

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 85 of 1991

this the 16th day of May'2000.

HON'BLE MR D.V.R.S.G. DATTATREYULU, MEMBER (J)
HON'BLE MR S. MANICKAVASAGAM, MEMBER (A)

Babu Ram

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Applicant

Versus

Union of India through its Secretary to the Department of Communication, New Delhi.

2. The Postal Services Board, Department of Posts, Dak Bhawan, New Delhi. though its Member (personnel).
3. The Director, Postal Services, Lucknow Region, Lucknow.
4. The Supdt. of Post Offices, Sitapur Division, Sitapur.

Respondents

Sri R.K. Srivastava : Advocate for the Applicant
None : Advocate for the Respondents

O R D E R

D.V.R.S.G. DATTATREYULU, MEMBER (J)

The applicant in this case prays to set-aside the impugned orders dated 26.8.83 under Annexure-1 treating the suspension period of the applicant as Extra-ordinary leave. He also prays that the directions may be given to the respondents to treat the applicant as on duty with all consequential benefits.

2. The facts gave ~~to~~ rise for filing the present petition would go to show that the applicant was appointed as Postal Assistant on 14.2.1979. On 20.9.1981, a case was lodged against the applicant under section 380 & 411 of I.P.C. (380 relating to theft in dwelling house etc and section 411 relating to dishonestly receiving stolen property), on the basis of the same, the applicant was suspended w.e.f. 29.9.1981 as the applicant was in police custody for more than 48 hours. This was done under

sub Rule 2 of the Rule 10 of C.C.S. ^{Rules.} The applicant was acquitted by the judgment dated 4.4.83, copy of judgment under Annexure-3. Therefore, he ~~was~~ requested to revoke the suspension order. The suspension order was, therefore, revoked, but the suspension period from 26.8.83 to 12.4.83 was treated as Extra ordinary leave, hence this petition.

3. In the Counter filed on behalf of the respondents, it is stated that the concerned authorities went through the judgment passed by the Criminal Court and the Court has acquitted the applicant on compromise basis. Though, he was reinstated in service and the suspension period is treated as Extra Ordinary leave.

4. We have heard the learned counsel for the applicant. There is no representation for the respondents. We have perused the application, Counter, Rejoinder and the Annexures filed by both sides.

5. The point for consideration is whether this action of the respondents is according to law or not?

6. The most glaring aspect in this case is that the department has not any-where stated that the applicant has committed any mis-conduct affecting his service and no disciplinary action initiated against him. He was kept under suspension only on the ground that a criminal case was pending against him for offence under section 380 and 411 of the I.P.C. Though, it is stated by the respondents in their Counter that the case ended in acquittal only on the ground of compromise. It is to be seen that both sections 380 and 411 are not ^{compromisable} functioning of offence, but ~~going subject~~. Further when the court acquitted the applicant of the said charges, the acquittal exonerated him ^{of} all the charges under section 380 and 411. ~~When the exoneration was done, then the criminal case to the date when the alleged offence took place.~~ The findings not guilty of the charges ^{gives} to the date when the offence ^{was} said to have been committed. Therefore, ~~the applicant is deemed to have been under suspension~~ ~~on of the offence. Even from the date when it is alleged to have~~

been committed the offence by him. ^{Thru v} As far as the criminal jurisprudence is concerned, ^{iv} in absence of any departmental enquiry, ^{from his duty there} the acquittal given by the criminal court, ~~post the applicant of~~ section schedule. Therefore, the department is not at liberty to treat the applicant's suspension period as Extra ordinary leave. This will cause hindrance in the service career of the applicant making him loose in the attendant of benefits of service ~~only~~. The salary of that period need not be paid because on the principle of 'no work no pay'. Therefore, the following orders are passed :

- (i) The application is allowed .
- (ii) The impugned orders dated 26.8.83 is hereby quashed.
- (iii) The respondents are directed to treat the entire period of suspension of the applicant as on duty for seniority, promotion and other attendants service benefits.
- (iv) The applicant is not entitled for any back wages during the aperiod of suspension except subsistence allowance.
- (v) The above orders shall be complied with by the respondents within a period of three months from the date of communication of this order.
- (vi) The parties shall bear their own costs.


MEMBER (A)

LUCKNOW: DATED:

GIRISH/-

16/5/2000


16/5
MEMBER (J)