

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 922 OF 2005

ALLAHABAD THIS THE 7 DAY OF 8 2008.

**Hon'ble Mr. A.K Gaur, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Ashok Kumar Shukla, aged about 47 years, S/o late Purshottam Chandra Shukla, resident of 287, Kendranchal Colony, Gulmohar Vihar Naubasta, Kanpur.

.....Applicant

(By Advocate: Shri H.S. Srivastava)

Versus.

1. Union of India through the Secretary Ministry of Finance, Department of Revenue, New Delhi.
2. The Chief Commissioner of Income Tax (CCA), U.P. (West Region), Aayakar Bhawan, 16/69, Civil Lines, Kanpur.
3. The Assistant Commissioner of Income Tax (Admin), U.P. (West Region), Aayakar Bhawan, 16/69, Civil Lines, Kanpur.

.....Respondents

(By Advocate: Shri Saumitra Singh)

ORDER

By Mr. A.K Gaur, Member (J)

Through this O.A., the applicant has prayed for following reliefs:-

- "(i) to issue orders/directions to the respondents to grant increments of pay due on 1st January 1999 and 1st January 2000 and regularize further increments accordingly.
- (ii) to issue orders/directions to respondents to pay full pay and allowances of suspension period after adjusting the amount of subsistence allowance paid to the applicant.
- (iii) to issue orders/directions to the respondents to promote the applicant to the grade of Daftary with effect from 23.12.2002, the day his juniors were promoted to that grade and pay full pay and allowances of that grade and place him above his juniors in the seniority list of Daftary.
- (iv) to issue orders/directions to the respondents to pay interest on the delayed payments of arrears on above accounts at the rate of 18% per annum from due date till the date of actual payment.
- (v) to issue any other order/direction as this Hon'ble Court may deem fit and proper in the circumstances of this case.
- (vi) to award the costs of the suit".

2. The brief facts of the case are that the applicant has been working as Peon in the Department of Income Tax in the office of Chief Commissioner of Income Tax. It is alleged that he was falsely implicated

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in the murder case, which was committed on 28.3.1998. The applicant was taken him custody and sent to jail and thereafter he was put under deemed suspension w.e.f 2.4.1998, which was revoked w.e.f. 30.10.2000 (Annexure A-2). After revocation of suspension order, the applicant filed an application on 16.11.2000 praying that he be granted increments of pay for January 1999 and January 2000. He also claimed arrears of pay of suspension period. The applicant vide order dated 28.9.2001 ordered that the issue of pay and allowances to be paid to the applicant for the period of suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty will be decided on the dispensation of the trial under section 302 IPC, with the further observation in the matter, the applicant is entitled for annual increment for suspension period until the issues mentioned in para (1) are decided. The applicant will, however, be allowed annual increment on due date falling after his reinstatement on the basic pay on the date of his suspension treating it as on the date of revocation of suspension. According to the applicant, he was acquitted in criminal Case NO. 988 of 1998 on 17.6.2004. The applicant submitted a copy of the judgment alongwith application dated 24.6.2004 to the respondents NO.2 with the request to regularize his increments of pay, which were due in January 1999 and January 2000 with arrears and other benefits. Several junior persons to the applicant, who were earlier working as Peon were promoted to the grade of Daftary in the pay scale of Rs. 2610-3540. The applicant also moved an application on 8.11.2004 that he may also be promoted like his juniors and annual increment may also be given to him. Applicant is further aggrieved by the order dated 10.1.2005 promoting 20 more peons, who were junior to the applicant to the grade of Daftary ignoring the name of the applicant inspite of clear acquittal of the applicant in a criminal case. According to the applicant, no adverse entry or remark has been communicated till date, nor any proceedings is pending which may render unfit for promotion. The respondents have also arbitrarily withheld his dues and promotion on the ground that an appeal has been filed against the order of acquittal of the applicant, specifically when the alleged false criminal charge was not connected with performance of official duties.

3. In the reply filed by the respondents, it is submitted that the increments of pay of suspension period and difference between full pay and subsistence allowance of the suspension period and promotion to next higher grade could not be given to the applicant in view of pendency of appeal against acquittal. A copy of letter received from A.D.M (City)

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Kanpur Nagar dated 24.12.2004 informing that appeal has been filed before the Hon'ble High Court and the same is pending. It is further contended on behalf of respondents that in the meeting of DPC held on 19.12.2002, the members of DPC decided to keep their recommendations in respect of the applicant in the sealed cover and further observed that applicant was placed under suspension due to the pendency of criminal case. As the appeal against the applicant was pending in the Hon'ble High Court, it would be deemed that criminal case was still continuing.

4. In rejoinder filed by the applicant, it has been submitted that mere filing of an appeal where no stay order has been passed by the Appellate Court, the order against which appeal has been filed will continue to remain in vogue and the respondents are bound to respect the judgment of the Court. According to the applicant, it is well settled law that unless and until the judgment is modified, set aside or quashed by the higher Courts, remains binding in all concerned and pendency of criminal appeal against the acquittal must not carry any impact upon the entitlement and the right of the applicant for his being considered for promotion.
5. Respondents have also filed supplementary reply but nothing new has been added therein.
6. It has been argued on behalf of the applicant that mere filing of an appeal where no stay order has been passed by the Appellate Court, the order against which appeal has been filed will continue to remain in vogue and unless and until the judgment is modified, set aside or quashed by the higher Courts, the order of acquittal remains binding in all concerned.
7. It has been contended by the learned counsel for the applicant that while the applicant was facing criminal charge, several promotion orders were passed promoting the juniors to the applicant and ^{1/2} series of the representations have already been filed by the applicant for promotion. In this regard, applicant submitted that since he was fully exonerated by the learned Session's Judge, his increment and pay of suspension period may be released. According to learned counsel for the applicant, it is settled view of law that Government servant deprived of promotion, on account of pendency of disciplinary proceeding is entitled to retrospective promotion, from the date his juniors were promoted, once he is acquitted by the Criminal Court.

