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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00038/2016

Dated this Wednesday, the 12th day of February, 2020

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Akhalaq Ahmad S/o of Allabax Mulla, age 45 yrs.,
Train Ticket Inspector (TTI) working under Divisional Commercial
Ticket Inspector at Railway Station, Solapur 413 003.
R/o House No.146, Laxmi Nagar, Hasture Wasti, Majrewadi,
Near Shivshahi (Post Office), Air Port, Solapur 400 003. - **Applicant**
(By Advocate Shri D.N.Karande)

VERSUS

1. Union of India through General Manager,
Central Railway, C.S.T. Mumbai 400 001.
2. Chief Commercial Manager, Central Railway,
Annex Bldg., C.S.T. Mumbai 400 001.
3. Sr. Divisional Commercial Manager,
O/o D.R.M.C. Rly Solapur, 413 003. - **Respondents**
(By Advocate Shri V.S.Masurkar)

ORAL ORDER
Per : R.N.Singh, Member (Judicial)

Heard Shri D.N.Karande, learned counsel for the applicant and
Shri V.S.Masurkar, learned counsel for the respondents.

2. In the present OA the applicant has challenged the order No.SUR/C/D&A/AAM/TTI/12 dated 09.01.2015 (Annex A-1) vide which penalty of withholding of increments for a period of five years with cumulative effect has been awarded to the applicant. The applicant has further challenged the order No.P.HQ.DAR.410.1 dated 26.11.2015 (Annex A-2) vide which the Revisionary Authority i.e. the Chief Commercial Manager has confirmed the aforesaid penalty.

3. The brief facts leading to the present OA are that the applicant was removed from service vide order dated 07.09.2012 (Annex A-3) in view of the provisions as contained under Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 from the date of receipt of such order keeping in view the fact that the applicant was convicted by the Court of Competent Jurisdiction vide orders dated 19.06.2012 in CC Nos.191/2009 and 239/2009. The aforesaid criminal case was initiated against the applicant by the wife of the applicant for offences under Section 498A read with Section 148 of IPC. The applicant has filed appeal before the Appellate Court against the said conviction order and therefore, he sought time from the Disciplinary Authority to enable him to bring on record the status of the criminal appeal preferred by him. The authority concerned is stated to have accorded three months for the purpose. However, within three months he could not bring any substantive material before the authority concerned resulting into the fact that the Appellate Authority has confirmed the order of penalty i.e. removal from service of the applicant vide order dated 08.03.2013 (Annex A-4). Subsequently, the applicant succeeded in a criminal appeal filed by him and the Appellate Court i.e. learned Court of Additional Sessions Judge, Bijapur allowed the Criminal Appeal No.41/2012 vide order/judgment dated 10.01.2014 (Annex A-5) whereby the order of conviction and order of sentence dated 19.06.2012 passed by the learned Lower Court in the aforesaid cases were set aside. Keeping in view such development in a criminal case, the applicant preferred a Revision Petition before the Revisionary Authority. However, the said

Revision Petition was not disposed of by the Revisionary Authority and therefore, the applicant approached this Tribunal by way of OA No.623/2014 which was disposed of by this Tribunal at the admission stage itself vide order/judgment dated 14.10.2014 (Annex A-14) with direction to the Competent Authority to dispose of the pending Revision Petition of the applicant within 12 weeks from the date of receipt of certified copy of such order. In pursuance of such direction of this Tribunal, the Revisionary Authority passed the order dated 09.01.2015 whereby the Revisionary Authority modified the order of penalty and ordered a penalty of "withholding increments of pay for a period of five years with postponing the future increments of pay".

4. Aggrieved by the impugned order of penalty dated 09.01.2015 (Annex A-1), the applicant is stated to have preferred another Revision Petition dated 12.02.2015 (Annex A-12) pleading therein the order of removal from service was passed by the Disciplinary Authority and confirmed the order by the Appellate Authority only on account of his being convicted in the criminal case. However, after the conviction and sentence both were set aside by the learned Sessions Court in his criminal appeal, there was no occasion or justification available to the authority concerned to inflict the punishment awarded vide the impugned order dated 09.01.2015. Again the said Revision Petition dated 12.02.2015 of the applicant was not considered and disposed of by the respondents and same made the applicant to approach this Tribunal by way of OA No.473/2015 which was disposed of by this Tribunal vide order/judgment dated 14.09.2015 (Annex A-13). The operative

portion of the order/judgment dated 14.09.2015 reads as under:

"3. After going through the records, we hold the view that in the interest of justice, the Revision Petition filed by him with the Respondent No.2 should be considered and disposed off expeditiously. Respondent No.2 is accordingly directed to consider the Revision Petition and pass a reasoned and speaking order within a period of eight weeks from the date of receipt of this order.

5. The Original Application is accordingly, disposed off with the above directions."

5. In furtherance of direction of this Tribunal in order dated 14.09.2015 (Annex A-13), the respondents have passed order dated 26.11.2015 (Annex A-2) by which the respondents have confirmed the order of penalty dated 09.01.2015.

