IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(6)

O.A. No. 1546/89 199
T.A. No.

DATE OF DECISION 24.10.1994

Surendran Cheruvote — Petitioner

None — Advocate for the Petitioner(s)

Versus

Union of India & Ors. — Respondent

Shri M.K. Gupta — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice Chairman(A).

The Hon'ble Mrs. Lakshmi Swaminathan, M(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✗

(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'

Central Administrative Tribunal
Principal Bench: New Delhi

(7)

OA No.1546/89

New Delhi this the 24th Day of October, 1994.

SH. N.V. KRISHNAN, VICE-CHAIRMAN (A)
SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Surendran Cheruvote
S/o Late Sh. K.V. Krishnan Nambiar
R/o Special Bureau, Govt. of India,
Eruchshaw Building, 249, D.N. Road,
Fort, Bombay-400 001. ...Applicant

(By Advocate Sh. C.V. Francis, though none appeared)

Versus

1. Union of India through
Cabinet Sectt.
Rashtrapathi Bhawan,
New Delhi.

2. Additional Secretary,
Cabinet Secretariat,
Room No.8-B,
South Block,
New Delhi.

3. Joint Secretary,
Cabinet Secretariat,
Room No.8-B,
South Block,
New Delhi.

4. Shri S.S. Trehan,
Under Secretary,
Cabinet Secretariat,
South Block,
New Delhi. ..Respondents

(By Additional Standing Counsel..Sh. M.K. Gupta)

ORDER

(Hon'ble Mr. N.V. Krishnan)

The applicant joined the Cabinet Secretariat, as a L.D.C. on 3.7.75. While so, a criminal case No.311/80 under Sections 342, 353 and 506/IPC was registered in the Lodhi Colony Police Station against 33 persons, including the applicant, on the ground that on 27.11.80 they participated in a 'gherao' and wrongfully confined certain officers. Thereupon, the applicant was placed under suspension on 29.11.80 (Annexure P.1).

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2. On 6.2.87 the Assistant Police Prosecutor moved an application before the Court of the Metropolitan Magistrate, New Delhi for permission to withdraw the case. That permission was granted and the accused persons, including the applicant, were acquitted on 28.2.87. Consequently, the suspension was revoked on 2.3.87 and the applicant was reinstated.

3. Thereafter, the third respondent, the Joint Secretary in the Cabinet Secretariat, initiated a disciplinary proceeding under Rule 16 of the CCS (CCA) Rules, 1965 against the applicant on the same grounds. A notice was issued to him in this behalf on 5.3.87 (Annexure P-4) alongwith a statement of imputation of misconduct.

4. After considering the reply of the applicant the penalty of censure was imposed on him by the order dated 28.4.87 (Annexure P-5).

5. A notice was then issued on 2.11.87 (Annexure P-6) by the disciplinary authority to the applicant informing him that it was proposed to treat the period of his absence from the date of his suspension, i.e., 29.11.80, till reinstatement, i.e., 1.3.87 as a period under suspension and the subsistence allowance already paid would be treated as the pay and allowances for that period. After the applicant filed a representation dated 20.11.87 (Annexure P-7), an order was passed on 20.1.88 (Annexure P-8) by the third respondent under F.R. 54-B(1) treating the period from 29.11.80 to 1.3.87 as a period not spent on duty and restricting the pay and allowances to the subsistence

allowance already drawn. However, it was ordered that the said period of absence shall count for earned leave, annual increments, pension/DCRG benefits.

6. It would appear that the applicant was due to cross the efficiency bar during the period he was under suspension, i.e. from 1.7.81 but, he was not permitted. He has been allowed to cross the E.B. only w.e.f. 1.7.87. He filed a representation in this behalf on 17.1.89 (Annexure P-9) claiming that he should have been allowed to cross the EB from 1.7.81. This representation was considered and rejected by the second respondent, the Additional Secretary in the Cabinet Secretariat, vide his memo dated 7.3.89 (Annexure P-10). Inter alia, it was mentioned that the acquittal in the criminal case was not on merits and he was not fully exonerated and the penalty of censure has been given to him. Therefore, he was not allowed to cross the EB from the due date.

7. Likewise, it would appear that the applicant was not granted promotion while he was under suspension. He made a representation on 29.3.88 (Annexure P-11) stating that two other persons who were awarded penalty of censure like him have since been promoted and that, therefore, he be promoted as a UDC. He was informed by the memo dated 24.6.88 (Annexure P-12) that the DPC considered his case for promotion in November, 1987 but did not consider him 'fit'. In this regard, he sent one more representation dated 5.7.88 (Annexure P-13) to the first respondent - Secretary, Cabinet Secretariat , complaining about his being refused promotion. That representation was rejected.

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8. It is in these circumstances that the applicant has sought the following reliefs:-

> " (i) Set aside and quash as illegal the order of the Joint Secretary (Pers) dated 20.01.1988;
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> (ii) Direct the responderts to release the increments of the applicant from 01.07.1981;
>
> (iii) Direct the respondents to treat the period of suspension as period spent on duty and give the applicant full pay & allowance for the period of suspension;
>
> (iv) Direct the respondent to promote the applicant from the date his juniors were promoted."

