

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1016 of 1996

Allahabad this the 26th day of February, 2001

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, Member (A)

Jagdish Rai, a/a 44 years, S/o Ram Shankar,
Machinist(SS) (Old N S M), Ticket No. 164 SM-II,
Ordnance Factory, Kanpur.

Applicant

By Advocates Shri Anil Kumar,
Shri R. Chadha,
Shri A.K. Sinha,
Shri P. Sinha

Versus

1. Union of India through the Chairman/DGOF,
Ordnance Factory Board, 10-A, Auckland Road,
Calcutta (West Bengal).
2. Sr.General Manager/Dy.General Manager (Admn.),
Ordnance Factory, Kanpur.

Respondents

By Advocate Shri Ashok Mohiley

O_R_D_E_R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this application under Section 19 of
the Administrative Tribunals Act, 1985, the applicant
has challenged the orders dated 14.7.1995 and 11.5.1996,
by which applicant had been allowed regularisation of
the suspension period from 14.06.88 to 10.02.94. However,
on the basis of this regularisation, he ~~will~~ ^{was} not been found

entitled for increments, leave and pension etc. It has been provided in the order that for the period of suspension, he will be entitled only for subsistence allowance paid to him.

2. The facts giving rise to this application are that while serving as Machinist(SK) in the Ordnance Factory, Kanpur, the applicant was arrested by the Police on 14.6.1988 with three .38 Bore Revolvers and two .32 Bore Revolvers. As possession of the aforesaid fire arms without valid licence was an offence under section 25 of the Arms Act, the applicant was detained in Police custody. He was placed under deemed suspension by the respondents under Rule 10 of C.C.S. (C.C.A.) Rules, 1965 for a period of 14.6.88 to 21.6.88 and thereafter an order was passed by the disciplinary authority continuing him under suspension from 22.6.88 to 10.2.1994. In the criminal case, however, the applicant was acquitted by order dated 01.10.93 passed by learned Metropolitan Magistrate VIth, Gwalteli, Kanpur Nagar. On being acquitted, the applicant made application alongwith the copy of Judgment for being re-instated and for payment of dues. On this application, proceedings were initiated and applicant resumed his duty w.e.f. 11.2.1994. By order dated 18.4.95(annexure C.A.-2), the applicant was given a show-cause notice as to why he should not be treated to have been suspended lawfully on justified grounds and for this reason he will be entitled to only those allowances, which were paid to him during the period of suspension but, for the aforesaid period he may be

treated on duty and period may be regularised. Thus, after affording opportunity to the applicant, the disciplinary authority passed the order dated 14.7.1995(annexure A-2) to the following effect;

"Having been acquitted of the criminal charges on benefit of doubt there will be no interruption in the service of Shri Jagdish Rai, T.No.164/NSM, Machinist(SK)due to his suspension period from 14.06.88 to 10.2.94(deemed suspension from 14.6.88 to 21.6.88 & regular suspension from 22.6.88 to 10.2.94) but it will not count towards his increment, leave and pension etc. He is also not entitled for any further pay allowances beyond the subsistence allowances and other allowances already paid to him vide Factory Order at reference(1) above."

Against the aforesaid order, the applicant filed an Appeal, which had been dismissed by the Appellate Authority namely Ordnance Factory Board, Calcutta and communicated to the applicant by the order dated 11.5.96. The order reads as under;

"The appellate authority/OF Board, Calcutta has rejected your above appeal dt.05.9.95 stating that full pay and allowances for the suspension period cannot be considered as you were acquitted on the ground of benefit of doubt."

Aggrieved by the aforesaid orders, the applicant has come before this Tribunal.

