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Sripati Satapathy,
Son of Narasingh Satapathy,
At present working as
Postal Assistant,
Phulbani Head Post office,
P.O./Dist- Phulbani.

... .. Applicant

1. Union of India represented by its Secretary, Department of Posts, Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle, At/P.O. Bhubaneswar, Dist-Puri.
3. Superintendent of Post Offices, Phulbani Division, P.O. and District-Phulbani. Respondents

For Respondents- Mr. A.B.Mishra, Senior
Standing Counsel(Central).

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

J U D G M E N T.

B.R. PATEL, VICE-CHAIRMAN.

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs :

- i) A direction be issued to the respondents to give all the benefits of salary and other emoluments covering the period from 22.2.1982 till 17.8.1984 ; and
- ii) to give similar benefits for the period from 19.6.76 till 21.2.82 when he was placed under suspension.

2. The facts of the case, in brief, are that while the applicant was working as Postal Assistant under the Postal Department at Phulbani he was suspended on 9.6.76 because of his alleged involvement in a criminal case. The criminal case was tried and the applicant was convicted on 19.1.82. He carried an appeal against the order of conviction and the learned appellate court acquitted him on 19.9.83, and he has since been reinstated in service. While reinstating the applicant no order was passed as to how the period of suspension should be treated. However, in the office memo. No.F-3/1/76-77/Ch.VI dated 23.3.84 it was decided that the applicant should be deemed to be under suspension with effect from 22.4.82 as it was proposed to initiate a departmental proceeding against the applicant. The order contained in this office memo. was challenged by the applicant before the Hon'ble High Court of Orissa which formed the subject matter of O.J.C.No.1445 of 1984 which came on transfer to this Bench under section 29 of

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the Administrative Tribunals Act, 1985 and was registered as Transferred Application No. 353 of 1986. This Bench vide its judgment dated 28.9.88 quashed the order placing the applicant under suspension ^{dated 22.2.82} ~~dated 22.2.82~~. Thereafter the Department treated the period from 22.2.82 to 17.8.84 as duty for all purposes, but no order was passed for the period from 19.7.76 to 21.2.82. The applicant made a representation dated 17.11.88 (Annexure-2) but there was no order on his representation. Instead, the Department issued an order vide Annexure-R-II treating the period from 19.6.76 to 21.2.82 as suspension. This order is being challenged in the present application.

3. The respondents in their counter have taken a stand that the applicant did not secure a clean acquittal and as such the previous period of his suspension from 19.6.76 to 21.2.82 was regularised as suspension according to sub-rules (4) & (5) of rule 54 of the Fundamental Rules vide order dated 28.2.89 (Annexure-R-II). They have further pointed out that the service of the applicant from 22.2.82 to 17.8.84 were regularised as on duty vide Memo No. B-2-1(a)/Part-I(Sub) dated 8.11.88 (Annexure-R-I). As the earlier period of suspension has been treated as such under the Fundamental rules referred to above, according to the respondents, the applicant is not entitled to any further relief and as such the application should be dismissed.

4. I have heard Mr. R.N. Naik, the learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing

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Counsel for the Central Government. Mr. Naik has contended that there is no concept of 'honourable acquittal' in a criminal case and whatever may be the ground on which an accused is acquitted, the benefit of acquittal should go to him. In this connection he cited a judgment of the Calcutta Bench reported in 1988 ATC Vol-8 page 483 (Sahabuddin Sk. v. Union of India and others) and contended that no distinction could be made whether an acquittal was on technical grounds or on merits. The facts of that case were that the applicant who was a railway employee was arrested by the police on a criminal charge and as a consequence thereof, he was placed under suspension, but the applicant and other co-accused persons ^{were} ~~was~~ discharged from the criminal case. Thereafter the order of suspension was revoked and the applicant was allowed to resume duties, but he was not allowed arrears of pay etc. for the period he was placed under suspension. The competent authority held that as he was under suspension for being criminally involved and he was subsequently discharged owing to some technicalities and not on merits of the case, he would be entitled to full pay and allowances to the extent of the leave due to his credit. The applicant had challenged that the order was violative of the principles of natural justice. The short point to be decided in that case was whether on being discharged from the criminal charge, the applicant can get his full pay and allowances for the period of his suspension. The Bench held that-

" considering the facts and circumstances of the case and the law on the point we feel inclined to accept the applicant's contention."

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In paragraph-6 of their judgment, the Bench held as follows :

"6. Now, the question is even after such discharge whether on merits or on technical grounds the respondents had any authority to decline payment of full pay & allowances to the applicant. The answer would obviously be in the negative. Para 2044 of the Railway Establishment Code, Vol-II does not authorise the respondents to classify the persons discharged from a criminal case in that way. The fact remains that when a person is discharged from a criminal case by a competent Magistrate the period he was placed under suspension should be treated as period spent on duty and after his reinstatement he must get his full pay & allowances for the period he was kept under suspension on the only ground of his criminal involvement."

