re-iterated the contentions made in the O.A.

7. We have heard the learned counsel for the parties at length and have perused the material on record.

8. We have carefully gone through the judgement of the Criminal Appellate Court, namely, the Hon'ble High Court of Allahabad and find ourselves in agreement with the applicants' counsel that although the appellate court had given the benefit of doubt to the accused-applicants



the acquittal was in fact an acquittal on merits. The appellate court clearly stated in the judgement that the evidence given by the prosecution witnesses could not be accepted at its face value, particularly in view of the fact that the medical evidence did not corroborate the depositions of the eye witnesses. It was further held that there was no explanation forthcoming from the prosecution as to who had caused the injuries to the accused persons. It is true that in the last but one para of the judgement the Hon'ble High Court of Allahabad has stated that the accused are given benefit of doubt. But it is equally true that the acquittal by the appellate court was on merits. As a matter of fact the High Court went to the extent of stating in its judgement that many innocent persons had been falsely roped in in the case.

17

9. FR 54-B lays down the principles for deciding as to what benefits should be granted to a Govt. employee who is re-instated after remaining under suspension for some time. It is provided that the authority competent to order re-instatement shall consider and make a specific order regarding the pay and allowances to be paid to the Govt. servants for the period of suspension ending with his re-instatement and whether or not the said period shall be treated as period spent on duty. Sub Rule (2) provides that where a Govt. servant who is under suspension dies before the disciplinary or the court proceedings instituted against him are concluded the period between the date of suspension and the date of death shall be treated as on duty for all purposes and his family shall be paid the full pay and allowances for that period. Similarly, in sub rule (3) it is provided that where the authority competent to order re-instatement is

by

of the opinion that the suspension was wholly unjustified. the Govt. servant shall be paid the full pay and allowances to which he would have been entitled had he not been suspended. The only exception is in a case where a Govt. servant had caused the delay in conclusion of the disciplinary proceedings initiated against him.

18

10. According to the counsel for the applicants the suspension of the applicants herein must be held to be wholly unjustified in view of the fact that they were eventually acquitted. There seems to be much force in this contention, particularly so when in FR 54-B we do not find any provision which makes it incumbent on the competent authority to refuse payment of back wages in a case where the employee has been acquitted after being given benefit of doubt.

11. We may hasten to add that sub rule (2) of FR-54 does provide that in a case where the Govt. servant has been fully exonerated the competent authority shall pay to him the full pay and allowances to which he would have been entitled. The term "fully exonerated" has not been defined anywhere. It appears that the respondents have taken benefit of this fact and have held that granting of benefit of doubt would imply that the Govt. servant has not been fully exonerated. We are afraid, this contention cannot be accepted.

12. As has been held by the Principal bench of this Tribunal in *Sunder Dass vs. Union of India & Ors.*, reported in ATR 1990 (1) CAT 9, where the case of the prosecution fails for lack of evidence resulting in the acquittal of the Govt. employee such acquittal cannot be

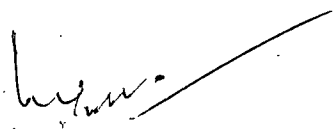
[Signature]

said to be an acquittal on technical grounds. It has been further held in that judgement that the employer has no option but to re-instate the employee and also pay to him for the period during which he was under suspension all back wages and allowance due to him. More importantly, the Tribunal held that there was no difference between "honourably acquitted" and "not acquitted honourably" in such matters, as there is no term as 'honourably acquitted' in ^{the} Code of Criminal Procedure.

19

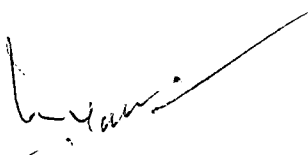
13. On facts identical to those of the instant case, the Cuttack Bench of this Tribunal in its judgement in Ram Charider Tripathi vs. Union of India & Ors., reported in 1987 (3) SLJ (CAT) 81 held that where the Govt. employee was suspended and was later convicted by the lower criminal court but was subsequently acquitted by the appellate court the competent authority would not be justified in ordering payment only from the date of acquittal and not from the date of suspension. It was further held that the Court/Tribunal would certainly go into the question as to whether the competent authority has exercised its discretion properly so far as payment of back wages is concerned.

