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Central Administrative Tribunal, Principal Bench

OA No.1976/97

New Delhi this the 31st day of January, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Madan Mohan Arora

...Applicant

(By Advocate Shri L.C. Rajput)

-versus-

Union of India & Others

...Respondents

(By Advocate Shri Rajeev Bansal)

1. To be referred to the Reporters of ~~not~~? YES

2. To be circulated to the other Benches of the Tribunal? NO

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(V. Rajagopala Reddy)
Vice-Chairman (J)

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Principal Bench: New Delhi

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New Delhi this the 31st day of January, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Aahooja, Member (A)

Madan Mohan Arora
S/o Late Shri Roshan Dass,
D-278, Nirman Vihar,
Delhi-110092.

...Applicant
(By Advocate: Shri L.C. Rajput)

Versus

1. Union of India
through the Secretary
Ministry of Communications,
Govt. of India, New Delhi.
2. Chief Post Master General,
Delhi Circle, New Delhi.
3. Director Postal Services (P)
Delhi Circle, Delhi.
4. Senior Supdt. of Post Office,
Delhi North Division,
Delhi-110054.

...Respondents
(By Advocate: Shri Rajeev Bansal)

ORDER (Oral)

By Reddy, J.-

The applicant, while working as Sub Post Master in 1974, was alleged to have accepted a bribe of Rs. 100/-. He was placed under suspension vide order dated 9.7.74 on the ground that the criminal case was pending against him. The applicant was eventually convicted and sentenced to undergo R.I for one year under Section 161 IPC read with Section 5 (1) (d) and 5 (2) of Prevention of Corruption Act, by a judgment dated 31.3.1976 by the Trial Court. The applicant filed an appeal against the judgement in the High Court of Delhi. The appeal was allowed

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and the conviction & sentence were set aside by the judgment dated 12.2.87 on the ground that sanction for the prosecution has not been accorded by the competent officer and that sanction also suffers from the Vice of non-application of mind. Thereafter, after obtaining a valid sanction for prosecution the applicant was prosecuted on the same charges before criminal court at Delhi. By judgment dated 24.10.1994 the applicant was acquitted of all the charges. In the meantime the applicant retired on 30.9.1982 and till he relieved, he was continued to be under suspension.

2. The grievance of the applicant is that though he was acquitted of all the charges, the entire period during which he was under suspension was not treated as period spent on duty and he was not paid arrears of pay and allowances including for the suspension period and that the pension and Gratuity of the applicant were also not released. The applicant also prays for payment of the arrears of these amounts with interest @ 18% per annum.

3. It is the case of the respondents that as the applicant has been acquitted giving the benefit of doubt on the ground that prosecution has not established the case by producing material witnesses, the applicant cannot be considered as honourably acquitted and hence treating the entire period as period spent on duty. Ld. counsel now

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produces an order dated 2.1.96 where it was stated, taking the view that suspension was not fully justified that the applicant was only entitled for the pay and allowances only for certain period and that the period w.e.f. 9.7.74 to 30.9.82 would be treated as not on duty for all purposes. It is contended by the 1d. counsel for respondents that as the order dt. 2.1.94 was not challenged, the applicant is not entitled for any relief contrary to the decision taken in the order.

4. We have heard the learned counsel on either side.

5. It is not in dispute that the applicant was placed under suspension on 9.7.74 only on the ground that a case was pending against him. Ultimately, the applicant was acquitted by order dated 25.10.94 by the Special Judge, Delhi. Meanwhile, the applicant has been retired in 1982 when he continued to be under suspension. The only question that arise in this case is whether the applicant is entitled for pay and allowances for the entire period in which he was under suspension i.e. till the date of retirement and for release of the pensionary benefits regularising the entire period of the suspension. Our attention is drawn to the judgement of the Special Judge whereby the applicant has been acquitted. It is the case of the respondents that the applicant has not been

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acquitted honourably. We have perused the judgement closely. We find that several witnesses have been examined by the prosecution. The court after considering the entire evidence on record found that the evidence was not sufficient to prove that the applicant had accepted the bribe as alleged by the prosecution. The evidence placed by the prosecution was not found favour by the learned Judge. In the operative portion of the judgement, it is observed as follows:-

"In view of the above discussion, the prosecution has not been able to establish its case fully against the accused as initial demand has not been proved and further material witnesses as already stated have not been examined and it was not the part of duty of the accused to accept the magazines and then admittedly for the last 15 months magazines were being accepted in the post office where accused was working as post master, his false implication cannot be ruled out. The accused is accordingly acquitted of the charge. His bail bond stands cancelled and surety discharged."

6. From the above, it cannot be said that the applicant had not earned a clean acquittal in this case. A clear finding was given that the evidence was not sufficient to establish the charges.

7. Clauses (1) (a) and (b) of Fundamental Rule-54 (B) contemplate that when a Government

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servant who has been suspended is reinstated or who having been so reinstated but for his retirement, the authority competent to order reinstatement shall consider and make a specific order 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. The Government has to consider whether the period shall be treated as a period spent on duty.

8. Fundamental Rule 54(B) Clause-3 contemplates that the authority competent to order reinstatement is of the opinion that the suspension is wholly unjustified, then the Government servant is entitled to be paid fully pay and allowances to which he would have been entitled had he not been suspended.

9. In view of the fact that the applicant was acquitted on a consideration of evidence, as stated supra, we are of the view that the entire suspension period of the applicant should have been held as wholly unjustified. The applicant has been suspended only on the ground that he was accused in a criminal case now that the applicant has been acquitted and that judgment has become final, the suspension of the applicant should have been held as wholly unjustified. We cannot accept the contention of the learned counsel for respondents that as the acquittal being not a clean acquittal. The period

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of suspension cannot be treated as wholly unjustified. The applicant is entitled for the entire period of suspension should be treated as period spent on duty and that he was entitled for full pay and allowances to which he is entitled to had he not been suspended. The order dated 2.1.96 which has been passed under Fundamental Rule-54 (B) has denied the above benefits to the applicant on the ground that the acquittal was not a honourable acquittal and that the Government servant was not exonerated. This finding is wholly untenable and is contrary to the findings of the learned Special Judge. In the circumstances, the order dated 2.1.96 (Annexure A-I) is liable to be quashed.

10. It is true that this order has not been specifically challenged in this OA but as the applicant is denied all the benefits which he is entitled to under FR-54(B) only on the ground that the respondents passed the above order. We will have to necessarily set aside the order dated 2.1.96 notwithstanding the fact that it was not specifically challenged. The applicant seeks payment of interest on the delayed payments at 18% per annum. The applicant has been acquitted by the judgment dated 25.10.94 only thereafter the respondents could have considered the case of the applicant under FR-54 (B). He is therefore entitled for interest at 12% per annum on the delayed payment w.e.f. 1.4.95.

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11. In the circumstances, the applicant is entitled all other monitory benefits including the pay during the period of suspension and granting the increments and fixing the pension with interest as stated supra. These amounts shall be paid within four months from the date of receipt of a copy of this order.


(R.K. Ahuja)
Member (A)

cc.


(V. Rajagopala Reddy)
Vice-Chairman (J)