9. The main ground of challenge is that as the applicant was suspended only in connection with the criminal case, in which he was acquitted, the respondents ought to have treated the period of suspension as a period spent on duty and given him all consequential benefits, including crossing the EB and promotion.

10. The respondents have filed a reply in which the facts, as presented above, have not been denied. In regard to the main ground, the respondents state as follows:-

> " The criminal case against him did not run through its normal course and in order to maintain cordial relations between the Government employees and the Government, the case was withdrawn under special circumstancces. Therefore, his acquittal is only technical in nature and cannot be compared with the normal cases of acquittal in a criminal case. By withdrawing the case under special circumstances the department does not forgo its right to take departmental action against him for his misconduct."

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Their further contention is that the applicant was rightly punished by the imposition of the penalty of censure and consequently, he was not found entitled to cross the EB from the due date. In regard to promotion he was found unfit by the DPC, which met in November, 1987.

11. The only additional plea taken by the applicant in his rejoinder, is that, according to the Department of Personnel Memo No.11012/15/85-Estt(A) dated 3.12.85, the period of suspension shall be treated as duty, if only a minor penalty is imposed. This is a reiteration of para 5(1) of the OA relating to grounds for relief.

12. The applicant filed MA-2645/82 stating that the points raised in the present OA have been dealt with in the judgement rendered by the Tribunal in OA-866/90 filed by one Sh. J.M. Soni in which the facts are identical. In that case, since reported (ATJ-1992 (2) 378), the period of suspension was directed to be treated as duty on full pay & allowances and consequential directions were given regarding crossing the E.B. and grant of promotion. Therefore, it was prayed that the OA be disposed of on the same lines.

13. The matter came up for final hearing. Sh. M.K. Gupta, Additional Standing Counsel for the respondents alone was present. He urged that the decision of this Tribunal in J.M. Soni's case cannot be taken as a precedent and that on merits, the applicant was not entitled to any relief. Thereupon, after notice to the learned counsel for the applicant, we heard both the parties, who argued the case at great length.

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14. The learned counsel for the respondents pointed out that in J.M. Soni, reliance was placed on the Full Bench decision in Samson Martin vs. Union of India & Others (1990 (12) ATC 643) to come to the conclusion that, if a Government servant is acquitted in a criminal trial, the period of suspension pending the criminal trial should be regularised only as a period spent on duty. It was also held by the Full Bench that the disciplinary authority did not have any discretion in this matter based on an examination of the judgement to find out whether the acquittal was honourable or not and that there is no concept of "honourable acquittal" in criminal jurisprudence.

15. Referring to para 12 of the Full Bench decision stating that their views have got the approval of the Supreme Court vide the judgement in Brahm Chandra vs. Union of India (AIR 1984 SC 380), the learned counsel for the respondents pointed out that the Supreme Court did not render such a decision in Brahm Chandra supra. Secondly, the decision in Samson Martin has been modified in effect, by two subsequent decisions of the Supreme Court. Thus, in Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994 (1) SCC 541) the Supreme Court was dealing with the R.B.I. Staff Regulations, 1948, relating to suspension pending investigation or criminal trial and provisions for reinstatement, only if the conviction is set aside by the higher Court and the employee was 'honourably acquitted'. The Supreme Court held that if the bank found that the employee was not 'honourably acquitted' it could refuse reinstatement in terms of R.B.I. Staff Regulations, 1948. Therefore, it is not as if the concept of 'honourable acquittal' does not exist. Futher, in Depot Manager,

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A.P.S.R.T.C. v. V. Venkateswarulu (JT 1994 (3) SC 199) the Supreme Court considered the provisions of the A.P.S.R.T.C. Classification Control and Appeal Rules, 1967, which are similar in this respect to the provisions of the CCS (CCA) rules and the Fundamental rules, and found no justification for the decision of the Andhra Pradesh High Court that, on reinstatement after acquittal, an employee becomes, without any further scrutiny, entitled to the payment of full salary for the period during which he remained under suspension.

16. The learned counsel for the respondents admits that the case of J.M. Soni decided by the Tribunal is, no doubt, identical with that of the applicant. But, in Soni's case one significant fact has not been considered, as it might not have been brought to the notice of the Bench. That fact is that, before the criminal case was withdrawn, all the accused persons, including the applicant, had tendered apologies. This would be clear from para 4 of the statement of imputations (Annexure P-4) where it is stated as follows:

> "However after long pendency of the said criminal case and in view of unconditional apology tendered by all the 33 employees it was considered fit in public interest that the criminal case may be withdrawn."

That fact is also reiterated in the final order dated 28.4.87 (Annexure P-5), imposing penalty of censure.

17. In other words, the tendering of an apology amounts to admission of guilt. Therefore, though not stated explicitly, the authority found that the period of

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suspension was justified and hence it was not treated as duty for all purposes and the pay and allowances was restricted to the subsistence allowance already drawn.

18. On the contrary, the learned counsel for the applicant states that the applicant was admittedly suspended only in connection with the criminal case. When that case ended in acquittal, the suspension was revoked and the applicant was reinstated. It is at this stage that the respondents ought to have taken a decision as to how the period of suspension should be treated. As the applicant had been acquitted in the criminal case, there was no alternative except to hold that the suspension was unjustified and hence, the period of suspension should have been treated as on duty. He contended that the subsequent departmental enquiry had nothing to do with the suspension and the penalty of censure imposed does not empower the disciplinary authority to treat the period of suspension as not spent on duty.

