

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 541
~~XXXXXXX~~

1990

DATE OF DECISION 11.2.1992

Shri M.K. Kunjappan .. Applicant ~~(s)~~

Shri K.S. Madhusoodanan Advocate for the Applicant ~~(s)~~

Versus

Assistant Engineer, Circle Telecom Respondent (s)

Stores Depot, Ernakulam and
2 others.

Shri N.N. Sugunapalan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *m*
3. Whether their Lordships wish to see the fair copy of the Judgement? *m*
4. To be circulated to all Benches of the Tribunal? *m*

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

The applicant is aggrieved by the order dated 15.11.1989 of, the first respondent, Assistant Engineer, Circle Telecom Stores Depot, Ernakulam, by which the first respondent had ordered that during the period between 12.6.1986 and 21.8.1989, i.e. between the applicant's removal from service and reinstatement consequent on conviction by the Sessions Court and acquittal by the High Court in a murder case ^{he} ~~shall~~ be entitled to receive only subsistence allowance at an

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amount equal to leave salary which he would have drawn had he been on half pay leave.

2. Shorn of details, the facts necessary for disposal of this application are as follows. The applicant who was working as a Jamadar in Circle Stores Depot, Ernakulam, under the first respondent, was implicated in a murder case in the year 1975. The Sessions Court in the first instance, acquitted all the accused including the applicant. The High Court in criminal appeal No.178 of 79 set aside the judgement of the Sessions Court, Palakkad, and remanded the case for fresh trial by the First Additional Sessions Court, Ernakulam. The case was again tried by the Sessions Judge, Ernakulam, and the applicant, along with other co-accused were convicted for murder. The applicant was sentenced to undergo imprisonment for life. During the pendency of the trial, the applicant, who had been reinstated in service earlier, was again placed under suspension. After the judgement of conviction was passed by the Sessions Judge, the applicant was dismissed from service with effect from 12.6.1986 under rule 19(i) of the C.C.S. (C.C.A.) Rules, 1965. On an appeal filed by the applicant, the High Court of Kerala, by judgement dated 2.6.1989, found that the applicant and the other co-accused were not guilty and acquitted them. Consequently, the applicant was set at liberty ^{from} ~~the~~ Central

Prison, Kannur, on 5.6.1989. The applicant, on 7.6.1989, made a representation to the first respondent requesting for reinstatement with back wages. A copy of the judgement of the High Court in criminal appeal No.196 of 86 was also produced before the first respondent. As the respondent did not reinstate the applicant, on 14.8.89, the applicant caused the issuance of a Lawyer Notice to the first respondent. However, the applicant was reinstated in service with effect from 21.8.1989. A show cause notice was issued by the first respondent proposing to treat the period during the date of dismissal, namely 12.6.1986, and the date of reinstatement on 21.8.1989 as period spent on suspension with ^adirection that the applicant would be entitled to subsistence allowance during the period at an amount equal to leave salary, which the applicant would have drawn had he been on half pay leave vide FRs 53 and 54. To this show cause notice, the applicant submitted a reply stating that the proposal had no justification as FRs 53 and 54 did not apply to this case and that as he was unemployed during the period in question and as the High Court has found him not guilty of the offence for which he was tried under the provisions of FRs 54(2) and 54(A)(3), he was entitled to full pay and allowances. After considering this explanation, the first respondent has passed the impugned order at

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Annexure A-VII holding that during the period from 12.6.1986 to 21.8.1989, the applicant would be entitled only to subsistence allowance. The applicant has in this application filed under Section 19 of the Administrative Tribunals Act challenged this decision as unjust, illegal and arbitrary and has prayed that Annexure A-VII be set aside and the respondents be directed to treat the period from 12.6.1986 to 21.8.1989 as the period spent on duty and to pay him full back wages and other benefits including bonus for the period between 1984 and 1989.

3. The respondents have, in their reply statement, contended that as the applicant was undergoing imprisonment as sentenced by a Court of competent jurisdiction as per the provisions contained in para 117 of Volume III of the P & T manual and according to relevant provisions of the Fundamental Rules he is not entitled to full pay and allowances and that as this period has been counted as duty for all purposes, like increments, pension etc., and as an amount equal to subsistence allowance has already been given to him, the applicant has no legitimate grievance and that the challenge against the order at Annexure VII is unsustainable. We have heard the counsel on either side and also carefully gone through the pleadings and documents.

