

(W)

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1143 of 1986.
(Original Suit No.587 of 1983)

Rajjan Lal Plaintiff
Vs.

Union of India and
the General Manager, Defendants.
Small Arms Factory, Kanpur

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been received on transfer from the Court of III Additional Munsif Kanpur City under Section 29 of the Administrative Tribunals Act XIII of 1985. The short point arising for determination in this case is the question of payment of the salary to the plaintiff for the period he remained under suspension in connection with a criminal charge. He was working as Machinist 'A' in Small Arms Factory, Kanpur at the time he was involved in a criminal case under Section 393/307 of the Indian Penal Code, whereupon he was suspended by the General Manager, defendant no.2, on 7.4.1975. On trial, he was acquitted by the Additional Sessions Judge on 28.4.1979 with a finding that the prosecution could not succeed in making out the case against him beyond reasonable doubt and he is entitled to benefit of doubt. The plaintiff was, thereafter, reinstated by the defendant no.2 on 28.5.1979 but he

.2.

was not paid any salary in addition to the subsistence allowance already received by him for the period of suspension and his request for such payment is alleged to have been turned down by order dated 8.5.1980 of the defendants. The suit was accordingly filed for a declaration that the said order dated 8.5.1980 is null and void and the plaintiff is entitled to his full wages for the period of suspension.

2. The suit has been contested on behalf of the defendants and it has been stated in their written statement that as the plaintiff was suspended on account of his involvement in a criminal case and he was not fully exonerated by the Court but was given benefit of doubt, as such, his suspension was not wholly unjustified and after following the procedures prescribed by Fundamental Rule 54 and Article 193 of the Civil Service Regulations, the impugned order was passed in accordance with law. No copy of the impugned order dated 8.5.1980 alleged in the plaint by the plaintiff has been produced by any party on record and it appears that the order of the nature alleged by the plaintiff was actually passed on 30.1.1980 after issuing a show cause notice to the plaintiff on 19.11.1979 as to why his pay and allowances for the period of suspension should not be forfeited. The plaintiff had submitted

12
3

his reply, which was considered and it was ordered by the defendant no.2 on 30.1.1980 that no further payment can be made to the plaintiff over and above what has already been paid as subsistence allowance. This is apparent from papers no.31-C and 32-C filed by the defendants in this case.

As the infirmity regarding the date of the ^{order &} ~~Notice~~ was not ~~taken~~ ^{up} by the defendants in their written statement and was also not raised at the time of argument before us, we will not like to attach any importance to it and will now proceed to examine the case of the plaintiff on merits.

3. There is no dispute in this case that the plaintiff was acquitted by giving a benefit of doubt in the criminal case by the trial Court as is also evident from the copy of the judgment, Exb.1, on record. In support of his contention that even in a case when the acquittal is made by giving the benefit of doubt, the suspended Government servant is entitled to his full pay for the period of suspension, reliance was placed on the Single Judge decision of ^{of} ~~Calcutta~~ High Court in Prahlaid Choudhury Vs. Commissioner of Police (1983 (46)IFLR-205) and a decision of the Principal Bench of the Central Administrative Tribunal in Harnam Singh Vs. General Manager, Northern Railway (ATR 1986(2)CAT-495). On the other hand, reliance has been placed on behalf of

.4.

the defendants on Army Headquarters letter no.A/14079/ORG 4/CIV(D) dated 17.9.1966 and it has been contended on their behalf that when a Government employee is acquitted not on the merits of the case but giving him the benefit of doubt without any positive finding as to his innocence, the employee cannot be said to have been "fully exonerated" and, therefore, the competent authority can consider the merits of the case and pass orders allowing such proportion of pay and allowances for the suspension period, as may be deemed fit.

4. We have carefully gone through the rulings relied upon by the plaintiff as well as through the letters relied upon by the defendants. In the case of Prahalad Choudhary (Supra) it was observed that an acquittal is an acquittal and suspension has no place in administration of criminal justice. When the prosecution story suffers from great improbabilities and infirmities there was no scope but to acquit him of the charge and as such, it cannot be said that the acquittal of the petitioner was dishonourable. In that case, the learned Judge of Calcutta High Court placed his reliance on rule 72 of the West Bengal Service Rule Part I which lays down that if the accused is honourably acquitted, the full pay to which he would have been entitled, shall be payable to him on his acquittal. The phrase

"honourable acquittal" does not arise for consideration in this case. On the other hand, in the case of Harnam Singh (Supra), the Principal Bench of the Central Administrative Tribunal had considered the provisions of rule 2044 of the Indian Railway Establishment Code and rule 54 of the Fundamental Rules. The said rules are applicable in the cases when railway servant dismissed from service on his conviction in a criminal case is reinstated and the question of payment of his salary and allowances arise for the period of his absence from duty including the period of suspension preceding his removal or dismissal from service. Rule 2044-B of the Indian Railway Establishment Code and Rule 54-B of the Fundamental Rules, which make provision for the payment of pay and allowances to a railway employee for the period of his remaining under suspension after his acquittal in the criminal case were also considered in that case and it was observed at page 501 that on the facts of this case, this rule (Rule 2044-B) has no application. Rule 2044-B deals with the railway servant who has been suspended and later reinstated and not with one who was dismissed from service and later reinstated on being fully exonerated. The petitioner before the Principal Bench was not a railway servant under suspension when he was reinstated. Rule 2044-B (F.R.54-B) was, therefore, not applied to that case and placing reliance on Rule 2044-B (FR 54) it was