19. He stressed that so long as the decision in Samson Martin is not overruled, this Bench has necessarily to follow that decision, which has been rendered by a Larger Bench. He has also stressed the need for consistency by various Benches while dealing with cases involving the same set of facts and issues. Attention has been drawn to the observations of the Supreme Court in Hari Singh vs. State of Haryana - (1993) 3 SCC 114). That was a case where leave to appeal against their conviction was given to the appellants, though the S.L.P. filed by the co-accused, who had been convicted on more or less similar charges, had been refused. In that context the principlies of binding

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precedents were stated. The learned counsel for the applicant has drawn our attention to paras 10-12 of that judgement, relevant extracts from which are reproduced below:-

"It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical set of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will led to judicial anarchy."

"12. It is a basic principle of the administration of justice that like cases should be decided alike. It is a very sound rule and practice (sic) otherwise on same question of law or same set of facts different persons approaching a court can get different orders."

Therefore, he contended, we have no alternative except to follow the decision rendered in Soni's case.

20. We have carefully considered the rival contentions which raise important legal issues.

21. The first question is whether the judgement in Soni's case is distinguishable, as contended by the learned counsel for the respondents. We have carefully seen that judgement. Para 4 of that judgement refers to the show cause notice for imposing penalty and the order passed on 24.4.87. There is no mention in this connection that the applicant therein had apologised for his action. Perhaps, the show cause notice and the final order therein either did not contain any reference to such apology or, though there was such a reference, attention of the Bench was not specifically drawn to this aspect of the case. This is clear from para 10 of that judgement which deals with the arguments of the respondents. They only took the stand that

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the criminal case was withdrawn "under special circumstances' and the suspension cannot be termed as unjustified.

22. In the present case also, the respondents have taken a similar stand in the reply filed by them. However, the learned counsel for the respondents has specifically drawn our attention to the statment of imputation accompanying the notice under Rule 16 of the CCA Rules dated 5.3.87 (Annexure P.4) wherein, while narrating the facts, it is stated as follows:-

> "However, after long pendency of the said criminal case and in view of unconditional apology tendered by all the aforesaid 33 employees, it was considered fit in public interest thhat the criminal case may be withdrawn. This was done without prejudice to holding departmental proceedings. Hence application for withdrawal was moved in the court which was allowed by the court in its order dated 28.2.87."

Likewise, he has also drawn our attention to the order dated 28.4.87, (Annexure P-5) imposing penalty which also stated inter alia "and that he had already tendered apology and requested for leniency, and promised to be very careful in future." The learned counsel contended that as the applicant had apologised, and as he was imposed a penalty the suspension was found justified. This had not been adverted to in Soni's case.

23. We find that the learned counsel for the respondents is on strong ground. Either there was no evidence of an apology having been tendered by J.M. Soni or, though he too had apologised, attention of the Bench was not drawn to that fact to draw a conclusion that the applicant had thereby admitted his guilt and, therefore, the suspension was justified. In the present case, this point

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has been strongly made. Needless to say, the apology implies admission of guilt. This itself justifies the suspension.

24. Therefore, the judgement in Soni's case (supra) is distinguishable on facts.

25. The order of the Metropolitan Magistrate acquitting all the accused including the present applicant and J.M. Soni reads as follows:-

"PR : AP.P. for State Sh. S.S.Maya, All the 13 Accused on bail with counsels Sh.J.R. Priyani and Sh. S.K. Sharma Advocates.

The prosecution has already moved an application dated 6.2.87 for permission to withdraw the case. The grounds on which the withdrawal is sought are that all the accused are government servants. In order to maintain cordial relations between the government employees and the Government, the prosecution is of the opinion that the case must be withdrawn. The accused persons have already faced a trial for about six years. Keeping in view the facts and circumstances of the case and the grounds mentioned in the application, it appears that it will be in the interest of justice to allow the application. Accordingly, the application is allowed.

Statement of A.P.P. Sh.S.S. Maya recorded separately.

In view of the statment, the accused persons are acquitted. File be consigned to RR."

In para 14 of the judgement in Soni's case it is held as follows:-

"14. In our opinion, the acquittal in the instant case is not a technical acquittal, as has been wrongly concluded by the respondents. Accordingly, the applicant would be entitled to full pay and allowances during the period of his suspension."

26. We are clearly of the view that the acquittal was ordered because the prosecution was permitted to withdraw the case. Therefore, it needs no elaborate arguments that

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it was not an acquittal on merits but only a technical acquittal. The question is whether, on this account, it can be held that there is a disagreement with the earlier decision in Soni's case, requiring a reference to a larger Bench. We think not, for the following reasons:-

i) The very fact that Samson Martin has been relied upon in Soni's case is proof of the fact that though there is an acquittal in the criminal case, yet, if it is permissible to appraise it, the acquittal should be held to be not on merits, but was either not an honourable acquittal or was only a technical acquittal.

ii) What is more important is that there is no discussion as to how the conclusion that the acquittal is on merits was reached. On the face of it, this conclusion is clearly an obiter.

iii) If it is not to be treated as an obiter, some other meaning has to be assigned to this finding. In our view, this conclusion in paragraph 14 of that judgement cannot be read in isolation. It has to be read in the context of the earlier paras 12 and 13. They read as follows:-

"12. The question whether a Government servant who has been suspended on the initiation of criminal proceedings against him and who was subsequently reinstated consequent upon his acquittal by the criminal court, is entitled to full pay and allowances for the period during which he was kept under suspension, has been considered by Full Bench of this Tribunal in S. Samson Martin Vs. Union of India & Others - 1990 (1) ATLT (CAT) 161. The Full Bench has held that in such a case, the Government servant is entitled to full pay and allowances during which he was placed under suspension without the disciplinary authority having to determine as to how and why he was acquitted.

