

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. DA-285/86

Date of decision: 6.11.92

Shri Jitender Kamal Applicant

Versus

Lt. Governor, Delhi Respondents
and Others

For the Applicant Shri M.L. Bhargava, Advocate

For the Respondents Shri Dinesh Agnani, Advocate
with Shri V.K. Rao, Advocate

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

We have heard the learned counsel for both the parties and have gone through the records of the case carefully. The applicant, who has filed this application, while working as Labour Inspector in the Office of the Assistant Labour Commissioner, Labour Department, Delhi Administration, has sought for the following reliefs in this application:-

- (i) To fix the seniority of the applicant as per his original seniority;

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- (ii) to give all due promotions to him as if the suspension order dated 12.4.1968 and dismissal order dated 24.7.1976 were never passed;
- (iii) to fix his pay as per his original seniority;
- (iv) to pay him full pay and allowances for the period from 6.4.1968 to 30.5.1974 during which he was paid subsistence allowance only;
- (v) to pay him all arrears of pay and allowances for the period from 30.5.1974 to 21.5.1980 during which he was not paid anything; and
- (vi) to pay him interest on the amount which may be found due to him at the rate of 10 per cent per annum with effect from the date of suspension till the date of payment.

2. While the applicant was working as Extension Officer, he was placed under suspension w.e.f. 6th April, 1968, as a criminal case against him was under investigation. The trial court convicted and sentenced him by judgement dated 30.5.1974 after trial. On 24.2.1976, the respondents passed an order by which he was dismissed from service w.e.f. 30.5.1974.

3. The applicant had filed an appeal against the order of conviction in the Delhi High Court. By judgement dated 21.5.1980, the Delhi High Court set aside the judgement of

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the trial court and acquitted him. Thereafter, he was reinstated in service w.e.f. 14.8.1981.

4. The grievance of the applicant is that he has not been paid full pay and allowances during the period of his suspension from 6.4.1968 to 23.7.1976 and from 24.7.1976 to 20.5.1980, which was the period of his dismissal from service till the judgement of the Delhi High Court acquitting him, was passed. The applicant has, however, been paid full pay and allowances for the period from 21.5.1980 onwards.

5. The respondents have not paid him pay and allowances from the date of dismissal to the date of reinstatement on the ground that he was acquitted by the Delhi High Court by giving him the benefit of doubt. The pay and allowances during the period of suspension were also restricted to the subsistence allowance already paid to him. Before doing so, the respondents had given show-cause notice to the applicant.

6. After hearing both the sides, we are of the opinion that the action taken by the respondents in the instant case is not legally sustainable. In *Brahma Chandra Gupta Vs. Union of India*, AIR 1984 SC 380, a Government servant was convicted by the trial court which led to his dismissal from service. He was acquitted on appeal and thereafter, 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 judgement 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 3/4 of the salary for that period. Thereupon, the officer filed a suit for recovery of the remaining 1/4 of the salary which was decreed by the Trial Court in his favour. The Supreme Court decided the matter ultimately and issued the following directions:-

"Keeping in view the facts of the case that the appellant was never hauled up for 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; but 3/4 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 the 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 this appeal, set aside the

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judgement of the first Appellate Court as well as the High Court and restore the one of Trial Court with this modification that the amount decreed shall be paid with 9 per cent interest per annum from the date of suit till realisation with costs throughout."

7. It follows from the above that when the suspension is wholly due to a criminal proceeding, the acquittal at the end of such proceeding would render the suspension wholly unjustified and the disciplinary authority does not have to analyse the judgement of the Criminal Court to come to its own conclusion regarding the degree of proof in respect of the culpability.

8. The aforesaid judgement of the Supreme Court in Brahma Chandra Gupta's case was followed by a Full Bench of this Tribunal in S. Samson Martin Vs. Union of India & Others, 1990 (1) ATLT (CAT) 161.

9. In M. Jayaraman Vs. Senior Superintendent of Post Offices, 1988 (7) ATC 676, this Tribunal has held that there is no concept of honourable acquittal in the Code of Criminal Procedure.

10. In view of the foregoing, we are of the opinion that the applicant is entitled to succeed in the present application. Accordingly, we set aside the impugned orders passed by the respondents denying full pay and allowances to the applicant for the period from 6.4.1968 to 20.5.80.

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The respondents shall pay to the applicant full pay and allowances for the period from 6.4.1968 to 30.5.1974, during which he was paid subsistence allowance only. They shall also pay full pay and allowances to the applicant from 30.5.1974 to 20.5.1980, during which period, he was not paid anything. The respondents are also directed to pay interest on the aforesaid amounts due to the applicant at the rate of 12 per cent per annum w.e.f. 6.4.1968 till the date of payment. The respondents are directed to comply with the aforesaid orders and directions as expeditiously as possible and preferably within a period of three months from the date of receipt of this order. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) *6/11/82*
Administrative Member

P.K. Kartha
6/11/82
(P.K. Kartha)
Vice-Chairman(Judl.)