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4. The applicant was dismissed from service with effect from 12.6.1986 by the 1st respondent under rule 19(1) of the CCS (CCA) Rules, 1965 for conduct leading to imprisonment on the basis of the conviction and sentence passed on him by the Additional Sessions Court, Ernakulam. This conviction and sentence were set aside by the Hon'ble High Court of Kerala vide its judgement in criminal appeal No.196/86 dated 2.6.1989. The applicant was released from prison on 5.6.1989 and he made a representation for reinstatement in service with full back wages and other benefits on 7.6.1989 and produced before the first respondent a copy of the judgement of the Hon'ble High Court on 5.7.1989. But the order for reinstatement of the applicant was issued only on 18.8.89 and the applicant could rejoin duty only on 21.8.1989. The case of the applicant is that during the period between 12.6.1986 and 21.8.1989 he was kept out of duty and was denied the pay and allowances for no fault of his purely on the basis of the conviction and sentence passed by the Sessions Court, Ernakulam, which have been set aside by the Hon'ble High Court finding that the applicant was not guilty of the charge and that in these circumstances as he had undergone the sentence for no fault of his and as the basis of the sentence itself has been quashed by the Hon'ble High Court, he is entitled to be

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restituted to the extent possible. The learned counsel for the applicant argued that though the suffering which the applicant has undergone ^{by} being detained in prison cannot be undone, the least that can be done is to pay him full wages and other benefits which would have been available to him had he not been subjected to imprisonment and to deny this is wholly unjustified and not warranted by any rule of law. The learned counsel for the respondents on the other hand, argued that in accordance with the provisions contained in the Fundamental Rules and in para 117 of Volume III of the P & T manual, in such circumstances, the applicant is entitled only to what he would have been eligible to get if he had been under suspension during this period and since that has already been given to him, the applicant has no legitimate grievance. Paragraph 117 of P & T manual, Volume III, a copy of which is marked as Annexure-R1, reads as follows:

"117. If on appeal, the conviction is set aside and the Government servant is acquitted, the punishment orders based on the conviction which no longer stands become liable to be set aside.

A copy of the judgement of the higher court should be immediately obtained and examined with a view to deciding whether:-

- (i) the acquittal should be challenged in a still higher court;

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(ii) 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.

If it is decided to take the matter still to a higher court, action to institute proper proceeding should be taken with the least possible delay and the punishment order should not be set aside during the pendency of such proceedings. If on the other hand, it is decided that a departmental enquiry should be held, a formal order should be made:-

- (a) setting aside the punishment order; and
- (b) ordering such departmental enquiry.

Such an order should also state that under rule 10(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Government servant is deemed to be under suspension with effect from the date of dismissal, removal or compulsory retirement.

In a case where neither of the courses mentioned above is followed, a formal order should be made setting aside the previous order of dismissal or removal or compulsory retirement. The period between the date of dismissal and the date on which he resumed duty should be dealt with

under F.R. 54. But in doing so, he should be deemed to be entitled to full pay and allowances from the date of acquittal, and the period counted as duty for all purposes and from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he been under suspension."

Relying on the last sentence of para 117 above, which says:"But in doing so, he should be deemed to be entitled to full pay and allowances from the date of acquittal, and the period counted as duty for all purposes and from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he been under suspension", the learned counsel for the respondents argued that the applicant would not be entitled to anything more than the subsistence allowance which would have been admissible to him had he been under suspension. We are not convinced by this argument. Even in paragraph 117 of the P & T manual, Volume III, relied upon by the learned counsel for the respondents, what is stated is that the pay and allowances payable should not be less than what would have been admissible to him had he been under suspension and not that it should not be more than that and ^{that} it should not be the full pay and allowances. Though the liberty

which the applicant was deprived of while he was undergoing imprisonment cannot be restored to him because it is an impossibility, we do not find any reason why restitution to the extent possible should be denied. The applicant had undergone the punishment based on a conviction passed by the Sessions Court which has been set aside in appeal by the Hon'ble High Court of Kerala acquitting him honourably. So there is no justification for denying him the full pay and allowances and other benefits which he would have received had he not been sentenced to imprisonment. As the applicant was dismissed from service solely on the basis of the conviction and sentence, ^{after} ~~the~~ order of the Hon'ble High Court setting aside the conviction and sentence, justice demands that he should be given the full pay and allowances and other benefits ^{that the} ~~treating~~ dismissal from service had never taken effect. We are, therefore, of the view that the claim of the applicant in this application is well founded and that it has to be allowed.

4. In the conspectus of facts and circumstances, we allow the application set aside the impugned order(Annex.VII) and direct the respondents to treat the period between 12.6.1986 and 21.8.89 in the case of the applicant as period spent on duty for all purposes and to pay him full back wages and other benefits as if he had continued

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Completed

Per a/c

on 08/5/92

on 30/4/92

Dr. M. V. S. S. S.

30/4/92

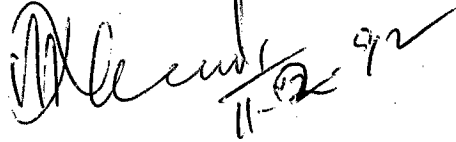
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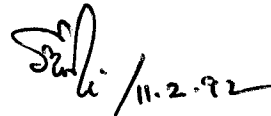
in service during this period. Action on the above lines should be completed and the payments made within a period of two months from the date of communication of this order.

5.

There is no order as to costs.

Handwritten signature of A.V. Haridasan, dated 11.2.92.

(A.V. HARIDASAN)
JUDICIAL MEMBER

Handwritten signature of S.P. Mukerji, dated 11.2.92.

(S.P. MUKERJI)
VICE CHAIRMAN

11.2.1992

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