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13. The aforesaid decison of the Full Bench related to a Railway servant. In the course of the judgement, the Tribunal had considered the ambit and scope of F.R. 54 B. The Full Bench also relied upon the judgement of the Supreme Court in Bhrahma Chandra Gupta Vs. Union of India, A.I.R. 1984 SC 380, wherein it was observed in the case of acquittal, the concerned person should be given full pay and allowances and that the disciplinary authority does not have the power to consider the degree of culpability of the person upon its own appraisal of the judgement of the Criminal Court."

Hence, keeping in view these observations the Bench, perhaps, felt that the acquittal has to be treated as on merits.

27. The suspension was ordered only in the context of the investigation of the FIR No.311 dated 27.11.80 under Sections 342, 353 and 506 I.P.C. (Annexure P-1). Therefore, the accused were prosecuted for these offences and acquitted as stated above. The next question is whether on these facts, the period of suspension can be held as unjustified and, therefore, necessarily to be treated as duty, as contended by the learned counsel for the applicant. Or, could it be held that the suspension was justified, as an apology had been tendered and, therefore, it could be treated as period not spent on duty, based on certain later judgements of the Supreme Court. The further question is whether the penalty of censure imposed itself justifies the action taken by the respondents.

28. In Samson Martin, the Full Bench has come to the following conclusions:-

"9 xxx xxx xxx xxx

Once charges are framed, the accused has to undergo the trial and at the end thereof, the criminal court has the option only between two courses, viz., acquittal or conviction. <u>There is nothing like honourable acquittal in the legal framework of Criminal Law in force in the country. Honourable acquittal is no longer a legal concept.</u> But is hard to die and is still used in the Press and in ordinary parlance."

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"11. A Division Bench of the Karnataka High Court in M.K. Balappachar v. State of Mysore (1975 SLJ 73 (Kant)) has come to the same conclusion, holding that once a person is acquitted, whether such acquittal is on account of lack of evidence or on account of any defect in the procedure in the trial or on account of the court extending the benefit of doubt, so long as such acquittal stands, the person concerned should be given the full benefit and he must also be regarded as being acquitted of the blame flowing from any of the acts or omissions which formed the subject-matter of the charge."

"12. The above line of thought and decision has also got the approval of the supreme Court, as could be seen from the decision rendered in Brahm Chandra Gupta v. Union of India (AIR 1984 SC 380). In that case, the officer concerned was convicted by the trial court. The conviction led to his dismissal from service. He was acquitted on appeal. On being acquitted he was reinstated in service. For the period during which he was out of employment, the concerned authority took the view that, from the perusal of the judgment of the criminal court, the applicant could not be said to have been fully exonerated of the charge and a direction was given that he should be given 3/4th of the salary for that period. Thereupon, the officer filed a suit for recovery of the remining 1/4th of the salary which was decreed by the trial court in favour of the plaintiff. On appeal, the claim of the officer was dismissed and the same was confirmed by the High Court."

The Supreme Court decided ultimately the matter as follows:-

> "Keeping in view the facts of the case that the appellant was never hauled up for the departmental enquiry, that he was prosecuted and has been ultimately acquitted and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned Trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We, accordingly, allow the appeal, set aside the judgement of the first appellate court as well as of the High Court and restore the one of trial court with the modification that the amount decreed shall be paid with 9% interest p.a. from the date of the suit till realisation, with costs throughout."

"So the law now is well crystallized to the effect that when the suspension is wholly due to a criminal proceeding, the acquittal at the end of such proceeding

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would render the suspension wholly unjustified, and the disciplinary authority does not have to analyse the judgment of the criminal court to come to its own conclusion regarding the degree of proof in respect of the culpability."(emphasis given).

That conclusion was again reiterated in para-15 as follows:-

"In conclusion our view in the matter, which has the approval of the Supreme Court in Brahm Chandrara gupta v. Union of India, is that in case of acquittal, the concerned person should be given full pay and allowances and that the disciplinary authority does not have the power to compute the degree of culpability of the person upon its own appraisal of the judgement of the criminal court." (emphasis given).

The question is whether the Supreme Court has laid down such a rule in Brahm Chandra Gupta's case.

29. A careful perusal of that judgement shows that the Supreme Court did not lay down any such general rule. The appellant therein contended that as he was suspended only in connection with a criminal charge, Article 193 of the Civil Service Regulations did not apply and hence, full salary cannot be denied. The amount of salary deducted was Rs.3595.07. In this background the Supreme Court observed as follows:-

"4. The learned trial Judge accepted the case of the plaintiff-appellant and decreed the suit with costs. Surprisingly, though not unusual these days, for this paltry sum,the Union of India carried the matter in appeal. We find it difficult to appreciate this litigious attitude, against a clerk in the lower echelon of service more so when no principle was involved. It may be that the Union of India wanted the Court to consider the true ambit and scope of Article 193 and therefore, the appeal may have been preferred. The learned District Judge was of the opinion that in the circumstances of the case the appellant could not be said to be fully exonerated and accordingly reversed the judgment and decree of the trial court and dismissed the suit. After an unsuccessful appeal to the High Court, the appellant has filed this appeal by special leave petition.