Citing a judgment of the Calcutta High Court in the case of Jatindranath Mondal v. State of West Bengal reported in AIR 1969 Cal 461 where the High Court held that on the discharge of a delinquent in a criminal case, the delinquent shall be deemed to have been reinstated and 'he shall be deemed to be entitled to recover full salary and allowances during his period of suspension', the Bench observed as follows :

" We find that the said decision is quite sound and acceptable by us. We rely on that decision and making our own finding hold that the applicant is entitled to get his fully pay & allowances for his period of suspension, i.e. from 24-10-1984 to 21-10.1985."

The Bench further held that the respondents have no authority to adjust the said period of unintentional absence of the applicant against the leave due to his credit. Mr. A.B.Misra contended that the case before the Calcutta Bench was distinguishable, in that there was no trial and the applicant along with other co-accused persons ^{was} ~~were~~ discharged after

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investigation as no criminal charge could be made out against them. Whereas in the present case, the applicant was acquitted on being given benefit of doubt after a regular trial. The contention of Mr. Misra is beside the point. The real question is whether an employee should get full pay and allowances during the period of his suspension which was caused by his involvement in a criminal case. Whether he was discharged after investigation by the police or after a thorough trial by a court, or whether the discharge or acquittal was on merits or on technical grounds, is immaterial.

5. Mr. Naik also cited a judgment of the Punjab High Court in the case of Jagmohan Lal v. State of Punjab through Secy. to Punjab Govt. Irrigation and others reported in AIR 1967 Punjab 422 and contended that even if one was acquitted on the ground of benefit of doubt, full wages for the period of suspension should be given. This judgment deals with suspension of a Govt. servant during criminal proceedings which resulted in acquittal on benefit of doubt. It has been held that the employee is entitled to full pay and allowances during suspension. This conclusion was based on the interpretation of Rule 7.5 of the Punjab Civil Service Rules. This rule deals with suspension during pendency of criminal proceedings etc. and reads as follows :

" 7.5. A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as

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under suspension for any periods during which he is detained in custody or its undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such period should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

The Hon'ble Single Judge interpreted this rule as follows :

" There is no doubt that the rule contemplates the payment of the full amount only in the event of the officer being acquitted of blame."

and further held that-

" ... In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged', or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. ..."

(underlining is for emphasis)

The learned Judge has further held -

" It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

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Mr. Naik has also cited a judgment of Madras High Court reported in AIR 1960 Madras 325 (Union of India v. Jayaram Damodhar Timiri). This judgment has also been referred to by the Single Judge of the Punjab High Court in the aforesaid case. In para-5 of his judgment, the Single Judge has stated as follows :

"5. The Madras High Court also in the Union of India v. Jayaram Damodhar Timiri, AIR 1960 Mad 325, has taken the same view. It has been observed, "There is no conception like 'honourable acquittal' in Criminal Procedure Code. The onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted. Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated, he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) of the Civil Service Regulation does not apply."

Though the above observation has been made in the context of Rule 7.5 of the Punjab Civil Service Rules, the observation in the judgments of both Punjab and Madras High Courts in the matter of acquittal is fully applicable to the present case. In other words, the applicant should not be denied full pay during the period of his suspension, on the ground that he was given the benefit of doubt or that his acquittal was not honourable or clean.

6. Mr. Naik has further urged that initiation of departmental proceedings on some allegations which formed the criminal case cannot revive the ^{old} ~~whole~~ order of suspension and that a fresh order of suspension is necessary. In this connection, he referred to the judgment of the Calcutta High Court reported in AIR 1969 Cal 461 (Jatindra Nath Mondal

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v. State of West Bengal and others). In that case the petitioner who was a Revenue Officer faced a criminal case for breach of trust and cheating etc. as a result of which he was suspended by the order of the Collector, Malda. During the pendency of the criminal case, departmental proceedings were also instituted. The petitioner was discharged in the criminal case and took the plea that the order of suspension spent its force on the day he was discharged in the criminal case. His plea was that the respondents be restrained from giving effect to the impugned order of suspension and to direct them to pay to the petitioner the arrears of his full salaries and allowances from the date he was placed under suspension. In para-9 of that judgment, issues have been formulated as

follows : " In the circumstances, there is no alternative than to accept the petitioner's case that -

- (a) (i) On the date of suspension, there was no departmental proceeding pending against the petitioner;
- (ii) The order of suspension was made simultaneously with, and on account of, the institution of the criminal case on a charge of misappropriation.
- (iii) Ann. B shows that the said criminal case ended with the discharge of the petitioner on 22-9-1965.
- (b) What then should be the effect of the termination of the criminal case upon the impugned order of suspension ?"

