

**(RESERVED)**

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the 10<sup>th</sup> day of Meer, 2010

Present:

**HON'BLE MR. A. K. GAUR, MEMBER- J**

**HON'BLE MR. D.C. LAKHA, MEMBER- A**

**ORIGINAL APPLICATION NO. 1100 OF 2003**

Shri Krishna Balmiki Son of Sri Murlidhar Balmiki, resident of C.I.T./133, Armapur, District Kanpur Nagar.

.....Applicant.

**V E R S U S**

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Senior General Manager, Ordinance Factory, Kalpi Road, Kanpur Nagar.

.....Respondents

Present for the Applicant:

Sri B.N. Rai

Sri A. Kumar

Present for the Respondents:

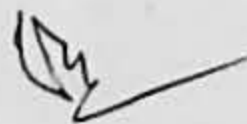
Sri N. C. Tripathi

**ORDER**

**(DELIVERED BY HON'BLE MR. D.C. LAKHA A.M.)**


This OA has been preferred to seek the following reliefs

- "(i) The applicant prays for quashing of the order dated 28.2.2003 and its publication dated 15.5.2003 Annexure No.6 and 7 of compilation No.1.***
- (ii) It is further prayed that the respondents be directed to pay the full pay and allowances of the suspension period w.e.f. 14.12.1998 to 4.7.2002 and the said period be treated as on duty."***



2. The facts of the case are as under :


The applicant is an employee of Ordnance Factory. An FIR in case Criminal No.100/98 was lodged against the applicant under Section 147, 323, 504, 506, 452 and 427 I.P.C. He was granted Bail on 15.12.1998 by the Competent Court. Suspension order dated 30.12.1998 (Annexure-1) in Compilation No.2 was passed on the ground of his involvement in the above criminal case. During the period of suspension his subsistence allowance was reduced by an order dated 4.5.2000. This order was challenged by the applicant in OA No.843/2000 which was partly allowed by the Hon'ble C.A.T. vide its order dated 2.8.2001 (Annexure-3 to Compilation No.2). The applicant was acquitted vide order dated 7.1.2002 by the Trial Court since the prosecution could not produce any evidence in support of the case. The copy of the order of acquittal is marked as Annexure-4 to Compilation No.2. Thereafter the General Manager reinstated the applicant on his post on 24.6.2002 (Annexure-5 to Compilation No.2). No order regarding pay and allowances of the applicant for the period of suspension was passed by the competent authority. The applicant moved a written request for the payment of his salary and other allowances for the suspension period which has been rejected by respondent No.2 vide his order dated 28.2.2003 (Annexure-6 to the Compilation No.1) on the ground that the applicant was acquitted of the criminal charges only on the basis of the benefit of doubt. The order has been issued by way of publication dated 15.5.2003 (Annexure-7 to the Compilation No.1). In this OA the applicant has challenged this order dated 28.2.2003 and its Publication dated 15.5.2003 i.e. Annexure 6 & 7 respectively.





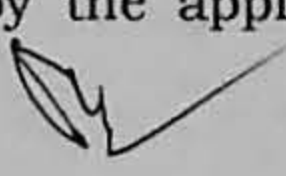
The applicant has taken the ground that the suspension was ordered only on the basis of the FIR and not in any other disciplinary proceedings. Since in the criminal case involving him in the FIR, he was acquitted so he is entitled to full pay and allowances of the suspension period. The order dated 28.2.2003 has been passed without application of mind by the concerned authority. The applicant has also taken the ground that in the criminal case no charge was proved against him for want of evidence from the prosecution side, hence, he was acquitted. The Senior General Manager passing the order dated 28.2.2003 has misconceived the order in the criminal case and only on that basis he has passed the order stating that the applicant is not entitled for payment of any other pay and allowances except subsistence allowance for the suspension period. The applicant has sought quashing of this order.

3. On notice the counter reply has been filed on behalf of the respondents. The official status of the applicant and the fact of FIR and criminal proceeding and the order passed therein by the criminal court are admitted by the respondents. It is added in the counter reply that the applicant put up the representations dated 31.7.99, 28.8.99, 28.9.99 and 28.10.99 intimating the developments in the criminal case stating that police had not yet framed the charge sheet. The enhancement of the subsistence allowance payable to the petitioner was being reviewed by the competent authority. In the meantime, Shri Ram Bali Ram, T.No.102/MM an employee of Small Arms Factory, Kanpur intimated that the applicant had sent a letter to him on his Union's pad for withdrawal of the criminal case. In the letter the petitioner further stated that in case Shri Ram Bali Ram does not withdraw the case, he would have to be ready to face the dire





