

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1434 of 2001.

Allahabad this the 19th day of November 2003.

Hon'ble Maj Gen K.K. Srivastava, A.M.
Hon'ble Mr.A.K. Bhatnagar, J.M.

Sabhapati Pandey (Ex-Mistry)
Erecting Shop Northern Eastern Railway,
Gorakhpur R/o Village & Post Padari Bazar
District Deoria.

.....Applicant.

(By Advocates: Sri S.K. Mishra/Sri R.K. Pandey)

Versus.

1. Union of India
through Chairman
Rail Bhawan, New Delhi.
2. Mukhya Karkhana Prabhandak (Karmik)
Northern Eastern Railway
Gorakhpur.
3. General Manager
Northern Eastern Railway
Gorakhpur.

.....Respondents.

(By Advocate : Sri Anil Kumar)

O_R_D_E_R

(Hon'ble Maj Gen K.K. Srivastava, A.M.)

In this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for setting a-side the impugned order dated 03.01.2001 (Annexure 1) with direction to respondents to regularise the services of the applicant of suspension period with effect from 09.02.1989 to 23.05.1990. The applicant has also prayed for payment of arrears with interest at the current Bank rate.

2. The facts, in brief, are that the applicant was employed in respondent's establishment as Mistry Grade F in the year 1989. An F.I.R lodged against ^{him} ~~him~~ under section

323/325 I.P.C. The applicant was arrested. Applicant was suspended by order dated 09.02.1989. The order of suspension was revoked by order dated 24.05.1990. The applicant retired on 31.10.1990. The Criminal case was finally decided by order dated 24.08.1998 by IVth Additional Chief Judicial Magistrate, Gorakhpur in criminal case No.1553 of 1997. He was acquitted. After acquittal, the applicant filed a representation on 15.09.2000 and 20.11.2000 for regularising the suspension period from 09.02.1989 to 23.05.1990 and pay the arrears. The representations of the applicant have been rejected by impugned order dated 03.01.2001 hence this O.A., which has been contested by the respondents.

3. ^{we have} Heard learned counsel for the parties at length, we also perused the records as well as pleadings of the parties.

4. The grievance of the applicant is that though he has been acquitted in the criminal case yet the respondents are not regularising the suspension period of the applicant as duty and paying him the arrears. Learned counsel for the applicant submitted that the action of the respondents is illegal. Learned counsel for the applicant has placed reliance on the law laid down by Hon'ble Gujarat High Court in case of Ramsinhji Viraji Rathod, Parmanand Society Vs. The State of Gujarat and another, 1971 S.L.R. 743.

5. We have also perused the impugned order dated 03.01.2001 and we find that respondents have taken the plea that since the applicant has not been acquitted ^{honourably} his case for ^{regular} ~~regular~~ treating the suspension period as duty cannot be considered. The Hon'ble Gujarat High Court in case of Ramsinhji Viraji Rathod (Supra) has

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held that in case of acquittal from Court ^{in event} without giving him ~~of~~ benefit of doubt, he is entitled to full pay for suspension period. In para 7 of the order of Hon'ble Gujarat High Court it has been held that there is no concept like 'Honourable acquittal' or 'full exoneration' in criminal trial. We would like to reproduce the relevant paras from the judgment of Hon'ble Gujarat High Court passed in the case of Ramsinhji Viraji Rathod, Parmanand Society (Supra):-

"Para 7.....Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J., in Jayaram's case, A.I.R. 1960 Mad. 325".

"Para 11.....Under these circumstances, the order passed by the State of Maharashtra on April 23, 1968 and communicated to the petitioner by the District Superintendent of Police, Banaskantha District by this letter, dated June 27, 1968, must be set aside and it must be held that the petitioner, who was suspended because there was criminal ^{prosecution} against him and was reinstated after he was acquitted is entitled to full pay during the period of his suspension as required under the general provisions of law".

6. In view of the above, we find substance in the submissions of learned counsel for the applicant and we have no hesitation to hold that the respondents have erred in the eyes of law. Therefore, the impugned order dated 03.01.2001 is liable to be quashed.

7. In the facts and circumstances, the O.A. is allowed.

The impugned order dated 03.01.2001 (Annexure 1) passed

by respondent No. ² ~~4~~ is quashed. The respondents are

directed to treat the period of suspension from 09.02.1989

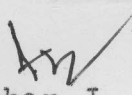
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11.12.03,

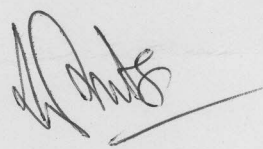
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to 23.05.1990 as on duty. They are also directed to work out the arrears which would be due to the applicant and pay the same within period of three months from the date of communication of this order alongwith an interest at the rate of 9%. The interest shall be payable to the applicant from 17.10.2001 i.e., date of filing of this O.A. to the date of actual payment.

No order as to costs.


Member-J


Member-A.

Manish/-