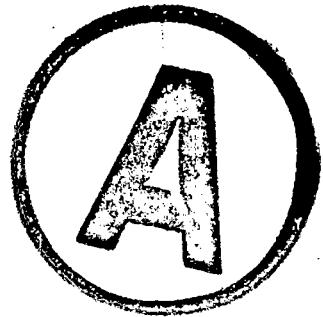


CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.513 and 514 of 2009

Wednesday, this the 17th day of August, 2011



CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

O.A 513/09

Mrs.Bhanumathiamma D.,
aged 55 years,
W/o N Vijayakumaran Nair (Late)
residing at Aikara House
Nedumprayar
Maramen p.o
Thiruvalla

..... **Applicant**

(By Advocate – Mr.K.A Abraham)

V e r s u s

1. Union of India represented by the
Secretary, Ministry of Railways
Rail Bhavan, New Delhi
2. Chief Personnel Officer,
Head Quarters Office,
Southern Railway
Madras
3. Senior Divisional Commercial Manager
Southern Railway
Trivandrum
4. Divisional Railway Manager
Southern Railway
Trivandrum

..... **Respondents**

(By advocate – Mr.K.M Anthru)

O.A 514/09

K Rajendran Nair
Peon, Office of the Senior Divisional Electrical Engineer
Southern Railway
Trivandrum

..... **Applicant**

(By Advocate – Mr.K.A Abraham)

V e r s u s

1. Union of India represented by the Secretary, Ministry of Railways
Rail Bhavan, New Delhi
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Southern Railway
Madras
3. Senior Divisional Commercial Manager
Southern Railway
Trivandrum
4. Divisional Railway Manager
Southern Railway
Trivandrum

..... Respondents

(Bt advocate – Mr.P Haridas)

This Original Application having been heard on 27.07.2011, the Tribunal on 17.08.2011 delivered the following:

O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

As the legal issue involved in the above two cases is one and the same, both the Original Applications are dealt with in this common Order.

2. In so far as the applicant in O.A 513/09 is concerned, the original applicant Mr.N Vijayakumaran Nair having expired, he was substituted by his legal heir Smt Bhanumathiamma.D vide order dated 19.11.2010. However, for the purpose of reference the applicant Mr.N Vijayakumaran Nair alone is spelt out.

3. The aforesaid applicants were subjected to suspension from service on account of their involvement in a criminal case. Later on, they were, on conviction by a Criminal Court, dismissed from service. Subsequently, on their acquittal by the Hon'ble High Court and by virtue of order dated 28.07.2006 in O.A 799/05, the applicants were reinstated in service. Both the applicants were paid subsistence allowance during the period of their suspension and 50% of the

salary and allowances for the period they were kept out of service. The claim of the applicants in these O.As relates to :-

(a) Payment of full pay and allowances for the period of suspension and regularisation of the period of suspension.

(b) Payment of full pay and allowances for the period they were kept out of duties and for regularisation of the said period.

(c) Promotion from 1998 to the next higher grade from the date the junior one Mr.K Bhaskaran was promoted to the next higher grade of CCI/TCR on a pay scale of Rs.2000-3500 (pr-revised) (this relief is in respect of applicant in O.A 513/09 only).

4. Briefly stated, the applicant in O.A 513/09 served as Commercial Inspector Grade II in the Southern Railways, while the applicant in O.A 514/09 was serving as Peon in the office of Additional Electrical Engineer, Southern Railways. Both the applicants were convicted by the Sessions Court in a Criminal Case. Consequent to the same, they were removed from service. The Hon'ble High Court on appeal, however, acquitted the applicants. As such, on their filing of O.A 729/07, the O.A was allowed with a direction to regularise the period of absence of duties and payment of pay and allowances. Vide Annexure A-5 order dated 07.05.2009 certain payments have been sanctioned. The entire letter reads as under:-

“ Shri.N Vijayakumaran Nair, Commr.Inspector, Sr.DCM/O/TVC who was placed under suspension from 19.03.96 to 23.07.2004 was removed from service w.e.f 23.07.2004 and re-instated in service with effect from 1.11.2006.