AR
6

held that the entire period of suspension preceding the dismissal and the period of absence from duty from the date of dismissal to the date of reinstatement should be treated as on duty and the petitioner was found entitled to full pay and allowance due to him as if he had not been suspended or removed from duty at any time during that period. None of the two rulings cited by the plaintiff are applicable to his case.

5. The relevant rule applicable to the case of the plaintiff is contained in Art. 193 of the Civil Service Regulations Volume I. The relevant extract thereof is reproduced below :-

" 193. (1) to (4).....

(5)(a) When a Government servant who has been suspended is reinstated or would have been so re-instated but for his death or retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make a specific order :-

{i)....

{ii)....

{b).....

{c) Where the authority competent to order reinstatement is of opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-clause (h) be paid the full pay and allowance to which he would have been entitled had he not been suspended.

.....

{d)....

{e) In cases other than those falling under sub-clauses (b) and (c), the Government servant shall subject to the provisions of sub-clause (h) and (i) be paid such "amount (not being the whole) of the pay and allowances" to which he

would have been entitled had he not been suspended as the competent authority may determine after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period " which in no case shall exceed sixty days from the date on which the notice has been served" as may be specified in the notice.

(f).....

(g).....

(h) The payment of allowances under sub-clause (b) sub-clause (c) or under sub-clause (e) shall be subject to all other conditions under which such allowances are admissible.

(i) "The amount" determined under the proviso to sub-clause (c) or under sub-clause (e) shall not be less than the subsistence allowance and other allowances admissible under clause (1)."

6. In the instant case, the plaintiff was not removed from service but was only placed under suspension on account of his involvement in the criminal case. Article 193 will, therefore, apply to him. For the guidance of the authorities, the Army Headquarters issued the aforesaid letter dated 17.9.1966 for exercising their proper discretion in the cases covered under clause (e) of Art.193(5) aforesaid. Its relevant extract is also reproduced below :-

" (2) Questions have been raised from time to time as to how the provisions of Article 193, Civil Service Regulations should be applied in the type of cases mentioned below :-

(a)....

(b)....

(c) An officer, who is suspended on account of his arrest and detention by police on criminal charge (s), is acquitted not on the merits of case, but giving him the benefits of doubt without any positive finding as to his innocence, or on technical grounds, and is consequently reinstated in service, without any appeal against the order of acquittal being preferred.

(d)....

2. The manner in which the above types of cases should be dealt with is explained below :-

(a)....

(b).....

(c) In this case, the officer cannot/said to have been "fully exonerated" and, therefore, the competent authority can consider the merits of the case and pass orders allowing such proportion of pay and allowances for the suspension period as he may deem fit, and also pass orders whether the period of suspension shall be treated as duty for any specified purpose or purposes."

.....

7. Art.193(5) thus fully empowers the competent authority to determine after giving notice to the Government servant of the quantum proposed to be paid to him as pay and allowance in addition to the subsistence allowance already received by him during the period of his suspension on his being acquitted by the Court of law by giving the benefit of doubt. The Article 193(5) nowhere provides that in such a case, the Government servant will be entitled to his full pay and allowances. The Army Headquarters letter aforesaid further makes it amply clear that in such cases, the officer cannot be said to have been fully exonerated and the competent authority can

PN/ya

consider the merits of the case and pass orders allowing only such proportion of pay and allowances for the period of suspension as he may deem fit.

In the case of the plaintiff, he was given a notice dated 19.11.1979 (paper no.31-C) as contemplated by clause (e) of Art.193(5) of the Civil Service Regulations to show cause as to why his pay and allowances over and above what has been paid to him as subsistence allowance for the period of suspension should not be forfeited. The final order dated 30.1.1980 passed by the General Manager, defendant no.2 (paper no.32-C) further states that reply of the plaintiff to the show cause notice has been considered and no further payment can be made over and above what has already been paid to him as subsistence allowance. This order was thus passed in accordance with law. It has not been alleged that his case was not considered on merits or according to the circumstances of his case despite the benefit of doubt given to him, he was entitled to be treated as fully exonerated and the discretion exercised by the General Manager was not correct. We have, therefore, no material before us to interfere with the impugned order passed by the General Manager which otherwise appears to be a valid order.

8. The suit is accordingly dismissed but without any order as to costs.

राम जी हरि
Dated 11.3.1987
MEMBER (A)

S. Bhattacharya
11.3.1987
MEMBER (J)

Dated 11.3.1987
kkb