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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. C.A. 826/1987. DATE OF DECISION: 19-11-1990.

Shri Baman Charan Gaut Applicant.

Shri S.C. Gupta, Sr.
Advocate with Shri M.K.
Gupta Counsel for the Applicant.
V/s.

Union of India & Anr. Respondents.

Shri F.P. Khurana Counsel for the Respondent

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
 Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether reporters of local papers may be allowed to see the judgement? *yes*.
2. To be referred to the reporter or not? *yes*.
3. Whether their lordships wish to see the fair copy of the judgement? *No*.
4. Whether to be circulated to all Benches of the Tribunal? *No*.

J.P. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain
(P.C. JAIN)
Member(A)

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Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

The applicant, who was working as Junior Intelligence Officer Grade-I (M/T) and has since retired from service on superannuation, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against Memorandum dated 31.10.1985 (Annexure A-9), by which the period of suspension / dismissal from 16.5.1978 to 15.3.1985 has not been treated as the period spent on duty and he has been allowed for this period an amount equal to leave salary which he would have drawn had he been on half average pay leave. He has prayed:

- (i) that the above impugned order as well as subsequent order to the same effect be quashed;
- (ii) that the entire period from 16.5.1978 to 15.3.1985 be directed to be treated as period spent on duty, entitling him under F.R. 54A(3) to payment of full wages for the said period and to other benefits, including all due promotion; and
- (iii) that he be given full retirement benefits on the basis of the aforesaid prayers and reliefs, with due interest, within a reasonable period.

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2. Relevant facts, in brief, are that the applicant was placed under suspension under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, on the ground that a case against him in respect of a criminal offence was under investigation. The criminal case was under Sections 279/304-A/201/202/466 IPC as well as under certain Sections of the Motor Vehicles Act. The Metropolitan Magistrate, New Delhi, vide his orders dated 29.9.1982 found the applicant guilty under Section 466 I.P.C. and under Section 89/118A of the Motor Vehicles Act and sentenced him to undergo R.I. for two years under Section 466 IPC and R.I. for one month under Section 89 read with Section 118-A of the Motor Vehicles Act and also sentenced him to pay a fine of Rs.1,000/- under Section 466 and a fine of Rs.300/- under Section 118-A I.P.C. The applicant was acquitted by the Metropolitan Magistrate on other charges. He went in appeal against this order. The Additional Sessions Judge, New Delhi, vide his order (Annexure A-3) dated 16.3.1985/allowed the appeal and conviction under Section 466 I.P.C. and under Section 118-A of Motor Vehicles Act was set aside and the applicant was acquitted. In the meantime, vide Order dated 14.10.1982 issued by the Intelligence Bureau (Ministry of Home Affairs), Government of India (Annexure A-2), on the basis of conviction of the applicant by the Metropolitan Magistrate he was dismissed from service with effect from 29th September, 1982. On acquittal by the appellate court, as aforesaid, the order of dismissal from service was set aside and the applicant was reinstated as Junior Intelligence Officer Grade-I (MT) in service with effect from 16.3.1985, vide orders dated 19.6.1985 (Annexure A-4). He retired on reaching the age of superannuation with effect from 31.7.1985.

3. Vide Memorandum dated 30.7.1985 (Annexure A-6),

a notice was issued to the applicant under F.R. 54-A(2) to show cause as to why the period of suspension / dismissal be treated as having not been spent on duty and as to why he should not be paid an amount equal to the leave salary which he would have drawn had he been on half average pay leave for the above period. The applicant submitted his reply within the permitted time (Annexure A-7) challenging the proposed action in the Memorandum dated 30.7.1985. He sent a reminder on 10.10.85 (Annexure A-8). However, vide Memorandum dated 31.10.1985 (Annexure A-9), he was informed that after considering his representation, it had been decided to pay him an amount equal to leave salary which he would have drawn had he been on half average pay leave for the period of suspension / dismissal upto the period of his reinstatement in service. He was also informed that it had been decided not to treat the period of his suspension / dismissal as "the period spent on duty". He gave a representation on 5.11.1985, which was rejected vide Memorandum dated 3.12.1985 (Annexure A-12), on the ground that the period of suspension / dismissal could not be treated as period spent on duty and, as such, he could not be paid full pay and allowance for the said period. He then filed an appeal (Annexure A-13) on 19.12.85, which was rejected vide Memorandum dated 29.5.1986 (Annexure A-14), wherein, for the first time, it was stated that the acquittal of the applicant by the appellate court was on technical grounds and not on merits.