5. The appellant was suspended in 1962 and we are now in 1983 when the appellant prays for a decree for Rs.3595.07 P. During the passage of the time the purchasing power of this amount must have been considerably reduced by now.

6. Mr. R.K. Garg, learned counsel for the appellant wanted us to examine the scope and ambit of

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Article 193 and Mr. Gujaral learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both." (emphasis added).

The passage from the Supreme Court's judgement quoted by the Full Bench in para 12 of its judgement and reproduced in para-28 supra then follows. It is, in fact, the concluding portion of para 6 of the Supreme Court's judgement.

Thus, it is clear that Bhrahma Chandra Gupta (supra) did not examine the implication of Article 193 of the Civil Service Regulations and did not lay down any general rule of application. That judgement was delivered on the peculiar facts of that case. Therefore, with great respect, we have to point out that the conclusions drawn by the Full Bench referred to in para 28 supra do not appear to be warranted.

30. The next question is whether, in the circumstances of the case, the penalty imposed in the disciplinary proceedings can be relied upon to pass an order under FR 54-B as to how the period of suspension is to be treated, even though the applicant was not suspended in connection with the D.E.

31. Admittedly, the suspension was only in the context of the criminal case registered against the applicant and others. When the applicant was acquitted, the suspension was revoked by the Annexure P-3 order. It was not felt necessary to continue the suspension though a D.E. was contemplated despite acquittal, as is clear from that order. Neither in the notice (Annexure P-6) nor in the impugned Annexure P-8 order, is it stated that the suspension is

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found to be justified on the ground that he was acquitted only on technical grounds. On the contrary, the impugned Annexuure P-8 order makes it clear that the suspension is found to be justified because of the penalty imposed subsequently and that it has to be dealt with under FR 54-B.

32. In paras 16 and 17 of Samson Martin, the Full Bench has made the following observations:-

"16. We are aware that there are certain cases of technical acquittal."

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"Even in such cases, regarding the culpability of the employee, nothing will be known to the disciplinary authority with certainty. Therefore, whatever the circumstances of acquittal, when the disciplinary authority has chosen to suspend on the facts of the criminal proceeding only and to wait till the end of the proceeding, it has no discretion on matter of pay and has to abide by the verdict of the criminal court."(emphasis added).

"17. xxxxxx If the employee is involved in a criminal case connected with the performance of his duties, it is open to the disciplinary authority to suspend the servant on the basis of the misconduct in the service, leaving aside the criminal proceeding. If such a course is followed the disciplinary authority can, in case of acquittal, start the domestic enquiry and pass such order as it deems fit regarding the period of suspension on the basis of such enquiry."

33. The learned counsel for the respondents urged that the basic difference between Samson Martin and the present case is that in the latter, a DE was started after acquittal and a penalty imposed. He, therefore, contended that the observation in para 17 of Samson Martin, reproduced above, authorises the action taken by the respondents. We are unable to agree. What the Full Bench has decided is just the reverse. According to that judgement, notwithstanding the acquittal, the disciplinary authority could hold the suspension as justified and pass an appropriate

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consequential order, provided the order of suspension was in the context of the service misconduct and not the criminal case.

33. This conclusion of the Full Bench is now unsettled. This question has since been considered by the Supreme Court in the Depot Manager, A.P.S.R.T.C. case (JT 1994 (3)SC 199). The question involved therein was stated as follows in the judgment:-

> "3. The common question for consideration in these appeals is whether an employee of the Andhra Pradesh State Road Transport Corporation (Corporation), who was kept under suspension pending investigation, inquiry or trial in a criminal prosecution, is entitled to salary for the period of suspension after the criminal proceedings are terminated in his favour? The High Court has answered the question in the affirmative and in favour of the respondents. These appeals by the Corporation are against the judgement of the High Court."

The relevant regulations are the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 - Regulations for short. Regulation 18 gives the power of suspension (i) pending investigation or enquiry into grave charges and (ii) where any criminal offence is under investigation or trial. A perusal of the judgment makes it clear that the respondent employees were suspended only in connection with the criminal offence for which they were tried but acquitted. There was no departmental proceedings thereafter. Regulation 21 deals with "Pay, allowances and treatment of service on reinstatment." Clauses (1) and (2) thereof are material and are reproduced below:-

> "(1) When an employee who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order as to-
>
> (a) the pay and allowances which shall be paid to the employee for the period of his absence from duty; and

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(b) whether or not the said period shall be treated as a period spent on duty.

(2)(a) Where such competent authority holds that the employee has been fully exonerated or, in the case of suspension, that it was unjustifiable, the employee shall be granted the full pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended, as the case may be.

(b) In all other cases, the employee shall be granted such proportion of such pay and allowances as such competent authority may direct:

Provided that the payment of allowances under this clause shall be subject to all other conditions subject tc which such allowances are admissible.

