

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 485/2001

Date of Decision : 8.10.2003

L.R.Kolhe _____ Applicant

Shri S.V.Marne _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

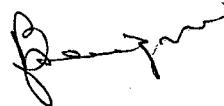
Shri R.R.Shetty _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri Justice B.Panigrahi, Vice Chairman

The Hon'ble Shri S.P.Arya, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library


(B.PANIGRAHI)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.485/2001

Wednesday this the 8th day of October, 2003.

CORAM : Hon'ble Shri Justice B.Panigrahi, Vice Chairman

Hon'ble Shri S.P.Arya, Member (A)

L.R.Kolhe,
Ticket No.2115/Bullet,
Ordnance Factory,
Warangaon.

...Applicant

By Advocate Shri S.V.Marne

vs.

1. Union of India
through Chairman,
Ordnance Factory Board,
Calcutta.

2. The General Manager,
Ordnance Factory,
Warangaon.

...Respondents

By Advocate Shri R.R.Shetty

O R D E R (ORAL)

{Per : Shri Justice B.Panigrahi, Vice Chairman}

The applicant had faced a criminal proceedings under Section 380 read with Section 34 of IPC in Regular Criminal Case No.178 of 1993 which, however, culminated in an order of acquittal. The original Criminal Case No.372 of 1993 disposed of on 8.10.1996. The applicant was held guilty and sentenced to undergo Rigorous Imprisonment of one year and to pay a fine of Rs.1,000/-. However, in Criminal appeal being Criminal Appeal



..2/-

No. 10 of 1996 which was decided on 24.2.1999, the applicant was acquitted of the charges. During the period for which the criminal case was pending, the applicant was placed under suspension and 50% of the salary used to be paid to him towards the subsistence allowance. After the order of acquittal was passed by the appellate court, the disciplinary authorities also directed his reinstatement but refuse to pay the full salary for the period the applicant was placed under suspension, i.e. for the period from 12.3.1993 to 18.5.1999 and they were inclined to treat this period as 'not spent on duty' for any purpose. In the said order, however, it was directed that the suspension amount paid to him need not be recovered from him.

2. Mr.R.R.Shetty, the learned counsel appearing for the respondents has submitted that since the applicant was charged committing theft irrespective of the fact that whether he was acquitted or not, since such conduct is reprehensible and unbecoming of a Government Servant, therefore, he does not deserve to be paid the full salary for the period kept under suspension. In support of his submission, he has also placed a reliance on a judgement of Supreme Court reported in (1997) 3 SCC 636, Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra & Ors. It is indicated in the judgement that the authorities have got plenary power to take a decision as regards the payment of full salary during the period of suspension awaiting the finalisation of the criminal case. Therefore, the authorities after taking into consideration the facts and circumstances of this case, treated the period of suspension as not spent on duty and accordingly passed the appropriate order.

3. Mr.S.V.Marne, the learned counsel appearing for the applicant while repelling the said statement submitted the judgement reported in AIR 1984 SC 380 in the case of Brahma Chandra Gupta vs. Union of India. The facts of that case is paramateria applicable to the present fact situation. In the aforesaid case, it was indicated that in case no disciplinary proceedings initiated during the pendency of such criminal case and in the criminal case it ended into an order of acquittal, the employer thereafter cannot hold up the salary besides paying the subsistence allowance. It is further contended that this judgement is also followed by the Full Bench decision. In the later case in K.R.Bibhavnekar the above judgement was not referred to nor considered. Therefore, the ratio decided in Brahma Chandra Gupta prevails over the other judgement of the Supreme Court.

4. While considering the submissions of counsel of both the parties, we have carefully gone through the fact situation of this case which was quite akin with the facts of the case of Brahma Chandra Gupta, Hon'ble Supreme Court has held in para 6 as under :-

"6. Mr.R.K.Garg, learned counsel for the appellant wanted us to examine the scope and ambit of Article 193 and Mr.Gujral, learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the fact of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further

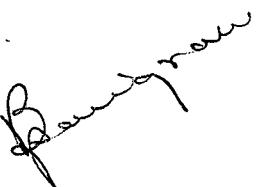
that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the Trial Court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgement of first appellate Court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout."

It may be further noted that delinquent was not involved in connection with any official act. Of course, he was charged for committing theft which was subsequently set aside. After the acquittal order was passed, he is presumably innocent. In that event, the authorities could not have reduced the salary for the period under suspension.

5. In the aforesaid situation, we allow the application by directing the authorities to pay the salary for the period of suspension after deducting subsistence allowance if any paid to him within a period of four months from the date of communication of this order. Accordingly, Annexure.A-1 dated 11.11.2000 passed by the respondents is hereby quashed and set aside.


(S.P. ARYA)

MEMBER (A)


(B. PANIGRAHI)

VICE CHAIRMAN

mrj.

CP 21/04
For orders
on 12/3/04
sd-

Dated: 12.3.2004 (16)

Applicant by Mrs. S. S. Marne for
Shri S. V. Marne.

The learned counsel for the applicant states that even after clear direction in the order of the Tribunal dated. 8.10.2003 for payment of salary for the period of suspension, the applicant has not been paid the same. She further states that 4 months period granted by the Tribunal was over on 13.2.2004. The learned counsel for the applicant was not aware whether the applicant has made any application to the concerned authority for payment of salary for the period of suspension.

Since only one month has gone, we would not like to issue any contempt notice at this stage. The applicant may make necessary information on the next date of hearing.

List the case on 12.4.2004.

^{Shs}
(Muazzaffar Hussain)

M(5)


(A. K. Agarwal)
cc

16/3/04

dd

Dated: 27.4.2004 (13)

Applicant by Sh. S. V. Marne
Respondents by Sh. R. R. Shetty

The learned Counsel for the respondents states that order of the Tribunal dated 8.10.2003 has already been complied with. The learned Counsel for the applicant agrees with it.

In view of this C.P. is dismissed.
Notice issued to the alleged contemnor are discharged.

M.M

(S. Tr. Deshmukh)

M(J)

K.R.
(A. R. Agarwal)
V.C

dk

order issued
on 25/5/04
K.R.

18