

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

Pre-Delivery Judgement in O.A. No.: 536 of 2001.

Hon'ble Vice-Chairman may kindly see the above
judgement for approval/signature.



(S. G. DESHMUKH)
MEMBER (J).

Hon'ble Shri A.K. Agarwal,
Vice-Chairman.

M (J)
S. G. Deshmukh
Sh



CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 536 of 2001.

Dated this Wednesday the 31st day of December 2003

Shri Tukaram Dadu Sawant, _____ Applicant.

Shri P. A. Prabhakaran, _____ Advocate for
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. G. Rege, _____ Advocate for
Respondents.

CORAM : Hon'ble Shri Ajay Kumar Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

(i) To be referred to the Reporter or not?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.


(S.G. DESHMUKH)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 536 of 2001.

Dated this Wednesday the 31st day of December ^{WV} 2003

CORAM : Hon'ble Shri Ajay Kumar Agarwal, Vice-Chairman.

Hon'ble Shri S. G. Deshmukh, Member (J).

Shri Tukaram Dadu Sawant,
Room No. 601, Building No. 15,
'B' Wing, Income Tax Colony,
Powai, Mumbai - 400 069.

... Applicant.

(By Advocate Shri P. A. Prabhakaran)

VERSUS

1. Union of India through
The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001.
2. The Chief Commissioner of
Income Tax, Mumbai,
3rd Floor, Ayakar Bhavan,
M. K. Road, Mumbai - 400 020.
3. The Addl. Commissioner of
Income Tax, (H.Qrs.) Personnel,
3rd floor, Ayakar Bhavan,
M. K. Road, Mumbai - 400 020. ... Respondents.

(By Advocate Shri V. G. Rege)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

The present O.A. is filed for quashing and setting aside the orders dated 05.01.1998 and 03.05.2001 and directing the respondents to issue orders to the effect that the applicant is entitled for full pay and allowance for the period of suspension and dismissal as if he had not been suspended or dismissed and has been on continuance service in terms of clause (a) of sub-rule (1) of F.R. 54 and the period of suspension and dismissal be treated as a period spent on duty in terms of clause (b) of sub-rule (1) of F.R. 54 and directing to consider the

applicant, if otherwise found fit, and grant promotion that he has been qualified on each of the dates on which his immediate junior or juniors were granted promotion and the process be continued for successive stages/grades/posts, as the case may be and directing to pay arrears of pay and allowances, bonus, etc. for the period of suspension and dismissal and to pay the interest on the arrears from 10.08.1999 and the penal interest be recovered from the personal pay of the officers responsible for forcing the applicant to file this O.A.

2. The case of the applicant is that he has been in the Group 'C' Service of the respondents since 1971, initially as L.D.C. and later promoted as U.D.C. On 12.10.1981, while the applicant was working as U.D.C., his wife, who was ailing from certain chronic disease, committed suicide. The applicant was arrested by the police and later on was enlarged on bail. On the report of Vile Parle Police Station regarding the arrest and detention of the applicant, the respondents placed the applicant under suspension w.e.f. 13.10.1981. Thereafter, applicant was convicted by the Session Court by judgement dated 23.02.1984. Respondents issued an order dismissing the applicant from service w.e.f. 30.06.1984. The applicant preferred an appeal before the Hon'ble High Court. He was released on bail. The appeal was allowed and the conviction was set aside and the applicant was acquitted by the High Court. On receipt of the order of acquittal, the applicant represented to Respondent No. 2 on 17.02.1997 for reinstatement in service. After due process, Respondent No.3 issued an order dated 6.6.1997 reinstating the applicant in service. After joining the service, the applicant made a representation on 11.6.1997 that orders under F.R.54 may be issued regularising the period covering from 13.10.1981, the date of suspension followed by dismissal, till 06.06.1997 the

date of re-instatement and grant of pay and arrears thereof. The applicant followed up the representation by appeals and reminders dated 13.10.1997 and 10.11.1997. On 06.01.1998 the applicant received an order issued by Respondent No. 3 under reference DC (HQ) Pers./165-1/97 dated 05.01.1998 holding that his case is not fit for payment of salary and other benefits for the period between suspension and reinstatement. The respondent has reasoned in the said order that the exoneration is on technical ground. Since the applicant is not exonerated on merit, the ratio of the decision of the Hon'ble Supreme Court of India in the case of Krishna Kant Raghunath Bibhavnekar V/s. State of Maharashtra & others [AIR 1997 1434] is applicable to his case.

● The applicant received another order dated 05.01.1998 holding that the period between suspension and reinstatement is treated as period during which he was not on duty. Aggrieved by these two orders, the applicant submitted an appeal to Respondent No. 1 on 16.02.1998. As the applicant did not receive any correspondence, the advocate of the applicant submitted another notice-cum-review appeal to the Respondent No. 2 on 03.08.1998. His advocate also made a representation on 10.05.1999. As there was no response from the respondents, the applicant filed the O.A. bearing No. 711/99 on 10.08.1999. The O.A. was disposed of by this Tribunal with a direction to the respondents to dispose of the appeal within a period of three months from the date of receipt of the copy of the order. As the respondents did not comply with the direction of the Tribunal, the applicant had filed a C.P. No. 14/2001 on 08.03.2001. Respondent Nos. 1 issued the impugned order dated 03.05.2001 almost repeating the initial orders issued by Respondent No. 3 on 05.01.2001 and hence this O.A.