(c) In a case falling under sub-clause (a) the period of absence from duty shall for all purposes be treated as a period spent on duty.

(d) In a case falling under sub-clause (b) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specific purpose. It will be open to the competent authority to convert the period into one off leave due." (emphasis added)

The question posed above was decided by the Court in the following passage:-

"6. xxxxxxx

"The High Court was, however, not justified in holding that on acquittal and reinstatement an employee becomes - without any further scrutiny - entitled to the payment of full salary for the period during which he remained under suspension. Regulations 21 (1) and 21(2) are equally applicable to an employee who remained under suspension because of investigation/trial on criminal charge. The competent authority is bound to examine each case in terms of Regulations 21 (1) or 21(2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned. In other words it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. The employee concerned has to be given a show cause notice in respect of the proposed action and his reply taken into consideration before passing the final order." (emphasis given).

34. The Regulations extracted above are more or less similar to the provisions of FRs. Thus, F.R. 54 which relates to reinstatement as a result of appeal or review states that "if the employee has been fully exonerated, he

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should be paid the full pay and allowances and the period of absence prior to reinstatement should be treated as duty." FR 54-A deals with a case where dismissal, removal or compulsory retirement is set aside by a Court of law and the employee is reinstated without holding any further enquiry. This provides that if the order is set aside by the Court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and "where he is not exonerated on merits" the employee shall be paid only a portion of his pay and allowances and the competent authority may decide whether the period of absence from duty prior to reinstatement, including the period of suspension should be treated as duty or not. F.R. 54-B relates to a case where a Government servant who was suspended is reinstated, as in the present case. This is the rule invoked in the present case. Under sub rule (1) and the authority competent to order reinstatement shall consider and make a specific order:-

"(a) 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 (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty."

Sub rules 3 and 4 read as follows:-

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

(Proviso omitted)

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes."

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Then follows sub rule (5) which applies to a case which sub rule 3 does not apply. In that case the pay and allowances for the period of suspension can be restricted to such amount as determined by the disciplinary authority. This is the sub rule invoked in this case. Where this sub rule applies the period cannot be treated as duty except as otherwise directed.

35. In other words, despite acquittal, the authority has to apply its mind and consider whether the suspension was wholly unjustified in which case alone full pay and allowances have to be given and the period is to be treated as duty. If it is held that there was justification for suspension then only such portion of the pay and allowances need be paid, as is ordered and unless otherwise specifically directed, the period of suspension shall not be treated as duty.

36. The ratio of the judgment in Depot Manager APSRTC applies with equal force to the corresponding provisions of F.Rs. The conclusion that follows is that, the acquittal of an employee in a criminal case, by itself, does not require that the period of suspension pending trial should, automatically, be treated as a period of duty and full pay and allowances be paid for that period. The competent authority can examine each case in terms of the Rules/Regulations governing the subject and come to an independent decision. In the present case, if an order under F.R. 54 B (1) had been passed immediately after revocation of suspension and before any D.E. was commenced, the fact that the acquittal in the criminal case was technical and not on merits and the further fact that the

applicant had tendered an apology to the Department before the criminal case was withdrawn could have been taken into consideration to conclude that the suspension was fully justified. As that order was passed after the applicant was punished in the D.E., on the same facts as in the criminal case, this punishment alone was taken into consideration to deal with the period of suspension under F.R. 54-B even though that suspension had nothing to do with the subsequent departmental proceedings. In other words, unless the service rules prohibit their consideration, the competent authority can take into account the result of a DE, or any other relevant fact to conclude that the suspension was justified and pass a consequential order under clauses (5) and (7) of FR 54-B, even though the suspension was ordered in connection with a criminal case ending in acquittal and the employee was not suspended in connection with the DE initiated on charges based on the same facts as in the criminal case.

37. The third conclusion of the Full Bench is that the disciplinary authority has no right to scrutinize the judgement of the court acquitting the accused employee to find out the degree of culpability of the accused. This is clear from the extracts of paras 12 & 15 of that judgement, reproduced in para 28 supra. In that connection the attention of the Bench was drawn by the respondents to para 10 of the judgement of Supreme Court in State of Assam Vs.

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Raghava Rajagopalachari (1972 SLR SC 915). That case involved the application of F.R. 54 as it stood earlier. Clause (a) thereof provided for payment of full pay if the employee was "honourably acquitted". Clause (b) applied to a case where there was no such acquittal and, therefore, full pay need not be paid. It was noted that the Note and Administrative Instructions appearing under the Rule seemed to show that the words "honourably acquitted" meant acquittal of blame or that the Govt. servant has been fully exonerated. Thereafter, it was observed in para-10 as follows, which has been extracted in para 12 of the Full Bench judgement:-

> "10. It seems to us that if, on reading the judgement and order which acquits a government servant, it appears to the government or the competent authority that the government servant has not been fully exonerated of the charges levied against him, the government or the competent authority would be entitled to come to the conclusion that cl. (b) would apply and not cl. (a). This conclusion is strengthened by the wide discretion given to the competent authority under cl. (b). Acting under cl. (b), the competent authority is entitled to give, if the circumstances so warrant, the whole of the pay and allowances and also treat the whole of the period of absence from duty as period spent on duty."(emphasis added)

The Supreme Court thereafter gave the following finding:-

> "11. In this particular case, if one reads the judgement of this Court in R.R. Chari v. State of U.P. (1) it seems that the Government was entitled to come to the conclusion that the petitioner had not been honourably acquitted within the meaning of cl.(a). This Court held that in the absence of valid sanction the charges against the petitioner under s.161 and s.165 could not have been tried and that it rendered the

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> proceedings against the petitioner in respect of these two charges without jurisdiction. Accordingly his trial in respect of these two offences was held to be invalid and without jurisdiction." (emphasis added).

