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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 242/Jodhpur/2009.

Date of decision: 03.09.2012

CORAM :

HON'BLE MR. G. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER

Jugal Kishore Panwar S/o Shri Gopilal Panwar aged about 67 years, resident of 36 years, Jaishree Colony, Paida, Dhoon Kot Road, Udaipur, last employed on the post of Passenger Guard, Grade - 'A', at Udaipur, North Western Railway.

..... Applicant.

[By Mr. J.K. Mishra, Advocate]

Versus

1. Union of India through the General Manager, North West Railway, Jaipur Zone, Jaipur.
2. Sr. Divisional Operating Manager, North West Railway, Ajmer Division, Ajmer.

..... Respondents

[By Mr. Salil Trivedi, Advocate]

ORDER (Oral)

[PER HON'BLE MR. G. GEORGE PARACKEN]

The applicant, while working as a Passenger Guard with the respondent, a Criminal case No. 248/91 was lodged against him under Section 138 of the Negotiable Instruments Act, 1881, and he was tried by the Additional Chief Judicial Magistrate No. 2, Udaipur. He was convicted in the same case and sentenced for six month's simple imprisonment and payment of fine of Rs. 71,000/-, vide judgment dated 4.8.1994. Consequent to the said conviction, the respondents, vide NIP dated 25.10.1994 removed the applicant from service under Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Appellate Authority affirmed the said order and rejected the appeal filed by the Applicant vide its order dated 8.5.1995. The OA No. 350/1995 filed against the aforesaid

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orders before this Tribunal was dismissed vide order dated 22.02.202. The applicant preferred an appeal against the aforesaid conviction and sentence before the District and Sessions Judge, Udaipur and the said Court while admitting the appeal, suspended the sentence during its pendency. Later on, the said appeal was dismissed vide judgment dated 19.06.1999. However, the Hon'ble High Court of Rajasthan at Jodhpur vide its judgment and order dated 19.01.2008 in the Criminal Revision Petition No. 393/1999, quashed and set aside the judgment passed by the Courts below and the applicant herein was acquitted of all the charges.

2. Thereafter, the applicant submitted Annex.A/5 representation on 23.07.2009 requesting the respondents to withdraw the order of penalty of removal from service imposed upon him by the disciplinary authority as upheld by the appellate authority and to grant him all consequential benefits as if he was never been removed from service. However, during the pendency of the aforesaid representation, the applicant retired from service on 28.02.2008. In support of his aforesaid request, the applicant has relied upon the Instructions issued by the Government of India, M.H.A., O.M. No. F.43/57/64-AVD (III), dated the 29th November, 1966, as amended vide the Government of India, C.S. (Department of Personnel), O.M. No. 371/3/74-AVD(III), dated the 19th September, 1975. The relevant part of the said Instructions reads as under :-

"Action when appeal/revision against conviction succeeds.-

(a) If an appeal/revision in higher Court against conviction, succeeds and the Government servant is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands, becomes liable to be set aside. A copy of the judgment of the

higher Court should therefore, be immediately procured and examined with a view to decide -

(i) Whether the acquittal should be challenged in a still higher Court; or

(ii) Whether, despite the acquittal, the facts and circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted."

(b) XXXXX XXXXX XXXXX XXXXX
(c) XXXXX XXXXX XXXXX XXXXX

2. XXXXX XXXXX XXXXX XXXXX XXXXX

3. In cases where neither of the courses mentioned in paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed - Form at the end of this chapter). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension / removal / dismissal to the date of acquittal, pay and allowances will be allowed as directed by the competent authority under FR 54 (2) or FR 54 (3) and the period treated as duty or non-duty under FR 54 (4) or FR 54 (5), as the case may be."

3. Since the aforesaid representation has not been considered and decided in his favour, he has approached this Tribunal by filing this O.A. seeking the following reliefs :-

"(i) That the respondents may be directed to review the case of the applicant as a result of his acquittal from the criminal case and allow all consequential benefits including payment of salary and allowances from the date of removal to the date of superannuation, and thereafter due pension and other retrial benefits as if he was never removed from service. The arrears of due amounts may be paid along with market rate of interest.

(ii) That the impugned orders dated 15.01.2010 (Annexure A/7) to the extent of treating the intervening period i.e. from the date of removal to the date of retirement i.e. from 7.11.1994 to 28.2.2003 as 'dies non', may be declared as illegal and the same may be quashed. Any other order/final order, if passed subsequently, in this respect, may also be quashed. The respondents may be directed to treat the said period as spent on duty for all purposes including pay and allowances etc.



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(iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iv) That the costs of this application may be awarded."

4. The respondents have filed their reply. Along with the reply, the respondents have also enclosed the Annex.A/7 order dated 15.01.2010 treating the interregnum period between the date of removal till the date of his retirement i.e. 07.11.1994 to 28.02.2003, as dies non. However, the learned counsel representing the respondents Mr. Vinit Mathur, has submitted that the issue involved in this case has already been settled by the Hon'ble Apex Court in its judgment in ***Union of India and Ors. Vs. Jaipal Singh*** reported in 2004 (1) AWC 748 SC : 2003 (4) JCR 222 SC. According to the said judgment, in such cases, the Government servant will be entitled to reinstatement with all consequential benefits from the date of his removal but he will not be entitled for any back wages. The relevant part of the said judgment reads as under :-

"4. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within

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their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside."

5. We have considered the aforesaid submissions put forth by the learned counsel for the parties. We are in full agreement with the argument of the learned counsel for respondents that the case of the applicant is squarely covered by the judgment of the Hon'ble Apex Court in ***Union of India and Ors. Vs. Jaipal Singh*** (supra). We, therefore, dispose of this O.A. in terms of the said judgment and accordingly direct the respondents to reinstate the applicant in service from the date he has been removed from service with all consequential benefits except back wages. Consequently, the impugned order dated 15.01.2010 Annex.A/7, issued by the respondent-Railways treating the period from 07.11.1994 to 28.02.2003 as dies non, is quashed and set aside. The respondents shall comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(B.K.Sinha)
Admv.Member

(George Paracken)
Judl.Member