3. The respondents filed their counter affidavit and contended that applicant was placed under deemed suspension on 12.10.1981 in view of his arrest and detention by the police authorities in connection with the suspicious death of his wife. He was dismissed from service as he was convicted and sentenced by the Trial Court on 30.06.1984. He was reinstated in service w.e.f. 06.06.1997 as he was acquitted by the High Court in appeal. It is contended that the applicant was ordered to be acquitted by the High Court in view of failure of the prosecution to bring home the charge beyond reasonable doubt. As per provisions of F.R. 54, it is within the powers, jurisdiction and discretion of the competent authority to decide the question of treatment of period of suspension and pay and allowance to be paid to the Government employee for the said period on his reinstatement. It is contended that applicant is not entitled to full backwages by treating period of suspension as duty as laid down in Apex Court's judgement in Krishna Kant Regunath Bribhavnekar V/s. State of Maharashtra [(1997) SCC (L&S) 847]. It is contended that as the applicant's acquittal is due to failure of the prosecution to prove his guilt beyond reasonable doubt to which the High Court came to the conclusion on account of want of appropriate legal evidence and not on merits and the matter, therefore, involved moral turpitude and thus it was decided not to treat the applicant's period of suspension as on duty and it was held that he is not entitled to the full pay and allowances for the said period. It is contended that the action and orders of the respondents is perfectly legal and valid and there is no case at all on merits to interfere.

4. Heard the Learned Counsel, Shri P.A. Prabhakaran for the applicant and Shri V. G. Rege, Learned Counsel for the Respondents.

5. The Learned Counsel for the applicant, Shri Prabhakaran, submitted that the suspension was effected only on pendency of criminal proceedings. The competent authority has necessarily to follow the basic principles of criminal law. Since the Criminal Court can now pass only an order of acquittal, the competent authority can scan that order to find out whether the delinquent official was acquitted or not. In case of acquittal in criminal trial, the concerned person should be given full pay and allowance and the disciplinary authority does not have the power to compute the degree of culpability of the person upon its own appraisal of the judgement of the Criminal Court. In support of his contention, the Learned Counsel for the applicant relied upon the following case laws :

- (i) S. Samson Martin V/s. Union of India & Others decided by the Full Bench of Central Administrative Tribunal, Madras [1990 (12) ATC 643]
- (ii) Baman Charan Raut V/s. Union of India & Another [1991 (16) ATC 385]
- (iii) Rama Nand V/s. Union of India & Others [2003 (1) CAT ATJ 377].
- (iv) O. P. Jayana V/s. Union of India & Another [1991 (16) ATC 350]
- (v) Municipal Committee, Jaitu V/s. Gulab Singh & Others [2003 (3) ATJ 417].

6. On the other hand, the Learned Counsel for the respondents relied on Krishnakant Raghunath Bibhavnekar V/s. State of Maharashtra & Others [AIR 1997 SC 1434] in support of his contention that reinstatement with all consequential benefits should not be granted as a matter of course if the conduct alleged is the foundation for prosecution.

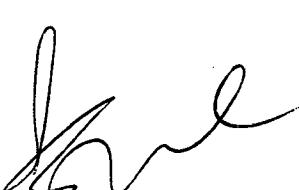
7. The only question which is to be decided in the instant case is whether the competent authority is justified to disallow the pay and allowance of the applicant for the period of

suspension and dismissal after his acquittal in the criminal trial ?

8. It has been held by the Apex Court in the case of Ranchhodji Chaturji Thakore V/s. The Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) & Anr. [1997 (1) SC SLJ 37] that when one is convicted and dismissed on its basis but is later acquitted due to setting aside of conviction, he is not entitled to backwages on his reinstatement. The applicant in the instant case was involved in a criminal case in which his wife was said to have committed suicide. He was suspended as a criminal case was registered against him and he was arrested and detained in custody by the Police. The applicant was dismissed from service on his conviction by the Session Court in that case. He was reinstated in service on his acquittal in the appeal by the High Court. It was his conduct of involving himself in the crime that was taken into account for his not being in services of the respondents. His service was terminated on the basis of conviction. It is well settled that each case requires to be considered in its own backdrops. In the instant case, the petitioner had involved himself in a crime though he was later acquitted. He had disabled himself from rendering services on account of conviction and incarceration in jail. As per ratio laid down in Ranchhodji Chaturji Thakore's case and Krishna Kant Raghunath Bibhavnekar's case, the petitioner is not entitled to backwages.

9. In view of the above discussion, the O.A. stands dismissed. No order as to costs.


(S. G. DESHMUKH)
MEMBER (J)


(AJAY KUMAR AGARWAL)
VICE-CHAIRMAN.