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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.123 of 2009

Indra Prakash ..... Applicant  
Versus  
Union of India & Ors ..... Respondents  
.....

Order dated : 12.08.2011

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....

Respondents filed their counter opposing the prayer sought by the Applicant in this Original Application i.e. (i) to quash the order of the Disciplinary Authority under Annexure-A/5 dated 18.9.2006, (ii) to quash the order of the Appellate Authority under Annexure-A/7 dated 30.10.2008 and (iii) to direct the Disciplinary Authority (Respondent No.2) to pass revised order treating the period of suspension of the applicant from 27.4.1996 to 13.4.2006 as spent on duty entitling him to full pay and allowances minus the subsistence allowance already received by him.

2. According to the Respondents, consequent to the detention of the Applicant in judicial custody in connection with ST case No. 67/39 [out of Chandrasekhapur PS Case No.25/27 Arms Act/GR No. 985/96], in exercise of the power conferred under sub rule (2) of Rule 10 of CCS(CC&A) Rules, 1965, the applicant was placed under suspension

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w.e.f. 27.4.1996 vide order dated 13.5.1996. The said order of suspension of the Applicant was reviewed as per rules and was extended from time to time. The Learned CJM, Khurda by order dated 21.3.2006 acquitted the applicant from the criminal charges beyond all reasonable doubts on the ground that the prosecution failed to establish the charges levelled against the applicant u/s.294/342/307/34 IPC. Consequent upon his acquittal in the criminal case, the applicant was reinstated into service vide order dated 13.09.2006. But the period of his suspension from 27.4.1996 to 13.09.2006 was treated as non duty for all purposes. Appeal was preferred under Rule 23 of CCS (CC&A) Rules, 1965. The Appellate Authority rejected the appeal of the applicant. The contention of the Respondents is that as per the guidelines, full pay and allowances is admissible in the case where a Government servant is reinstated after being honourably acquitted in the criminal case. But where the acquittal is not on merit and/or the employee is not acquitted on merit, it is left to the authority ordering reinstatement to determine from the circumstances of each case whether the acquittal by a court of law should be taken to mean exoneration on merits or not. In the instant case the applicant having been acquitted of the

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criminal charges due to failure on the part of the prosecution to provide available records/evidence in support of the charges beyond all reasonable doubts it cannot be taken to mean that the applicant was honourably acquitted of the criminal charges. Thus the order dated 18.9.2006 under Annexure-A/5 of the OA passed by the Disciplinary Authority disallowing the applicant's pay and allowance for the suspension period does not suffer from any illegality/shortcomings for which it was upheld by the Appellate authority.

3. From the above, it is to be examined whether acquittal of the applicant from the criminal charge on the ground that the prosecution failed to establish the charges levelled against him beyond all reasonable doubt can make him eligible/entitled to receive the full pay and allowances during the period of suspension; in other words whether his acquittal can be treated as honourable acquittal. In this connection we have heard the rival submissions of the parties and perused the materials placed on record.

4. Admittedly no disciplinary proceedings were initiated against the applicant. On examination of the impugned orders it is found that the order of the disciplinary authority is cryptic as no reason has been

assigned as to why the period of suspension of the applicant was required to be treated as non duty. The Appellate Authority has tried to justify the order passed by the Disciplinary Authority but while doing so he failed to make any discussions on the reasons of allowing the applicant to continue under suspension for such a long period i.e. from 27.4.1996 to 13.09.2006. For the purpose of taking a decision on the entitlement of the applicant to the wages during the period of suspension, it is relevant to quote the relevant portion of the observation of the Hon'ble Apex Court in the case of G.M.Tank v Union of India and others, 2006 (4) SLR (SC) 10. It reads as under:

“...The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilty alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

5. By applying the aforesaid decision the Division Bench of this Tribunal had quashed the order of punishment in OA No. 851 of 2005 disposed of on 26<sup>th</sup> September, 2007 (Raj Kumar Bag v UOI & Ors.). The said

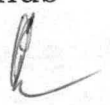
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order of this Tribunal was challenged by the Respondent-Department in WP ( C ) No. 1130 of 2008 before the Hon'ble High Court of Orissa on the ground that the Tribunal ought not to have allowed the case of the Applicant when the applicant therein was acquitted on benefit of doubt as the prosecution miserably failed to prove its case against the accused beyond all reasonable doubt. The Hon'ble High Court of Orissa dismissed the said Writ Petition upholding the order of this Tribunal.

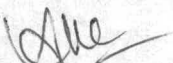
6. The judicial pronouncement, in the instant case was only after a regular trial and on hot contest. On examination of details, the court came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is the department which allowed the applicant to continue under suspension for such a long time apparently awaiting the decision in the criminal case. Hence, once he is exonerated the Respondents would not have denied him wages especially in absence of any disciplinary proceedings to justify long continuance of the order of suspension.

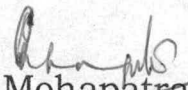
7. The ratio in the above decisions when telescoped upon the facts of this case and in view of the unreasoned order of the Appellate Authority the irresistible conclusion would be that there has been miscarriage of justice caused to the applicant in the decision making process of the matter which needs reconsideration. The Applicant seeks to quash the order of the Disciplinary Authority in Annexure-A/5 and the order of the Appellate Authority under Annexure- A/7. The Disciplinary Authority in Annexure-A/5 while ordering reinstatement of the applicant has ordered to treat the period of suspension of the applicant as non duty for all purposes which order the applicant seeks to quash and if it is done then it would amount to restoring the position of the applicant as he was prior to the order under Annexure-A/5. Since the very ~~essence~~ <sup>essence</sup> and purpose of the applicant is to declare the order treating his period of suspension as non duty illegal, we quash the order under Annexure-A/7 and remit the matter back to the Appellate Authority to reconsider the matter afresh keeping in mind the discussions made above in a reasoned order and communicate the same to the Applicant. The entire exercise shall be completed within a period of 120 days from the date of receipt of copy of this order. In the result, this OA stands



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allowed to the extent stated above. There shall be no order  
as to costs.

  
(A.K. Patnaik)  
Member (Judl.)

  
(C.R. Mohapatra)  
Member (Admn.)