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8. Learned counsel for the applicant has placed reliance on the decision rendered in **A.T.R 1986 C.A.T. 109, C.J. C.V. Cheema Vs. The Union of India and others**. Learned counsel for the applicant has mainly placed reliance on para 8 of the said judgment, which reads as under:-

"8. The central point which falls for consideration in this case is as to whether in the event of setting aside of the conviction by the first appellate court, the order of dismissal passed in exercise of the powers conferred on the disciplinary authority by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for brevity's sake called 'The rules'), would survive and remain valid in a case where an appeal against the acquittal has been filed in the superior court. A plain perusal of rule 9 (i) makes it plain that the sine qua non to the invoking of the said rule is the conduct of the delinquent Government servant which has led to his conviction on a criminal charge. In case the order of conviction is set aside, the very foundation of the order of dismissal disappears. As a necessary corollary to this, it would follow that the edifice built on such foundation would also fall. That being so, the impugned order would not remain valid".

9. The sole ground on which the respondents resist the application is that since Appeal against order of acquittal passed by Session Judge has been filed before Hon'ble Court, the matter is still subjudice and the case of the applicant's promotion could only be considered after the decision of the pending appeal.

10. Learned counsel for the respondents submitted that increment of pay of suspension period and difference between full pay and subsistence allowance of suspension period as well as promotion to next higher grade could not be given to the applicant in view of the fact that appeal against the order dated 17.6.2004 passed by Additional District and Sessions Judge, Kanpur has already been filed before Hon'ble High Court. Learned counsel for the applicant would further contend that issue of pay and allowances and increments for the suspension period will be decided after final outcome of the trial of offence under section 302 IPC for which the applicant was charged. As the State has filed criminal appeal against the acquittal of the applicant, the criminal trial shall be deemed to pending before Hon'ble High Court, Allahabad and as such the DPC held on 17.12.2004 has rightly decided to keep their recommendations in sealed cover following view of the DPC held on 19.12.2002.

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11. We have heard Shri H.S. Srivastava, learned counsel for the applicant and Shri Saumitra Singh, learned counsel for the respondents. The argument advanced by the learned counsel for the applicant is misconceived and the OA is liable to be dismissed on the ground that Criminal Appeal against order of acquittal is pending before Hon'ble High Court and unless it is finally decided no relief could be given to the applicant.

12. Having considered the prayer of the applicant's counsel, we may refer the decision of Hon'ble Supreme Court in the case of **Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat reported in 1997 Supreme Court Cases (L&S) 491** wherein a similar and identical situation, Hon'ble Supreme Court declined to grant relief and made following observation:-

"The only question is whether he is entitled to back wages, consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of backwages would be considered only if respondents' action was found to be unsustainable in law and unlawful prevented for discharging the duties. Since the applicant had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction".

13. In our considered view due to pendency of the appeal against the acquittal, the applicant is not entitled to the prayer as claimed. We may also quote the following decisions of Hon'ble Supreme Court:-

- (i) *N. Selvaraj Vs. Kumbakonam City Union Bank Ltd. And another reported in 2006 Supreme Court case (L&S) 1710.*
- (ii) *Baldev Singh Vs. Union of India and others reported in (2005) 8 Supreme Court Cases 747.*
- (iii) *Union of India and others Vs. Jaipal Singh reported in (2004) 1 Supreme Court Cases 121.*

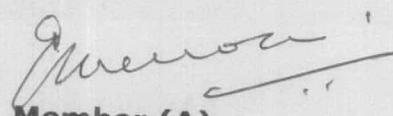
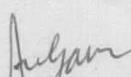
14. In the case of **N. Selvaraj** (supra), Hon'ble Supreme Court on careful consideration of the matter and materials on record including the earlier decision rendered in **Ranchhodji Chaturji Thakore** (supra) has chosen to order only reinstatement but deny backwages on the ground that the department was in no way concerned with the criminal case and, therefore, cannot be saddled with liability also for backwages for the period when he was out of service.

15. In the case of **Baldev Singh** (Supra), Hon'ble Apex Court held that merely because there has been an acquittal does not automatically entitle the employee to get salary for the period concerned. This is more so on ✓

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the logic of no work and no pay. Hon'ble Supreme Court has even gone to the extend of saying that acquittal in criminal proceeding does not imply that decision of departmental enquiry thereafter would not be justified in order to support of version.

16. Having given our anxious thought to the settled position of law, we are firmly of the view that in the DPC held on 17.12.2004, the members of DPC rightly decided to keep their recommendations in sealed cover following the view of DPC held on 19.12.2002 on the ground of pendency of criminal appeal against acquittal. We find that applicant has utterly failed to make out any case and need no interference with the orders of the passed by the respondents. We find no merit in this case and is accordingly dismissed with no order as to costs.


Member (A)
Member (J)

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