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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 382 of 1986

Jetha Nand Anand	.....	Applicant
Versus		
Union of India & Others	.....	Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. S.Zaheer Hasan, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. Jetha Nand Anand is the father of late G.P.Anand, the Turner grade 'A', Ordnance Factory Kanpur. Shri G.P.Anand died on 13.3.1981. His wife and mother also expired leaving the applicant as ~~their~~ sole heir. The applicant was paid gratuity etc. due to the deceased employee. As such he is entitled to the relief claimed before us.

2. While working as Turner the deceased employee was under suspension from 26.4.74 to 31.7.79. In this connection Bindu Prasad and T.K.Sirkar were also suspended. All these three persons were granted subsistence allowance for the period of suspension (1/2 of average pay and subsequently 3/8th alongwith compensatory allowance, House Rent Allowance and Dearness Allowance). All these three persons were involved in a murder case alongwith some other accused.

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On 3.2.1979 all the aforesaid accused persons were acquitted by the Sessions Judge and no appeal was preferred by the Government. On 24.7.1979 the General Manager revoked the suspension order of the late G.P.Anand, Binda Prasad and T.P.Sirkar. On 7.8.1979 the General Manager ordered that the period of suspension would not count towards their increments, leave and pension etc. and all these three persons are not entitled beyond the subsistence allowance and other allowances during the period of suspension. This order was passed ex parte without hearing the deceased employee and was violative of the principles of natural justice. No departmental proceedings were drawn against these persons. Several representations were made in this connection and they were rejected hence this application before the Tribunal. The applicant's case is that the order in question violates the principles of natural justice and it is also bad because they could not pass such an order under the rules. Binda Prasad filed a suit in connection with the order relating to forfeiture of Pay & Allowances during the period of suspension which was decreed on 28.4.84. On 30.5.1985 the original order of forfeiture in respect of Binda Prasad was amended and his period of suspension was treated as period spent on duty for all purposes. The case of the late G.P.Anand was also similar. No such order was passed in his case. So it is prayed that the order dated 7.8.1979 be quashed and the salary etc. due during the period of suspension after excluding

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the amount already paid be directed to be paid to the applicant and other benefits of increment and leave be also granted to the deceased employee.

3. Late G.P. Anand alongwith T.P. Sirkar and Binda Prasad was suspended in connection with a murder case. All of them were acquitted on 3.2.1979. On 24.7.1979 the suspension order in respect of all of them was revoked. On 7.8.1979 it was ordered that there will be no interruption in their <sup>services</sup> ~~witnesses~~ on account of their suspension but it will not count towards their increment, leave and pension etc. It was further directed that they will not be entitled for any further pay & allowances beyond the subsistence allowance and other allowances already paid to them. It may be noted at this stage that after the acquittal no criminal appeal was filed nor any departmental proceeding was started against them and Binda Prasad filed a suit challenging the order dated 7.8.1979 which was quashed by the Civil Court and thereafter the order dated 7.8.1979 was amended so far as the Binda Prasad was concerned and he was given all dues etc. In spite of representations made by the deceased G.P. Anand and <sup>M</sup> <sup>M</sup> <sup>M</sup> ~~others~~ the similar order was not passed in his favour. This discrimination could not be justified at the time of arguments nor there is any order justifying the same.

4. We have gone through the judgement of the learned Sessions Judge who rejected the evidence relating to motive of the crime. The learned Sessions Judge further observed that according to the prosecution

case the accused inflicted injuries with the help of knife and lathis but there are no contusion or stab wound. It was also observed that it was highly improbable that six persons could have attacked simultaneously. <sup>with weapons held by them</sup> The statement of eye witness <sup>post mortem</sup> Krishna Gopal was inconsistent with the report and the statement of P.W.4 did not inspire confidence. There was marked conflict between the medical evidence and the statements of two eye witnesses. There was material conflict <sup>in</sup> between the statements of two eye witnesses regarding the manner of assault and both of them appeared to have imaginary statements and not an ocular account. Since their statements were contradictory so the same have become suspicious and on such statements which are not above reproach and are in conflict with medical evidence, conviction of the accused cannot be based. At the end the learned Judge stated that due to various infirmities detailed in his judgement he had no option but to give benefit of doubt. In view of the above it cannot be said that it was a doubtful case. The prosecution in that case has failed to make out a case against these persons and they were acquitted.

5. <sup>case</sup> In a reported in 1986 (2) C.A.T. ATR Page 495 Shri Harnam Singh Versus General Manager, Northern Railway the following observations were made by us. When a Govt. servant is dismissed or removed from service but reinstated and such Govt. servant was under suspension prior to dismissal or removal, the competent authority is to make proper order for

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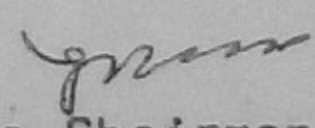
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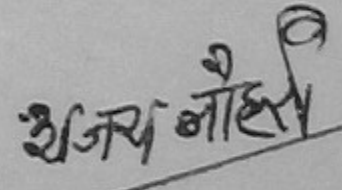
the period of his absence from duty including the period of suspension preceding his dismissal etc, ~~It was further observed that~~ <sup>and</sup> whether or not the period should be treated as period spent on duty. The contention that the applicant was acquitted only by giving the benefit of doubt so he cannot be deemed to be fully exonerated <sup>can</sup> ~~was~~ not accepted. When a person is prosecuted, ~~either~~ <sup>can</sup> on a criminal charge either he is convicted or acquitted, that is to say either he is exonerated fully or not at all, criminal law does not recognize an accused who is acquitted as not having been fully exonerated. Whenever he is acquitted because the evidence on record does not establish beyond all reasonable doubt that he is guilty of an offence of which he is charged, he stands fully exonerated of the charge levelled against him. However, if the employee is given the benefit of doubt the disciplinary authority may still think of taking disciplinary action against him because exoneration from a criminal charge does not operate as a bar to disciplinary proceedings. The disciplinary authority is also competent to take departmental action if the accused employee is acquitted after being given benefit of doubt. In that sense the acquittal of a Govt. servant by a criminal court may not by itself give him total immunity from disciplinary proceedings in a given case. But that does not imply that he was not fully exonerated by the criminal court. When the

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suspension is made only because of criminal charge which ultimately <sup>ends</sup> ~~falls~~ in acquittal and no further disciplinary proceedings are taken against the Govt. servant, he must ~~have been~~ <sup>be</sup> deemed to have ~~been~~ <sup>been</sup> fully exonerated and he is entitled to full pay and allowances, if he ~~was~~ <sup>is</sup> not suspended at all. In the case before us no disciplinary proceedings were taken and he was allowed to work. In other words, on acquittal he was treated as fully exonerated and the disciplinary authority did not think that any disciplinary proceedings were warranted. In view of the above, the order dated 7.8.1979 and the subsequent order rejecting the representation are quashed and the respondents are directed to disburse to the applicant the pay & allowances of late G.P. Anand, Turner, Ordnance Factory Kanpur for the period of suspension from 26.4.74 to 31.7.79 ~~and~~ <sup>in</sup> over and above the subsistence allowance etc. already paid alongwith other benefits of increment and leave for the said period of suspension and also give him consequential relief permissible under the rules. This order should be complied with within three months of the date of receipt of this order by the respondents. The petition is disposed of accordingly. Parties to bear their own costs.

  
Vice Chairman

  
Member (A)

Dated the 16<sup>th</sup> Sept., 1987

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