

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1772/88 198
RAxxNo.

DATE OF DECISION 21.11.89.

Shri Sunder Dass

Petitioner

Shri Sant Lal & Pradeep
Kumar

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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 to be circulated to other Benches ?

(Amitav Banerji)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.1772/1988

Date of decision: November 21, 1989.

Shri Sunder Dass ... Applicant.

Vs.

Union of India & Others ... Respondents.

Coram:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ... Shri Sant Lal &
Pradeep Kumar, Advocates.

For the respondents ... Shri P.P. Khurana, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

This Application under Section 19 of the Administrative
Tribunals Act, 1985, has been filed by Shri Sunder Dass, the
applicant for regularisation of period of suspension from
15.4.1976 to 14.4.1985 as period spent on duty for all purposes
including full pay and allowances. He has prayed for
setting aside the impugned order dated 17.12.1987 (Annexure
A-I) passed by the Senior Superintendent, Delhi Sorting Division
RMS Bhawan, Delhi-110006, by which the latter has declined
to grant the pay and allowances for the aforementioned period
spent under suspension even though the applicant was
acquitted of the criminal charge by the Metropolitan
Magistrate, New Delhi by his judgment dated 10.12.1986.

The applicant had joined the Postal Service as
Packer in 1943 in Karachi Postal Division (now in Pakistan).
On his transfer to India during 1947, he was posted in

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Lucknow Postal Division. Subsequently, he was transferred to New Delhi Postal Division in 1949. Thereafter he had been appointed as Stamp Vendor in New Delhi Head Office in 1956. The applicant had been arrested by the Police on 15.4.1976 on account of a criminal case under investigation against him. He was deemed to have been placed under suspension w.e.f. 15.4.1976 as ordered by the Deputy Postmaster, New Delhi Head Office. The aforesaid order of suspension was revoked by the Postmaster New Delhi Head Office by Memo No. Fl/1/76-77 dated 10.4.1985 with immediate effect. Thereafter the applicant was allowed to resume duty on 15.4.1985 though the trial of the criminal case was still pending.

Thereafter Shri O.P. Gogoi, Metropolitan Magistrate Patiala House, New Delhi vide his judgment dated 10.12.1986 acquitted the applicant from the charges framed against him. The applicant thereafter submitted his representation on 27.1.1987 to the Senior Superintendent (respondent No.3) along with a copy of the judgment of the Trial Court with a prayer to regularise the period of suspension as spent on duty for all purposes and also arrange payment of salary for the period from 15.4.1976 to 14.4.1985. The Senior Superintendent, Delhi Sorting Division (respondent No.3) by the impugned order dated 17.12.1987 has ordered that "the pay and allowances to said Shri Sunder Dass for the period of suspension from 17.4.76 to 10.4.85 be restricted to the subsistence allowance already paid to him during the period of suspension and the period cannot be treated

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as on duty for any purpose except the purpose of pension only". An appeal was preferred to the Additional Postmaster General (respondent No.2) on 5.2.1988 but no order had been passed within a period of seven months.

A reply has been filed by the respondents. The main plea of the respondents is that although the applicant was acquitted by the Criminal Court on 10.12.1986 but he was 'not acquitted honourably'. The plea was that he was acquitted on technical grounds and, consequently, was not entitled to full pay and allowances for the said period.

We have perused the judgment of the Metropolitan Magistrate and do not find anything therein about the applicant not being acquitted 'honourably'. As a matter of fact, the learned Magistrate has clearly stated:-

" it was for the prosecution to establish on record that these particular stamps were affixed on any particular letters which were put in the letter box to reach their destination. But on this aspect the prosecution evidence is missing. There is also no evidence to suggest that the accused had committed the theft of these 108 stamps from a particular place.".....

"In the result, therefore, I come to the conclusion that prosecution has failed to prove the case against the accused for the offence u/s 52 of the Indian Post Office Act and for these reasons accused is acquitted."

In view of this, it is the lack of evidence on the part of the prosecution that resulted in his acquittal

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No one can ever be held guilty of any charge unless the guilt has been established fully. A conviction has to be based on reliable evidence which is accepted by the Court. If the prosecution fails to lead cogent and reliable evidence the prosecution case fails and results in an acquittal. Such acquittal cannot be said to be an acquittal on technical ground. In the present case, there was no evidence of theft and consequently, the Court had no other option but to acquit the applicant. The contention that such acquittal is not an honourable acquittal is wholly untenable.

We do not find any difference between 'honourably acquitted' and 'not acquitted honourably'. There is no such term as 'honourably acquitted' in the Cr.P.C. Consequently, the basis for refusing the relief asked for by the applicant viz., he is not being acquitted honourably is wholly untenable and has to be rejected. Once a person is acquitted of a criminal charge, the employer has no option but to reinstate him and pay him for the period during which he was under suspension, all back wages and allowances as due to him minus the amount which has already been paid as subsistence allowance.

We have heard Shri Pradeep Kumar for the applicant and Shri P.P.Khurana for the respondents. We are in agreement with the arguments of learned counsel for the applicant that this Application must be allowed inasmuch as the impugned order dated 17.12.1987 is set aside. We direct the respondents to treat the period of suspension

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from 15.4.1976 to 14.4.1985 as spent on duty for all purposes with full pay and allowances. We further direct the respondents to arrange for the payment of arrears of pay and allowances as due for the said period within a period of two months from the date a copy of this order is served on them. In the circumstances, we direct the parties to bear their own costs.

B.C. Mathur
(B.C. Mathur)
Vice-Chairman (A)

21.11.1989.

(Amitav Banerji)
(Amitav Banerji)
Chairman
21.11.1989.

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