

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 291/1997

DATE OF DECISION : 22.08.2000

Madhav Singh .. Petitioner

Mr. Vijay Mehta .. Advocate for the Petitioner (s)

Versus

Union of India & Ors. .. Respondent

Mr. Vinit Mathur .. Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

(GOPAL SINGH)
Adm. Member

(B.S. RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 22.08.2000

O.A. No. 291/1997

Madhav Singh son of Shri Panney Singh aged 42 years resident of Village Satta Post Pithala District Jaisalmer, Ex-Fireman Gr.II, 10 Field Ammunition Depot, Jodhpur.

... Applicant.

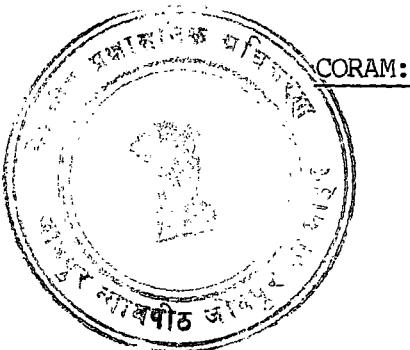
versus

1. Union of India through the Secretary to the Government, Ministry of Defence, New Delhi.
2. Chief Ordnance Officer, 19, Field Ammunition Depot, Jodhpur.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.



CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of dismissal passed by the respondent No. 2 vide Annexure A/1 dated 18.12.1981. It is the specific contention of the applicant that the applicant was dismissed from service vide Annexure A/1 only because he was convicted by the Additional Sessions Judge No. 1, Jodhpur, in Sessions Case No. 14/80 vide judgement/order dated 3.11.80. But later the said judgement of the learned Additional Sessions Judge has been set aside by the High Court of Rajasthan vide its judgement/order dated 24.10.96 passed in S.B. Criminal Appeal No. 804/80 (Madho Singh & Ors. vs. The State of Rajasthan), and in view of the acquittal of the applicant by the Rajasthan High Court, the applicant was entitled to be reinstated immediately and for that purpose, he made a representation and on his representation, he was reinstated in service vide Annexure R/2 dated 18.03.98, but without setting aside the order of dismissal vide

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Annexure A/1 already passed against the applicant and without paying his full back wages and without according other consequential benefits. Therefore, the applicant has filed the present application for setting aside the order Annexure A/1 with further direction to pay the back wages with all other consequential benefits.

2. By filing reply, the respondents have admitted that the applicant was dismissed from service only on the basis of the judgement/order passed by the Additional District and Sessions Judge No.1, Jodhpur, convicting him under Section 366 I.P.C. and sentencing him for $2\frac{1}{2}$ years R.I. and a fine of Rs. 1000/-. It is also admitted that the said order of the learned Additional District and Sessions Judge has been set aside by the High Court of Rajasthan in S.B. Criminal Appeal No. 804/80. It is further stated that in view of these circumstances only, the applicant was reinstated vide Annexure R/2 dated 18.03.98, but without back wages. In the reply, the respondents have further contended that the applicant is not entitled to back wages on the principle of "no work no pay" and accordingly, the respondents have prayed for dismissal of this application.



3. From the pleadings of the applicant and the respondents, we find that few facts are clearly admitted on both sides. It is admitted that the applicant was dismissed from service vide Annexure A/1 only on the basis of the conviction by the Additional District and Sessions Judge No. 1, Jodhpur, under Section 366 I.P.C. It is also admitted that the said order of the learned Additional District and Sessions Judge has been set aside by the High Court of Rajasthan in S.B. Criminal Appeal No. 804/80. From these admitted facts, the necessary consequence would be that the order of dismissal passed vide Annexure A/1 also is liable to be set aside, since order Annexure A/1 is passed only on the basis of the conviction awarded by the learned Additional District and Session Judge. When such conviction has been set aside and the applicant was acquitted of the charges by the High Court of Rajasthan, the basis for the order at Annexure A/1 automatically disappears. This is not a case of holding any separate departmental enquiry as such by framing any charge either similar or different to the charge involved in the criminal case. Therefore, in view of the acquittal passed by the Hon'ble High Court, the impugned order passed vide Annexure A/1 is liable to be set aside. In fact, the department should have withdrawn the order Annexure A/1 suo moto while reinstating the applicant in service. But for the reasons best known to them, they have not taken this trouble of setting aside that order at Annexure A/1. This order would still cast stigma on the

applicant, unless it is set aside, therefore, the said order is liable to be set aside. This conclusion of ours is fortified by the judgement of Hon'ble the Supreme Court, reported in 2000 (2) SLR 592 (Nar Singh Pal vs. Union of India & Ors.), in which Hon'ble Apex Court has observed as under:-