It is clear that the aforesaid judgement did not strike down the provisions in FRs which permitted the disciplinary authority to examine if an employee was "fully exonerated" or "honourably acquitted." On the contrary, the Court found that Government was entitled to hold that the petitioner was not "honourably acquitted".

The Full Bench, however, distinguished that judgement by stating that it was rendered while interpreting F.R. 54 before it was amended.

38. Be that as it may, it seems to us that the question whether the competent authority can scan a judgement acquitting an employee of an offence to find out whether he is "honourably acquitted" - if the service law provides one set of consequences if it is so held and another set of consequences if it is not so held - stood answered in the affirmative by the Supreme Court in Raghava Rajagopalchari (supra). May be, "honorable acquittal" is unknown to criminal law. But that does not preclude a service law from invoking this concept for a specific purpose. On the same ratio, the judgement can be probed to find out whether the employer is "fully exonerated" or "exonerated on merits".

39. That conclusion now finds reiteration in the judgement of the Supreme Court in Reserve Bank of India v. Bhopal Singh Panchal (1994 (1) SCC 541). The facts were

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that the respondent employee was involved in a criminal case. He was convicted on 13.12.76 and was dismissed on 28.4.77. On 21.11.77 he was acquitted by the High Court, giving benefit of doubt. The Bank refused to reinstate him on the plea that the acquittal was not honourable, relying on regulation 46(4) of the Reserve Bank of India Staff Regulations, 1948, which reads as follows:-

"(4) Where an employee has been dismissed in pursuance of regulation 3 and the relative conviction is set aside by a higher Court and the employee is honourably acquitted he will be reinstated in service."

This decision was challenged before the Industrial Tribunal which directed reinstatement. He was reinstated on 24.8.83. The period from 28.4.77 (date of dismissal) upto 23.8.83 (date before reinstatement) alone was treated as duty. The earlier period from suspension to dismissal was treated as extraordinary leave. The Labour Court before whom the employee filed a claim under 33 (2)(c) of the I.D. Act for salary in respect of this period, allowed the claim. It was against this order that special leave was granted to the RBI. The Supreme Court posed the following question for answer:-

"6. The short question that falls for consideration is whether the order of suspension is automatically set aside on the reinstatement and whether the management cannot deal with the period of suspension according to the regulations governing the service conditions."

The Supreme Court observed as follows:-

"11. Sub-regulation (4) of the said regulation states that when an employee has been dismissed on account of his conviction by the lower court, he is entitled to be reinstated in service if (a) the conviction is set aside by the higher court and (b) the employee is honourably acquitted. A mere acquittal does not entitle an employee to reinstatement in service. The acquittal has to be an honourable one." (emphasis given).

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xxx xxx xxx xxx xxx

13. xxx xxx xxx xxx xxx

"When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4)."

xxx xxx xxx xxx xxx

"15. We have already pointed out the effect of the relevant provisions of Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. <u>It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period.</u> In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."(emphasis given).

40. It is, therefore, clear beyond doubt that in service law, a judgement of acquittal can be probed into further to find out whether the acquittal was on merits or on any technical ground or whether it was an honourable acquittal.

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41. We are, therefore, of the view that the judgement of the Full Bench in Samson Martin Vs. Union of India & Others (1990 (12) ATC 643) is no more a binding judgement in view of the later decisions of the Supreme Court in Reserve Bank of India Vs. Bhopal Singh Panchal (1994 (1) SCC 541) and in Depot Manager, A.P.State Road Transport Vs. V. Venkateswarulu & Another (JT 1994 (3) SC 199) which have to be followed by us as mandated by Article 141 of the Constitution.

42. Therefore, it is clear that this O.A. cannot be disposed of, as requested by the applicant, on the basis of the judgment of the Tribunal in J.M. Soni vs. Union of India (1992 (2) ATJ 378) which relied on Samson Martin. On the contrary, we are of the view that the applicant's case cannot be supported by Samson Martin, because we have found that the Full Bench decision is no more binding.

43. We have, therefore, to consider the other ground raised in para 5(i) of the OA, which, however, was not argued, as the arguments were confined to considering whether the OA should not be disposed of based on Samson Martin. That ground is that as only a minor penalty has been imposed on the applicant, the period of suspension should have been treated as duty for all purposes in accordance with the Department of Personnel Memo No.11012/15/85-Estt(A) dated 3.12.85.

44. We observe that, in reply to the show cause notice (Annexure P-6) dated 2.11.87 regarding the proposal to treat the period of absence from 29.11.80 to 1.3.87 as a period under suspension and limiting the pay and allowances for

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that period to the subsistence allowance already paid, the applicant submitted a reply on 20.11.87 (Annexure P-7) in which he did not refer to the OM dated 3.12.85, now relied upon by him. However, he submitted that, while in the DE only a penalty of censure was imposed, a much greater penalty was being proposed to be imposed on him by the proposal contained in the show cause notice. Nevertheless, in the final order dated 21.9.88 (Annexure P-8) the disciplinary authority has observed in para-2 that the final culmination of the award of punishment of censure cannot be compared with the cases mentioned in the Department of Personnel and Training's OM dated 3.12.85, referred to above.