consequences. The criminal case No.100/98, as stated in the OA also, was lodged by Shri Hanuman S/o Ram Bali Ram. In view of the gravity of the criminal case and on the basis of other circumstances evident on record, while carrying out the periodical review of suspension case, the disciplinary authority reduced the subsistence allowance payable to the petitioner by 25% (Annexure-2 to the OA). On being requested the S.S.P. Kanpur vide his letter dated 21.8.2000 intimated that police has submitted the charge sheet in both the cases. Later on the applicant approached the Hon'ble C.A.T. challenging the order of reduction of subsistence allowance. In compliance of the order of the Tribunal, the order of reduction of suspension allowance was cancelled. Thereafter, the suspension of the applicant was revoked w.e.f. 24.6.2002 vide order No.1207/SD/Vig dated 24.6.2002 after his acquittal on benefit of doubt in Criminal Case vide judgment dated 7.1.2002 and he was allowed to resume his duty w.e.f. 5.7.2002 as notified in the letter dated 1.8.2002. In order to afford an opportunity to represent his defence the applicant was served with a show cause notice dated 12.7.2002 proposing to regularize the suspension period from 14.12.1998 to 4.7.2002. Copies of the order dated 24.6.2002 revoking the suspension order is marked as Annexure-CA-5 and copy of the show cause notice dated 12.7.2002 is marked as Annexure-CA-6 to the counter reply. The applicant submitted his written statement of defence dated 23.7.2002 (Annexure-CA-7) which was duly considered by the concerned authority. Since the applicant was charged in the criminal case and his acquittal was only on the basis of "benefit of doubt", his statement that he was implicated falsely could not be treated trustworthy. After due consideration on the reply to the show cause notice given by the applicant the order dated

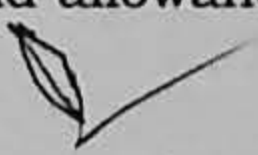




28.2.2003 was passed that the suspension of the applicant from 14.12.1998 to 4.7.2002 was justified for which the applicant is not found entitled for pay and allowances except the subsistence allowance for the period paid to him. The order has been passed taking in view the provisions under the rules and the circumstances in the case.

4. In the rejoinder affidavit the applicant has added that the suspension order was passed merely on the instructions of S.S.P. Kanpur Nagar without application of mind by the competent authority. Hence the same is not legally tenable and reasonable.


5. We have perused the pleadings in the file along with all documents and Annexures and also have heard the learned counsels of both the parties. Learned counsel for the respondents has also made his written submission. In support of the averments made in the OA, the learned counsel for the applicant has contended that the criminal case was fabricated against the applicant because the applicant was having enmity with the civil police authority. It is merely on the basis of the false criminal case that the suspension order has been passed against which the applicant has been requesting the Senior General Manager, Ordnance Factory Kanpur to constitute a departmental enquiry but his request was never accepted. It is also argued by the learned counsel for the applicant that since the applicant was acquitted from the Criminal Court he should be deemed to be entitled for payment of arrears, pay and allowances other than the subsistence allowance. Since the period of suspension has already been regularized and accepted as part of the service the payment of salary and allowances should also be allowed.





Learned counsel for the respondents would contend that the case of the applicant is covered under Sub Rule 5 and 9 of FR 54-B read with Rule 53 because he was acquitted from the Criminal charges under Section 147/323/324/504/427 and 325 IPC only on the basis of "benefit of doubt". Learned counsel for the respondents has also contended that the disciplinary proceedings and criminal proceedings are distinct and independent of each other and the outcome of the criminal proceedings does not influence the disciplinary proceedings in totality. During the period of suspension the applicant did not work for the department, therefore, the principle of "No Work No Pay" is fully applicable in this matter. Hence the salary and allowances, except subsistence allowance have correctly been disallowed to the applicant.

6. We have given thoughtful consideration to the pleadings and arguments of both the parties in view of the averments made in the OA and counter reply supported by other documents. It is clear from the impugned order dated 28.2.2003 (Annexure-6 to Compilation No.1) that the matter has been dealt with by the Senior General Manager taking in view all the facts of the case and the claim of the applicant under Sub Rule 3&8 of FR 54-B has not been accepted. The reasons for the same are also quite clear from the perusal of this order. It is stated in the order that the case is covered under Sub Rule 5 and 9 of FR 54-B read with FR 53 because the applicant was involved in the criminal charges in which the Competent Court has passed the order of acquittal on the basis of the "benefit of doubt" only. There is no cogent and reasonable evidence adduced by the applicant to prove his alleged enmity with the police leading to the



fabricated criminal case against him. Thus we find no wrong in this order and the same is observed as legally tenable.

7. In the light of above observation the OA deserves to be dismissed. There is no case warranting any interference in the order dated 28.2.2003 and 15.5.2003. Accordingly the OA is dismissed. No order as to costs.

  
Member-A

  
Member-J

RKM/