In compliance with the directions of the Hon'ble Central Administrative Tribunal, Ernakulam Bench, in O.A

No.729/2007, I have considered the matter. On perusal of records it is seen that Shri Vijayakumaran Nair was involved in a Criminal Case and was convicted by the Lower Court. However, he was acquitted by the Hon'ble High Court of Kerala. On further going through the judgment of the Hon'ble High Court it is seen that the acquittal was not an honourable acquittal. The employees was involved in activities which is unbecoming of a Railway Servant. He was given 50% of pay and allowances from 19.03.1996 to 18.06.1996 and 75% from 19.06.1996 to 23.07.2004. I do not propose to deprive him of this or to decrease it in any manner. Therefore it is decided to allow the same pay and allowances i.e. At the rate of 50% for the period of suspension from 19.03.96 to 18.06.96 and at the rate of 75% from 19.06.96 to 23.07.2004 and also to allow 50% of salary and allowances for the period he was out of service from 24.07.2004 to 31.10.2006. "

5. Of the above, the following were later on deleted by a subsequent order of the respondents:-

" On further going through the judgment of the Hon'ble High Court it is seen that the acquittal was not an honourable acquittal. The employees was involved in activities which is unbecoming of a Railway Servant "

6. For the purpose of reference, the following are the list of dates relating to the period of suspension etc of the two applicants:-

	<u>Applicant in O.A</u> <u>513/09</u>	<u>Applicant in O.A</u> <u>514/09</u>
Suspended from service	19.03.1996	19.03.1996
Convicted in the Criminal Case	02.09.2000	
Removed from service	23.07.2004	05.08.2003
Acquitted	20.01.2005	
Reinstated in service	01.11.2006	1.11.2006

7. After the pleadings were complete, at the time of hearing, counsel for the applicant submitted that with the deletion of certain words from the impugned order as as mentioned above, it is the admitted case that the applicants were

acquitted honourably from the criminal case. As such, they should be deemed to have been in service as if there was no criminal case pending against them. This deeming situation enables the applicant to claim full pay and allowances for the period of suspension as also for the period they were kept out of service. The counsel for the applicant relied upon para 1344 and 1345 of the Indian Railway Establishment Manual in this regard.

8. Counsel for the respondents submitted that the law is clear on the subject. The precedence of the Apex Court also vouch the same and the law is as under:-

(a) As to the period of suspension the same is in accordance with the rules relating to suspension.

(b) For the period kept out of duties, the applicants are entitled to full pay and allowances from the date of acquittal to the date of reinstatement.

9. In the instant case the applicants were paid subsistence allowance not only from the initial date of deemed suspension, but also during the period after conviction till their removal from service. Conviction of the applicants is dated 02.09.2000. As a matter of fact provision existed for passing order of removal from service from the period of conviction itself. However, in this case order of removal of service was passed only on 23.07.2004 and during this period (2.09.2000 to 22.07.2004) the applicants were paid subsistence allowance also.

10. Arguments were heard and documents perused.

11. It is, no doubt true, that the respondents have deleted certain words from

the impugned order inasmuch as the acquittal of the applicants was treated by the respondents as not on any technical ground or benefit of doubt. In fact, on a perusal of the entire judgment of the High Court, the decision goes as under:-

(a) Para 44 : Prosecution has not thus succeeded in proving the case of conspiracy alleged against any of the accused beyond reasonable doubt. The conviction under section 120 B has to be reversed.

(b) Para 45: Conviction under 363 IPC shall also have to be reversed, giving the benefit of doubt to the accused.

Para 101: Therefore, giving them the benefit of doubt, the conviction under sec 376(1) IPC shall have to be reversed in this case.

Para 111: Now we will come to other offences under Secs 366A and 372 IPC relating to sex trade. The offences under Secs 372 and 373 IPC have been alleged against all the accused in the 1st case. But all of them have been acquitted of the offences under the said counts. No appeal has been preferred by the State against the acquittal of the 35 accused in SC No. 187/99 of the offences punishable under Secs. 372 and 373 relating to the sex trade. So we cannot, in the absence of an appeal by the State examine whether the said 35 persons are guilty of the offence of sex trade punishable under Secs 373 and 373 IPC.

12. Nevertheless, since the Respondents have viewed the acquittal in a particular manner, no further elaboration on the subject save the benefit in the service matter arising out of the acquittal.

13. Rule 1344 of the IREM (corresponding to FR 54 A) reads as under:-

(1) Where the dismissal removal or compulsory retirement of a railway servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub rule (2) or (3) subject to the directions, if any, of the Court.

(2) x x x x x

(3) If the dismissal, removal or compulsory retirement of a railway servant is set aside by court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the

period, to which he would have been entitled, had he not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

14. In the instant case, there has been no inquiry subsequent to reinstatement. Thus the first condition vide 1344(1) is fulfilled. The next condition is subject to the directions, if any, of the court, the period of absence from duty shall be regularized and the applicants shall be paid pay and allowances in accordance with the provisions of sub rule (3).

