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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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T. A. No. 1864/87.

(W. P. No. 10620/85)

Thomas Massey Applicant.

vs.

Union of India & Others Respondents.

Hon'ble Mr D.K. Agrawal, JM.

Hon'ble Mr K. Obayya, A.M.

(By Hon. K. Obayya, AM)

The short question involved in this transferred petition received from the High Court of Judicature at Allahabad under Section '29' of the Administrative Tribunals Act, 1985 is whether the petitioner is entitled to be treated as on duty during the period 05.03.80 to 19.12.83 when he was under suspension, facing a criminal trial in the Court of Judicial Magistrate, Eastern Railway, Varanasi for alleged theft of railway property under Section 3 of the Railway Property Act.

2. The relevant facts are that the petitioner who was employed as Store Issuer in the Plant Depot, Mugalsarai, Eastern Railway was arrested on 01.08.80 on charge of theft of railway property. He was kept under suspension and the criminal case was filed against him. The case ended in his acquittal on 09.11.83. He represented to the authorities for his reinstatement and to treat the period 05.03.80 to 19.12.83 i.e. the intervening period between his suspension and reinstatement after court acquittal as on duty. This period was, however, regularised in terms of the letter dt.

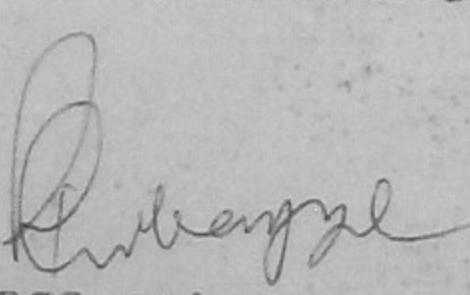
18.05.84 whereby the period of suspension from 05.03.80 to 29.11.83 was regularised as leave due, leave without pay etc. His appeal in this regard was rejected by an order dated 23.04.85 contained in Annexure-5. Aggrieved by the above order, he filed a Writ Petition in the High Court, Allahabad which has now come to us for disposal.

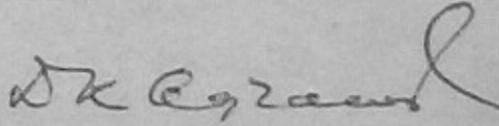
3. We have heard the learned counsel of the parties and also perused the record. The impugned orders are based on consideration that the acquittal of the petitioner in the criminal case was by giving benefit of doubt. And as such the petitioner was not entitled under the rules for treating the period of his suspension as on duty. We have carefully gone through the judgment in question. The petitioner was acquitted as the prosecution was not able to produce sufficient evidence to prove the charge. In our opinion the authorities have understood this decision erroneously by considering it as an acquittal by giving benefit of doubt. When there was no material for framing the charge, no case was made out against the petitioner. As such it is deemed to be an unqualified acquittal. The case of the petitioner undoubtedly is governed by the Railway Establishment Rule, Rule 2044-A(FR54-A) according to which where dismissal, removal and compulsory retirement is set aside by a court on the merits of the case, the intervening period between suspension and reinstatement should be treated as on duty for all purposes with full pay and allowances. This has been reiterated in the Board's Circular E-308/0/Vol.VI dt. 24.9.70.

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4. The learned counsel for the petitioner cited the case of Brahma Chandra Gupta vs. Nion of India & Others., 1984 Vol.II SCC p433. This was a similar case of reinstatement after acquittal in a criminal case and the Hon'ble Supreme Court held that since the authorities had not held that the suspension was fully justified, the petitioner was entitled for salary for the period of suspension.

5. Taking the facts and circumstances of the case, we are very clear in our mind that the petitioner is entitled for the benefit of Rule 2044 & Rule 100 of the Railway Establishment Code and since he was acquitted in a criminal case, he is entitled to be considered as on duty for the period he continued to be under suspension till his reinstatement. In this view of the matter, the impugned orders are liable to be quashed and accordingly we quash the orders dt. 18.05.84 and 23.04.85 (Annexure 3 & 5). The claims of the petitioner for his salary and other benefits for the period 05.03.80 to 19.12.83 should be settled deeming him to be on duty; within a period of three months. The petition is allowed as above. Parties to bear their costs.


MEMBER (A)


MEMBER (J)

November 13, 1990.
Allahabad.

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