"12. The fact that the appellant was involved in a criminal case is not disputed by the appellant. What is contended by him is that he was ultimately acquitted by the Court of Chief Judicial Magistrate, Agra, and, therefore, involvement of the appellant in a criminal case could not have been made the basis for terminating his services. Since the appellant was acquitted, and it was a clean acquittal, the stigma attached to him of having been prosecuted in a criminal case should have been treated to have disappeared and no argument can be allowed to be raised for justifying the order of dismissal on the ground of appellant's involvement in a criminal case."

4. The next corollary issue that arises in this case would be whether the applicant is entitled back wages and other consequential benefits as a consequence of setting aside the order Annexure A/1. Highlighting this aspect, the learned counsel for the applicant contended that the applicant is entitled to those consequential benefits flowing from his acquittal in the criminal case and from setting aside the order Annexure A/1. In support of his arguments, he relied upon judgements of Hon'ble the Supreme Court, reported in (i) 2000 (2) SLR 592 - Nar Singh Pal vs. Union of India & Ors., (ii) 1994 (5) SLR 742 - Sulek Chand and Salek Chand vs. Commissioner of Police and Ors., and also the judgement of Rajasthan High Court, reported in 1998 (1) SLR 684. On the other hand, the learned counsel for the respondents submitted that the applicant is not entitled to any back wages or any consequential benefits, since he did not work right from the date of his dismissal vide Annexure A/1 dated 18.12.81 till the date of his reinstatement on 18.03.98. Therefore, during the intervening period, the applicant is not entitled to any back wages or any arrears of salary or any other consequential benefits. Therefore, the application is liable to be dismissed. In support of his arguments, he relied upon the judgement of Hon'ble the Supreme Court, reported in 1997 (4) JT SC 322 = 1997 SCC (L&S) 999, K. Ponnamma (Smt) vs. State of Kerala and Others.

5. In our considered opinion, in view of the law declared by Hon'ble the Supreme Court in 2000 (2) SLR 592 [Nar Singh Pal vs. Union of India & Ors.] and 1994 (5) SLR 742 [Sulekh Chand and Salek Chand vs. Commissioner of Police & Ors.], the applicant is entitled to back wages and all other consequential benefits, flowing from setting aside the order at Annexure A/1. In the case Sulekh Chand and Salek Chand,

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cited supra, Hon'ble the Supreme Court has observed as under:-

"Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. The appeals are allowed. No costs."

6. In the above case, the petitioner was suspended on the basis of prosecution under Section 5(2) of Prevention of Corruption Act, and ultimately he was acquitted of the charges and consequently, the departmental proceedings were dropped on that basis. However, the promotion and other consequential benefits were denied to the petitioner. In these circumstances, Hon'ble the Supreme Court held that the petitioner was entitled to promotion with effect from the date his immediate junior was promoted with all consequential benefits. In the case of Mohan Singh Bhati, cited supra, Hon'ble Rajasthan High Court also held that in such circumstances, the petitioner would be entitled to all consequential benefits. In view of this established law, we are of the opinion that in the present case also, the applicant is entitled to back wages with all arrears and he is also entitled to promotion with effect from the date if any of his junior was promoted, with all consequential benefits. The contention of the learned counsel for the respondents that the applicant is not entitled to any back wages on the principle of "no work no pay" would not apply to the facts and circumstances of this case. Consequently, the judgement relied upon by him [1997 (4) JT SC 322] also would not apply to the facts of the present case. Accordingly, we pass the order as under:-

7. The application is allowed. The impugned order at Annexure A/1 dated 18.12.81 is set aside with a direction that the applicant is entitled to all the consequential benefits, including back wages, promotion, seniority, etc., as if the order vide Annexure A/1 did not exist. No costs.


(GOPAL SINGH)

Adm. Member


(B.S. RAIKOTE)
Vice Chairman

Part A.M
M. H. S.
2008

~~Copy see
this year~~
box 2008
PKM/MLR

Part II and III destroyed
in my presence on 20/10/07
under the supervision of
section officer () as per
order dated 20/10/07

M. H. S.
Section officer (Record)