4. The respondents have contested this O.A. We have perused the material on record and have also heard the learned counsel for the parties.

5. The main question which falls for determination in this case is whether the case of the applicant is

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covered by the provisions of sub-rule (2) of F.R. 54-A or by the provisions of sub-rule (3) of F.R. 54-A.

F.R. 54-A(2)(i) reads as follows: -

"(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant 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 Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:"

F.R. 54-A(3) is also reproduced below: -

"(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. "

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6. The case of the applicant is that he was placed under suspension because of the criminal case registered against him and he was dismissed from service on his conviction by the Metropolitan Magistrate in that case. He was reinstated in service on his acquittal in appeal. These facts show that the basis of action against him rested entirely on the criminal case. Further, he has been acquitted in the criminal case entirely on merits, as is clear from para 7 of the judgement in appeal:

"From whichever angle I may consider the matter before me, I find it difficult to maintain the conviction."

It is further stated that Article 311 never came into the picture and, as such, F.R. 54-A(2) cannot and does not apply to the facts of this case. It is also stated that the impugned order is a non-speaking order inasmuch as it does not deal with the points raised by him in his representation and also it has not given any reasons for arriving at the conclusions which are indicated in the impugned order.

7. The case of the respondents is that the judgement of the appellate court in the criminal case wherein the applicant was acquitted of his conviction under some charges, does not hold the applicant as innocent and that the applicant was acquitted owing merely to certain flaws in the prosecution case, such as the number of the vehicle involved in the accident was wrongly mentioned, the entry in the Log Book had been signed in good faith without checking its correctness, and the disciplinary authority felt that his acquittal by the appellate court was not on merits. It has further been stated that departmental proceedings for imposition of major penalty were initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 and a memorandum of charge was issued to the applicant on 4.9.78, but these proceedings were kept

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pending in view of the criminal case on the same charge pending investigation / trial. It may be stated here that in the counter-affidavit, it is also stated that these departmental proceedings were not continued and were allowed to be dropped and the applicant reinstated with effect from 16.3.85 keeping in view his impending retirement on 31.7.85. Copy of the charge-sheet has not been filed by the respondents. It is also stated that the disciplinary authority was not required to give reasons in the final order passed for not agreeing to the viewpoint of the applicant in his representation. A plea of limitation has also been taken in the counter-affidavit and it is further stated that the applicant did not prefer any Review Petition to the President under Rule 29-A of the CCS (CC&A) Rules, 1965 and, therefore, did not exhaust available remedies.

8. The learned counsel for the respondents did not press the point of limitation as well as of the applicant not filing the Review Petition. There is nothing in the judgement of the appellate court acquitting the applicant of all the charges against him to indicate, what to say of establishing, that the acquittal of the appellant ~~xxxxxxxxxxxxxxxxxxxx~~ was either on technical grounds or he was given the benefit of doubt. It is well settled that acquittal in a criminal case is acquittal for all purposes and the question of honourable or non-honourable acquittal is irrelevant (S. SAMSON MARTIN Vs. UNION OF INDIA & OTHERS - 1990 (12) ATC 643). Further, the question of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution has nowhere come in the picture. Thus, we have absolutely no doubt that the case of the applicant is covered by the provisions of sub-rule (3) of F.R. 54-A and not by the provisions of sub-rule (2) of F.R. 54-A.

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9. Before we conclude, we consider it appropriate to refer to the prayer of the applicant for consequential benefit in regard to "all due promotion". Apart from its mention in the relief clause in para 9(b)(ii), there is no averment on this point in the pleadings of the applicant. Nothing is mentioned in regard to the post to which the applicant would otherwise have been considered for promotion. We are, therefore, not inclined to pass any direction in regard to the consideration of the applicant for promotion during the period of suspension / dismissal.

10. In the light of the foregoing discussion, we hold that the applicant is entitled to be treated as on duty for all purposes and also to be paid full pay and allowances for the period to which he would have been entitled, had he not been placed under suspension and subsequently dismissed from service, till the date of his reinstatement in service. His pensionary benefits should also be recomputed, if necessary, on the basis of the above direction. The balance due to the applicant on this account, after adjustment of the subsistence allowance etc., which might have been paid to him during the period of suspension, should be paid to him within a period of three months from the date of receipt of a copy of this order by the respondents. However, in the facts and circumstances of the case, we are not inclined to grant to the applicant any interest on the above payments. The application is thus partly allowed in terms of the above directions. We leave the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member (J) (3.11.91)

P. C. Jain
(P.C. JAIN) 19/11/91
Member (A)