Paragraph-10 of the judgment furnishes the answer to this question as follows :

"10. The answer has been clearly given by the Supreme Court in cases such as Om Prakash v. State of U.P., (1955) 2 SCR 391= (AIR 1955 SC 600) and other cases as follows :

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(a) Where a Government servant has been suspended pending a criminal investigation or trial, the order of suspension automatically ceases to be operative as soon as the criminal proceedings terminate by an acquittal or discharge of the Government servant.

(b) Immediately after such acquittal or discharge in the criminal case, therefore, the delinquent should be deemed to have been reinstated and is accordingly entitled to recover his full salary and allowances since the date of suspension. In such a case, no question of application of F.R.54 of the Fundamental Rules(or any other similar Rule) also does arise because that Rule applies when a Government servant is acquitted in a Departmental proceeding (Raghava Rajagopala v. State of Assam, AIR 1965 Assam 109; Devendra v. State of U.P., AIR 1962 SC 1334 (1337)).

(c) Of course, notwithstanding the acquittal or discharge of the delinquent Government may initiate or continue departmental proceedings against the delinquent on the same charges upon which the criminal case had been brought (Partap Singh v. State of Punjab, AIR 1964 SC 72).

(d) But the initiation or continuance of departmental proceedings on the same allegations cannot revive the old order of suspension which had expired, by operation of law, with the termination of the criminal proceedings; hence, if the Government intended to keep the delinquent under suspension pending the disposal of the departmental proceedings, after the termination of the criminal case, a fresh order of suspension has to be made by the Government, (AIR 1962 SC 1334, *ibid*.) except where there are statutory Rules providing for an automatic revival and continuance of the old order of suspension (*ibid*; Khem Chand v. Union of India, AIR 1963 SC 687). "

In paragraph-13 of their judgment, the Calcutta High Court held as follows :

"13.(i) The result is that the petitioner shall be deemed to be reinstated as soon as the order of discharge in the criminal case was made on 22-9-1965, so that he is entitled to his full salary and allowances since 22-9-1965 onwards, so long as another valid order of suspension is not made."

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Relying on this judgment, Mr. Naik has urged that the sub-rules (4) and (5) of Rule 54 of the Fundamental Rules do not apply to this case as these sub-rules apply only to the cases of departmental proceedings and not to criminal cases. Mr. A.B.Misra, on the other hand, contended that as departmental proceedings have been initiated, it should be deemed suspension and Rule 54 (4) of the Fundamental Rules will come into play. Sub-rules (4) and (5) of Rule 54 of the Fundamental Rules read as follows :

| | | |
|--------------|-----|---|
| "F.R.54. (1) | x x | x |
| (2) | x x | x |
| (3) | x x | x |

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of (clause(1) or clause(2) of Article 311) of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such (amount (not being the whole) of the pay and allowances) to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, 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.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension proceeding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose :

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Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant."

Basing on the decision of the Supreme Court and the judgments of some other High Courts, the Calcutta High Court has decided in the case of Jotindra Nath Mondal v. State of West Bengal and others (supra) that sub-rule (4) of Rule 54 of the Fundamental Rules applies only to cases of departmental proceedings and not to criminal proceedings. I am in respectful agreement with the decision on this point of the Calcutta High Court in the aforesaid case and hold that sub-rules (4) and (5) of Rule 54 of the Fundamental Rules do not apply to this case and as such the order contained in Memo No. B-2-1(a)/Part-I(Sub) dated 28.2.89 passed by the Superintendent of Post Offices, Phulbani (O) Division, Phulbani, a copy of which is at Annexure-R-II is hereby quashed. I also agree with the Calcutta Bench of the Central Administrative Tribunal in their views expressed in the case of Sahabuddin Sk. v. Union of India and others (supra) that the Department has no authority to decline payment of full salary and allowances to the applicant on the ground that the acquittal of the applicant in the criminal case has not been clean or honourable. As has been held by the Madras High Court in the case referred to above, there is no concept of 'honourable' or 'clean' acquittal and once an employee is acquitted or discharged whether on merits or on technical grounds, he should not be denied



the benefit of such acquittal. Moreover, the period of suspension of the applicant from 22.2.82 to 17.8.84 has been treated as duty for all purposes and there is no reason why the previous period should not be similarly treated as on duty. It is, therefore, hereby directed that the applicant should be given full pay and allowances for the period of suspension from 19.6.76 to 21.2.82, and the balance be calculated and paid to him within three months from the date of receipt of a copy of this judgment. Since the department has already treated the period from 22.2.82 till 17.8.84 as on duty for all purposes vide Annexure-1, the applicant is entitled to full salary and other allowances (emoluments) for this period and the arrears of this period should be calculated and paid to him, if it has not already been paid, within three months.

7. Thus the application is allowed, leaving the parties to bear their own costs.



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VICE- CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
The 31st July, 1989/ Jena/ SPA.