15. At the time of ordering reinstatement vide order dated 28-07-2006 in OA No. 799 of 2005, what has been observed is as under:-

7. The next question is regarding the consequential benefits including regularisation of the period of suspension as duty. In fact the argument of the learned counsel for the respondents and the judgements relied on by the respondents deal with the question of payment of backwages and regularisation of the period of suspension. These are issues governed by the Fundamental Rules and the similar provisions in the Railway Establishment Manual, and decisions are to be taken by the competent authority in accordance with the Rules once the applicants are reinstated. Therefore we feel it is premature for us to pronounce any judgment on them at this stage. Both FR 54 and the corresponding provisions in the Railway Rules deal with the issue in detail and the procedure to be followed when a Government servant is suspended or reinstated after acquittal by a criminal court. There are a number of legal pronouncements in the matter including the judgments relied upon by the learned counsel for the respondents. We would therefore only direct that the competent authority under the above provisions shall decide this issue consequent to the reinstatement and pass separate orders regarding the matter as required under the rules.

8. Accordingly, we direct the respondents to reinstate the applicants in service forthwith and to take action on the remaining reliefs prayed for regarding regularisation of the period of suspension and other consequential benefits in accordance with the rules.

16. The words, "These are issues governed by the Fundamental Rules and the similar provisions in the Railway Establishment Manual, and decisions are to be taken by the competent authority in accordance with the Rules once the applicants are reinstated." give a clear indication that there is no other order.

passed by the Court save to follow the rules.

17. Thus, it is to be seen whether the payments made by the respondents are in accordance with the Rules or is there any deficiency in this regard.

18. The Rules stipulate, "full pay and allowances for the period, 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.". The period is to be trifurcated as under:-

(a) Period of suspension

(b) Period of absence from the date of removal from service till acquittal;

(c) Period of absence from the date of acquittal till the date of reinstatement.

19. Counsel for the respondents fairly states that in so far as (c) above is concerned, the applicant is entitled to full pay and allowance from the date of acquittal till the date of retirement and as such, if the same has not been paid the applicants are entitled to the same.

20. In so far as (a) and (b) are concerned, though the rules stipulate full pay and allowance for these periods as well, respondents deny the entitlement in view of the decisions of the Apex Court in the case of Union of India vs Jaipal Singh (2004) 1 SCC 121. This is a case, wherein the respondent before the Apex Court was involved in a criminal case and was charge sheeted for an offence under Sec 302 r/2 S. 34 IPC and though he was convicted by the learned Additional Sessions Judge, on further appeal, the Division Bench of the High Court returned the verdict of acquittal. Since he was not reinstated in spite of

order of acquittal, he moved the High Court and obtained orders. The Union of India relied upon heavily the decision by the Apex Court in the case of Ranchhodji Chaturji Thakore vs Superintendent Civil Engineer, Gujarat Electricity Board wherein the Apex Court has chosen to order only reinstatement but denied back wages on the ground that the Department was in no way concerned with the criminal case and, therefore, cannot be saddled with the liability also for back wages for the period when he was out of service during/after conviction suffered by the respondent in the criminal case. The Apex Court has in that case held as under:-

*4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in **Ranchhodji**. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the 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 reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within 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 insofar as it directed payment of back wages is liable to be and is hereby set aside.*

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as

period of service, without any break.

21. In Ranchhodji Chaturji Thakore vs Superintendent Engineer, Gujarat Electricity Board (1996) 11 SCC 603, the Apex Court has held as under:-

3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.

22. In the instant case, the dismissal was not by holding any enquiry but on the basis of the conviction by the Criminal Court. As such, the provisions of Rule 1344 cannot be directly applied. As the said provisions did not deal with the contingency of removal due to conviction, the way the Apex Court has treated under such contingency alone has to be adopted. Normally as held in the case of Rakhi Ray v. High Court of Delhi, (2010) 2 SCC 637, directions issued by the Court will prevail in the absence of any statutory rule governing a particular issue. As the particular issue in the case is reinstatement due to acquittal, and that part has not been dealt with in sub para (3) of Rule 1344, the decision by the Apex Court in the above case of Jaipal Singh (which followed the decision in Ranchhodji) *supra* has to be adopted.

23. Thus, the respondents are right in restricting the pay and allowance for the

period from the date of deemed suspension till the date of acquittal. For, as held by the Apex Court in the case of Ranchhodji, conviction subsisted till acquittal by the High Court and during conviction, the question of payment of full pay and allowance does not arise. That the applicant was not in incarceration would not improve the case as conviction subsisted and continued till acquittal.

24. In so far as the case of promotion is concerned, the respondents have stated in their counter that the case has been referred to the Headquarters. As such, the same would take care of the grievance of the applicants. It is expected that a decision in this regard would be arrived at by the respondents within a reasonable time in this regard.

25. Thus, taking judicial note of the submissions made by the counsel for the respondents that full pay and allowances would be paid to the applicants from the date of acquittal till reinstatement, and the fact that the case of the applicants for promotion is already under consideration, this OA is disposed of. Let the respondents fulfil their commitment within a period of three months from the date of receipt of certified copy of this order.

26. No cost.

(Dated this the 17th day of August, 2011)

Ms.K Noorjehan
Administrative Member

U (Dr.K.B.S Rajan)
Judicial Member

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