3. Learned counsel for the applicant has challenged the ~~illegal~~ legality of the order on the ground that the authorities failed to form any opinion to deny the applicant normal benefits for which he would have been entitled on re-instatement after revocation of the order of suspension. It is also submitted that

the order of acquittal whether passed on benefit of doubt or otherwise, does not make any difference as the applicant stands exonerated from the charge and he cannot be punished in this manner as done by the impugned orders. The applicant has placed reliance in Full Bench ^{order} of this Tribunal in the case of S. Samson Martin Vs, Union of India and Others 1990(12)A.T.C.643

4. Shri Ashok Mohiley, learned counsel appearing for the respondents on the other hand submitted that the disciplinary authority has a discretion, considering the facts and circumstances of the case, to award full pay and allowances to an employee who was under suspension on account of proceedings pending before the Criminal Court. Learned counsel has submitted that in the present case considering the gravity of offence and the fact that the acquittal was based on benefit of doubt giving to the applicant, the view taken by the disciplinary authority and the appellate authority cannot be said to be unjustified. Learned counsel has placed reliance in the Judgment of Hon'ble Supreme Court in the case of 'Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and Others 1997 S.C.C. (L&S) 847' and 'Hukmi Chand Vs. Jhabua Cooperative Central Bank Ltd., Jhabua (M.P.) and another 1998 S.C.C. (L&S) 509'. We have considered the submissions of counsel for the parties.

5. Undisputed facts of the present case are that the applicant was arrested on 14.6.1998 with three .38 Bore Revolvers and two .32 Bore Revolvers and he was prosecuted for an offence under Section 25 of the Arms Act. The acquittal of the applicant on 01.10.1993 in

Criminal Case No.2781 of 1990 was based on following findings;

"In the light of above mentioned discrimination and Ruling of above learned High Court, I am in a opinion that the story of prosecution is doubtful because prosecution has produced the witnesses who are all police men. There is no any independent public witness. On the spot, public witnesses of guard appointed to look after and safeguard of J.K. Temple could be produced. When it is proved that they were present there but neither public witness has been produced nor guard appointed in the J.K. Temple open space for looking after the temple has been made and produced as witness. About recovery and arresting the accused, there is so many differences on the statement of witnesses. In my opinion, it is desirable that accused Jagdish Rai should be given the benefit of doubt. Accused Jagdish Rai is liable to be acquitted."

6. From the aforesaid conclusion, it is clear that the learned Trial Court ~~had~~ given benefit ^{of doubt} to the applicant ~~of doubt~~. The prosecution case was not outrightly rejected. It cannot be disputed that the offence for which the applicant was prosecuted was a serious/~~that~~ is, recovery of five revolvers. The Hon'ble Supreme Court in the case of Krishnakant Raghunath Bibhavnekar(supra) stated the legal position in such cases in following words in para 4 of the Judgment;

" Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be

undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public....If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. The disciplinary authority has option either to inquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty after following the principle of natural justice."

7. The legal position expressed by the Hon'ble Supreme Court in such circumstances, is squarely applicable in the present case. In our opinion, the disciplinary authority has rightly ^{formulated} ~~found~~ the view that the applicant should be given benefit only of regularisation of the suspension period, and denying him the other benefits. In view of seriousness of the offence and the fact that he has been acquitted on the basis of doubt, he cannot claim ~~given~~ the other benefits as a matter of course.

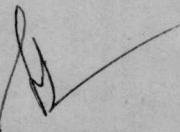


8. Learned counsel for the applicant has submitted that the authorities ~~have~~^{have} failed to form any opinion as required under Rule 54(B) of the Fundamental Rules. However, we do not agree with the submission. It is true that the orders are not as detailed as a judicial pronouncement but, they are indicative of the mind of the authorities as to why they ~~deny~~^{denied} the benefits claimed by the applicant. The applicant was given a show-cause notice, and the orders have been passed after giving him reasonable opportunity of hearing. The judgment of the Trial Court forms part of the record and the authorities could be fully aware of the facts and circumstances of the case.

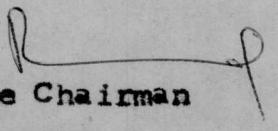
9. Similar view has been expressed by the Hon'ble Supreme Court in Hukmi Chand's case (supra).

10. In these facts and circumstances, the applicant cannot claim any benefit on the basis of Full Bench Judgment of this Tribunal in the case of S. S. Samson Martin (supra), in view of aforesaid two judgments of the Hon'ble Supreme Court.

11. For the reasons stated above, we do not find any illegality in the orders. The O.A. has no merit and is accordingly dismissed. No order as to costs.


Member (A)

/M. M. /


Vice Chairman