45. The O.M. No.11012/15/85-Estt(A) of the Department of Personnel and Training dated 3.12.85 reads as follows:-

"(3) Period of suspension to be treated as duty if minor penalty only is imposed.- Reference is invited to OM No.43/56/64-AVD, dated 22-10-64[not printed], containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servants could be placed under suspension if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. These instructions thus make it clear that suspension should be restored to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, has suggested that in cases where a Government servant, against whom an enquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where 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 F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B.

2. These orders will become effective from the date of issue. Past cases already decided need not be reopened." (Swamy's Compilation of FR SR Part-I, 12th Edition page 260) (emphasis given).

46. We have carefully considered this O.M. particularly the emphasized portions thereof. This OM applies only to those proceedings where the suspension is in connection with contemplated disciplinary proceeding, where, prima facie, the disciplinary authority was satisfied that a major penalty may have to be imposed but where the disciplinary proceedings ultimately ended in the imposition of only a minor penalty. These conditions are not satisfied in the present case. Before the D.E. commenced, the applicant had already been reinstated after revocation of the suspension. Therefore, he was not under suspension when the D.E. commenced. The earlier suspension too was not in connection with the D.E. The D.E. was not for imposition of any major penalty. The Annexure P-4 notice dated 5.3.87, initiating the D.E. was issued under Rule 16 of the CCS (CCA) Rules, i.e., for the imposition of only a minor penalty. Therefore, the OM dated 3.12.85 relied upon by the applicant will not apply to the facts of this case.

47. For the foregoing reasons, we conclude that the following principles are now well established by the decisions of the Supreme Court:-

i) The concept of 'honourable acquittal' still

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exists in service law vide the judgement of the Supreme Court in Reserve Bank of India vs. Bhopal Singh Panchal (1994 (1) SCC 541), contrary to what has been held by the Full Bench of the Tribunal in Samson Martin vs. Union of India & Others (1990 (12) ATC 643). It, therefore, follows that the disciplinary authority can examine a judgement acquitting an employee to find out whether he is 'honourably acquitted' in order to take the further decision as to how the period of absence prior to acquittal, including the period of suspension, if any, should be treated. For the same reason, such judgement can be probed to see if the employee is 'fully exonerated' or is 'exonerated on merits' or 'the suspension is wholly unjustified' for the purposes of passing an order under FR 54, FR 54A and FR 54B as the case may be, as to how the period of suspension should be treated.

ii) When an employee is suspended pending investigation and trial of a criminal offence in connection with official duties, but is acquitted and reinstated, it is open to the competent authority to consider all relevant circumstances to determine whether the suspension was justified or not and pass an appropriate order. (Depot Manager A.P. State Road Transport Corporation vs. V.Venkateswarulu (JT 1994 (3) SC 199).If,

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however, the suspension is revoked after acquittal and it is simultaneously decided to hold a disciplinary proceeding in respect of acts of misconduct based on the same facts as in the criminal case, the competent authority can defer passing the order regulating the period of suspension, until final orders are passed in the disciplinary proceedings.

48. Having considered in detail the issues raised in this OA and applying the principles set out in para 47 supra, we dispose of this OA with the following findings and orders:-

i) The acquittal of the applicant by the Annexure P-2 order is not on merits. It is only a technical acquittal. Therefore, he is not entitled to claim that, automatically, the period of suspension should be held to be unjustified and that it should be treated as duty and be given full pay and allowances.

ii) The respondents were entitled to consider the circumstances leading to his suspension and acquittal and pass an appropriate order under FR 54B. The applicant had admitted his guilt by apologising to the respondents before the criminal case was withdrawn. This was an adequate ground to hold that the suspension was fully justified and to pass the order as at Annexure P-8. However, that order was passed on a different ground.

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iii) The applicant was found guilty in disciplinary proceedings on the same grounds as in the criminal case. On that ground, it was competent for the disciplinary authority to hold that the suspension pending trial in the criminal case was fully justified with attendant consequences, though that suspension was neither ordered nor continued in connection with the disciplinary proceedings.

iv) In the circumstances of the case, the applicant is not entitled to the benefit of the Department of Personnel and Training's OM No.11012/15/85-Estt(A) dated 3.12.85 even though only a penalty of censure was awarded.

v) The respondents, therefore, were fully justified in passing the impugned Annexure P-8 order dated 20.1.88.

vi) Likewise, the respondents were fully justified in passing the Annexure P-10 order dated 7.3.89, not allowing the applicant to cross the efficiency bar from the due date (i.e. while he was under suspension) and also in postponing his promotion by the Annexure P-12 order dated 24.6.88.

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49. Therefore, we find that no case has been made out by the applicant for any interference by us. Hence, the O.A. is dismissed. There shall be no order as to costs.

24/10/94

(Smt. Lakshmi Swaminathan)
Member(J)

(N.V. Krishnan)
Vice-Chairman(A)

'Sanju'