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**M.A. No. 71/09**  
**(Arising out of O.A. No. 35/09)**

ORDER DATED 25<sup>th</sup> FEBRUARY, 2009


Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)  
Hon'ble Mr. C.R. Mohapatra, Member (A)

Heard Mr. D.P. Dhal, Ld. Counsel for the Applicant and Mr. S.K. Ojha, Ld. Counsel for the Respondents on M.A.71/09 seeking recall of the order dated 29.01.09 passed by this Tribunal dismissing this O.A for default. The reasons assigned therein, are convincing. Accordingly, we recall our order dated 29.01.09 dismissing the O.A. for default and in effect, the O.A is restored.

M.A.71/09 is disposed of accordingly.

MEMBER (A)

  
MEMBER (J)

**O.A. No. 35/09**

Heard Mr. D.P. Dhal, Ld. Counsel for the Applicant and Mr. S.K. Ojha, Ld. Counsel for the Respondents on the question of admission.

2. The applicant presently working as sweeper in the Medical Department of South-Eastern Railway, Jharsuguda has filed this O.A praying that his

  
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suspension period from 06.03.92 to 26.04.06 be regularized with consequential service benefits with interest. The brief facts for filing this O.A are as follows:-

While the applicant was working as Sweeper, a criminal case had been registered against him as G.R. Case No.161 of 1992 (Trial No.143 of 2007) offences under Sections 326/323/34 of Indian Penal Code. In connection with the above case, the Divisional Medical Officer, South Eastern Railway, Jharsuguda placed the applicant under suspension as per Annexure-A/1 order dated 16.03.92. However, subsequently, the suspension order had been revoked and the applicant was reinstated in service as per order dated 26.04.06. While the matter stood thus, as per order dated 09.10.2007 passed by the Judicial Magistrate First Class, Jharsuguda, in Trial case the applicant has been acquitted with the finding that the criminal case registered against him was a mistake of fact and that there was no evidence against the applicant. In the light of the above order passed by the Trial Court, the applicant has claimed that he is entitled for regularization of entire period of suspension and also all service benefits including the wages from the date of suspension till his reinstatement to service. In this regard, the applicant has filed Annexure-A/5 representation and sent a legal notices to the Divisional Railway Manager, South Eastern Railway and also the Divisional Personnel Officer South Eastern Railway. However, since his



representation having not been responded, the applicant has filed the present Original Application seeking the relief as referred to above.

3. The case of the applicant is that though a criminal case had been registered against him he was not arrested by any police officer, even though as per Annexure-A/1 order, he was suspended from service as per Schedule-I, II & III of the Railway Employees Disciplinary and Appeal Rules 1966 read with Proviso 51 of the Railway Servant (Disciplinary and Appeal Rule 1968). However, since the suspension order has been revoked by Respondent No.4, the Divisional Medical Officer South Eastern Railway on 26.04.06 the applicant is entitled for regularisation of the entire suspension period till his re-instatement in service. The further contention of the Counsel appearing for the applicant is that as per Fundamental Rule 53 (Paragraph 1342 of the Railway Establishment code read with Volum-II and also Rule 5 under Sub-rule 3 & 4 of the Rule 5 of the Railway Servant Disciplinary and Appeal Rules 1968 read with the Rule 54 of the Fundamental Rules, it is the discretion of the authority to consider the case arising under such circumstances, whether a Govt. servant acquittal by a Criminal Court after trial is entitled to regularize of the period in between suspension and revocation of the suspension. Hence, according to the Ld. Counsel, the Respondents are callous towards the applicant.

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4. Resisting the above contention the Ld. Counsel appearing for the Respondents, Mr. S.K. Ojha, contended that it is left to the discretion of the authority to consider the case of the applicant, provided that the applicant has been honorably acquitted and not otherwise. It is the further case of the Respondents that a disciplinary action has already been initiated against the applicant in view of the criminal case and trial thereof against the applicant which is still pending.

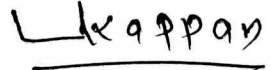
5. On anxious consideration of the contentions raised before us, we are of the view that the applicant is justified in approaching this Tribunal by filing this O.A. The applicant was suspended vide Annexure-A/1 order dated 16.03.1992 in contemplation of disciplinary proceedings due to criminal case against the applicant. However, he was reinstated in service on 26.04.06. Subsequently, the criminal case also ended with acquittal by the trial court. In the above circumstances it is the duty of the Respondents to consider the case of the applicant in the light of the Rules relating to the treatment of the period from the date of suspension till his reinstatement matter. The applicant though has filed Annexure-A/5 series, it is seen that these representations are addressed to the Divisional Railway Manager, the Chief Medical Superintendent and the Divisional Personnel Officer, other than appointing authority or the suspending authority, i.e. the Respondent No.4, i.e. the Divisional Medical Officer, South eastern

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Railways. Hence, we direct, the applicant to file a detailed representation to Respondent No.4 with copy to the DRM, within 30 days of the receipt of the copy of this order. Respondent No.4 is also directed to consider and dispose of the said representation, if filed by the applicant, as directed by this Tribunal, within 60 days from the date of receipt of the representation, with a reasoned & speaking order. The applicant is at liberty to move this Tribunal, if he feels aggrieved, by the order passed by Respondent No.4, as directed above.

6. With the above direction, this O.A is disposed of at this stage of admission. No costs.

  
MEMBER (A)

  
MEMBER (J)

K.B.