14. The Apex Court has also in State of Punjab & Ors. vs. Shambhu Nath Singla & Ors., reported in (1996) 1 SCC 296, held that where a Govt. employee was suspended but was re-instated by order of the High Court pending criminal trial he would be entitled to full salary and allowances for the period he was kept under suspension if he is subsequently discharged by the criminal court.



15. It ^{also} is not disputed that Chander Pal who was a co-accused with the applicants herein and who had also been convicted by the trial court but was subsequently acquitted in the same case has been paid all the back wages by the department of Excise where he is working. Unfortunately, the applicants herein were working in a different department. They have not been paid the back wages. Learned counsel for the applicants has urged before us that the applicants cannot be discriminated against in this manner. Learned counsel for the respondents, in reply, argues that since the departments were different no discrimination is disclosed in the instant case. We are not impressed by this contention. The mere fact that Sh. Chander Pal belongs to a different department would not dis-entitle the applicants to similar benefits being granted to them as have been granted to Shri Chander Pal by his own department.

16. That apart, rule 19 of CCS (CCA) Rules specifically provides that notwithstanding anything contained in Rule 14 & Rule 18 the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit in a case where a Govt. servant has been found guilty of such conduct that has led to his conviction on a criminal charge. As a necessary corollary it must be inferred that where the criminal case has eventually ended in the acquittal of the Govt. servant the disciplinary authority has to consider that fact in the proper perspective and then pass appropriate orders. Under Note (8) to Rule 19 of Swamy's Compilation of CCS (CCA) Rules, a reference has been made to the instructions issued by the concerned Ministry. According to the said Note two courses are open in a case where a



20

Govt. servant has been acquitted on a criminal charge. If the criminal court has given a finding that the allegations are not true then it is not permissible to hold a departmental enquiry in respect of a charge based on the same facts or allegations. If, on the other hand, the court has merely expressed a doubt as to the correctness of the allegations, then there may be no objection to hold the departmental enquiry on the same allegations, if better proof than what was produced before the court is forthcoming. There may be cases where the court has held that the allegations are proved but do not constitute the criminal offence: in such cases there would be no objection to hold a departmental enquiry on the basis of the said allegations.

21

17. Where, however, neither of the courses is followed the disciplinary authority is required to issue an order setting aside the previous order imposing the penalty and where the penalty imposed was dismissal, removal or compulsory retirement from service full pay and allowances have to be paid at least from the date of acquittal to the date of rejoining duties. So far as the period of suspension prior to the passing of the order of removal or dismissal is concerned the competent authority is required to pass an appropriate order under FR 54.

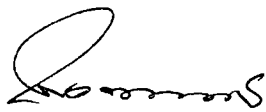
18. Keeping the above facts and circumstances in view we are convinced that in the instant case the applicants were entitled to full pay and allowances after the date of their acquittal by the appellate court. The O.A. has, therefore, to be allowed to this extent.

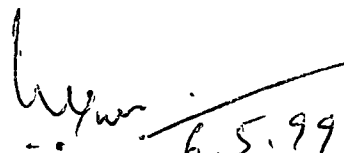
W. S. Murthy

19. For the aforementioned reason this O.A. is partly allowed, the impugned orders whereby the applicants have been held not entitled to back wages are quashed to the extent that pay and allowances from the date of their acquittal has not been granted to them and the respondents are directed to pay to the applicants full pay and allowances from the date of their acquittal to the date of their re-instatement in service. This will be done within a period of three months from the date of receipt of a copy of this order.

22

20. In the circumstances of the case no order as to costs is made.


(S.P. Biswas)
Member (A)


6.5.99
(T.N. Bhat)
Member (J)

na