6. In the aforesaid facts, circumstances and background, the applicant has approached the Tribunal and have prayed for the following reliefs:

"8(a). That this Hon'ble Tribunal may call for the records pertaining to case of the applicant, which led to issue the impugned orders.

8(b). This Hon'ble Tribunal may kindly quash and set aside the impugned orders dt. 09-01-2015 & 26/11/2015.

8(c). This Hon'ble Tribunal may kindly direct the Respondents to pay entitled to all consequential benefits which would flow from the quashing of the impugned orders.

8(d). This Hon'ble Tribunal may please direct the Respondents to pass a specific order regarding the payment of pay and allowances to be paid the applicant for the period of his absence from duty including the period of suspension preceding his removal from the service.

8(e). This Hon'ble Tribunal may kindly direct the Respondents to treat the complete period from the suspension to till re-instatement as a period spent on duty for all purposes.

8(f). This Hon'ble Tribunal may kindly direct the

Respondents to grant the applicant the increments and his seniority position till date with all consequential benefits such as promotion from the date of promotion of his junior in his cadre and arrears due on such grounds.

8(h). This Hon'ble may kindly direct to the Respondents be grant the applicant 12% interest on the above delayed payments and its arrears.

8(i). Any other relief as deem fit by this Hon'ble Tribunal.

8(j). Cost of this O.A. may be saddled on the Respondents."

7. The learned counsel for the applicant argues that once the respondents have invoked their jurisdiction under Rule 14(1) of the Railway Servants (D&A) Rules, 1968 to inflict the penalty of removal from service in view of the applicant's conviction in the criminal case, when the conviction is set aside by the Appellate Court, there was no occasion or reason for the respondents for not withdrawing the order of removal and reinstate him with all consequential benefits, more particularly in absence of any Disciplinary Proceedings against the applicant.

8. In response to the notice received from this Tribunal, the respondents have filed reply affidavit and they have opposed and disputed the claim raised by the applicant in the present OA.

9. Shri V.S.Masurkar, learned counsel appearing for the respondents with the assistance of the reply affidavit filed on behalf of the respondents does not dispute the factual matrix as incorporated herein-above, however, argues that the impugned order of penalty was passed keeping in view the clarification issued by the Railway Board vide letter No.E(D&A) 84 RG6-26 dated 29.04.1985.

10. The applicant has filed rejoinder. The learned counsel for the applicant in his rejoinder submits that the said circular of the Railway Board rather helps the applicant and support his claim. The said circular dated 29.04.1985 of the Railway Board reads as under:

"R.B.E. No.127/85

Subject: Regularization of the intervening period from the date of suspension/dismissal, etc., to the date of reinstatement in case of acquittal.

No.E(D&A) 84 RG 6-26, dated 29.4.1985

Attention is invited to the instructions contained in Railway Board's letter No.E(D&A) 69RG6-48 dated 5.9.1970 and endorsement No.E(D&A) 76RG6-62 dated 8.7.1980 on the above subject.

2. *It has been represented to the Railway Board that in cases of acquittal by a Court of Law there is no such thing as clear or honorable acquittal and that even if the acquittal is on benefit of doubt the entire period from the date of suspension preceding the date of dismissal/removal/compulsory retirement to the date of resumption should be treated as duty with full pay and allowances.*

3. *The Department of Personnel has been consulted and it is clarified that while a distinction can be made between cases in which a court sets aside an order passed by an authority on technical grounds like failure to follow the prescribed procedure, and a case in which a person is acquitted by a Court; in cases of acquittal or otherwise. An acquittal by a Court is acquittal from the charges framed against the accused and it has to be treated as such. In the circumstances, cases of acquittal by a Court of Law should be viewed as such and they should be distinguished from cases in which Courts set aside orders of Government on technical grounds like failure to follow the prescribed procedure, failure to fulfil the requirements of Article 311 of the Constitution, etc.*

4. *Cases of reinstatement following acquittal by a Court of Law, may be dealt with under relevant Sub-rules (2), (3), (6) and (8) of Rule 2044 (FR-54) of the Indian Railway Establishment Code Vol. II, keeping the above observation in view."*

11. We have perused the pleadings on record and have also considered the submissions made by the learned counsels for the parties carefully.

12. It is not in dispute that the order of penalty of removal from service was awarded to the applicant keeping in view his conviction in the criminal case. In the appeal preferred by the applicant against the said conviction and sentence in the criminal case referred to above, he succeeded and the conviction and sentence were set aside by the learned Appellate Court. In the circumstances once the conviction and sentence, the very basis on which applicant was penalized by the Department have been set aside, nothing remains available to the respondents to consider inflicting of any penalty against the applicant. More so in view the clarification / circular dated 29.04.1985 of the Railway Board noted herein-above.

13. In the aforesaid facts and circumstances, the OA is partly allowed. The impugned orders dated 09.01.2015 and 26.11.2015 (Annexes A-1 and A-2) are quashed and set aside, the applicant shall be entitled for all consequential benefits in accordance with the relevant rules and instructions. The respondents are directed to pass an order with regard to the consequential benefits accrued to the applicant in view of the above as expeditiously as possible and in any case within ten weeks from the date of receipt of a certified copy of this order.

14. However, in the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

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04/03/2020

