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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ALLAHABAD THIS THE 29TH DAY OF JULY, 2005.

ORIGINAL APPLICATION NO. 817 OF 2005.

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. D.R. TIWARI, MEMBER(A)**

T.P. Singh, aged about 45 years, S/o Sri Ratan Singh Birdi,
R/o Q. No. FT-85, Armapore Estate, Kalpi Road, Kanpur.

.....Applicant

(By Advocate : Shri R.K. Shukla)

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Department of Defence Production & Supplies, New Delhi.
2. The Secretary, Ordnance Factory Board, 10-A S.K. Bose Road, Kolkata.
3. The General Manager, Field Gun Factory, Kalpi Road, Kanpur, Respondents

(By Advocate : Sri Anil Dwivedi)

ORDER

BY MRS. MEERA CHHIBBER, MEMBER-J

By this O.A., applicant has sought quashing of the order dated 28.5.1996 whereby the General Manager has held that the applicant will not be entitled to any further pay and allowances beyond the subsistence allowance already paid



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to him for the period of suspension from 12.7.1994 to 3.3.1996. However, it was clarified that there will be no interruption in the service of the applicant for the period of his suspension i.e. 12.7.1994 to 3.3.1996 and will not count towards his increment, leave and pension etc. He has also challenged the order dated 5.5.1997 whereby his appeal has been rejected by the appellate authority on the ground that in criminal case, the applicant was acquitted by giving him the benefit of doubt.

2. It is the case of the applicant that once the applicant has been acquitted in the criminal case, he is entitled to get full pay and ^{permitted} allowances for the suspension i.e. from 12.7.1994 to 3.3.1996 by treating the same ^{as} spent on duty with all other consequential benefits for payment of arrears and grant of increment etc. The applicant has relied upon the order dated 23.7.1996 passed on the appeal of Sri R.P. Joshi, who was similarly denied the payment of full pay and allowances for the period of suspension, but after the matter was referred to the Ministry of Law, they opinioned as follows:-

"We have gone through the relevant records placed on the file. This kind of matter has been examined by the Courts including the



CAT on various occasions. Recently in 1993, the Principle Bench of CAT, New Delhi in the case of R.K. Mehta Vs. UOI examined an identical issue. The CAT very categorically observed, " if there is an acquittal, the disciplinary authority cannot probe further to find out whether the acquittal was honourable or not so honourable or whether it was on technical ground or otherwise. Therefore, it is clear that intention is that if there is an acquittal for whatever reason, it be, it has to be assumed that the suspension order only on the ground of arrest of pendency of criminal trial or appeal should be treated as unjustified for the purpose of FR 54-A."

3. He has also relied upon the judgment of the Principal Bench in the case of R.K. Gupta Vs. U.O.I. & Others reported in 2005 (1) ATJ 587, wherein this issue was also raised and considered in detail. After referring to the various judgments, it was held as under:-

" 21. From the perusal of the decision of the Metropolitan Magistrate, we are of the considered view that applicant was acquitted as sufficient evidence has not been put-forth to establish the offence. Accordingly, applicant was acquitted from the charges. This in our considered view, is an acquittal on merit. The benefit of doubt is also an acquittal on merit. What is to be seen is that if the evidence has not come-forth to establish the ingredients of offences a person is deemed to be acquitted on merit, as if not involved in the allegations of criminal offence alleged against him. This, to our considered view, is nothing but an acquittal on merit.

22. FR 54-B(3) obligates the authority to record a finding that the suspension was wholly unjustified or not? From the perusal of the orders passed on show cause notice, we find that the only consideration is that applicant is acquitted for lack of

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sufficient evidence and has been treated not to be an exoneration. This finding goes contrary to the ratio laid down by the High Court of Delhi, Punjab and Haryana as well as the Apex Court and on the face of it is not well founded and misconceived.

23. We also find that instead of applying FR 54-B(3) a resort has been made by the respondents to FR 54(4), which is misconceived in the present case, shows lack of application of mind by the respondents.

24. In the result, for the foregoing reasons, O.A. is allowed. Impugned order dated 28.5.2004 is set-aside. Respondents are directed to treat the suspension period from 23.7.1985 to 5.5.88 as duty for all purposes and in that event applicant would be entitled to all ^{retired} the consequential benefits including ~~retired~~ benefits. This shall be disbursed to applicant, within a period of two months the date of receipt of a copy of this order. No costs."

He has, thus, prayed that the same relief should also be given to the applicant as well.

4. It is seen that the applicant was arrested on 12.7.1994 and was released on bail within three days thereafter i.e. 14.7.1994. He was suspended on 12.7.1994 (page 17), which was revoked on 3.3.1996 after applicant was acquitted by the Criminal Court (page 26). The question whether there can be any difference on account of acquittal on the benefit of doubt or otherwise ~~as~~ has already been dealt with by the Principal Bench in the case of R.K. Gupta

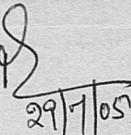


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(Supra). The detailed judgment has been given in which several citations have also been mentioned. More-over, the Ministry of Law has ^{also} given its opinion that in such cases, full pay and allowances should be given to the applicant. In this view of the matter, it would be better if this O.A. is disposed off at admission stage itself by giving direction to the respondent no.3 to reconsider the whole matter by keeping in mind the opinion of the Ministry of Law as well as the judgment ^a, quoted hereinabove, and to pass a fresh order within a period of two months from the date of receipt of copy of this order. No costs.



MEMBER-A


29/1/05.

MEMBER-J

GIRISH/-