

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A.No. 847/89

Date of decision: 2.4.93

TEJ SINGH

: Applicant.

Mr. J.K. Kaushik

: Counsel for the applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

None present on behalf of the respondents.

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:
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Applicant was hold/ the post of Senior Correspondence Clerk in the Office of the Station Master, Gangapurcity when he was charged U/S 5(1)(a) of the Prevention of Corruption Act, 1947 for the charge that he was habitual in accepting bribes from the railway employees, 10 instances of which were made subject-matter of the charge. There was an allegation also U/S 161 I.P.C. and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947 for accepting bribe of Rs. 20/- from a railway employee, Phool Singh. The applicant was prosecuted and he was convicted by the Special Judge, Jaipur City and sentenced to undergo simple imprisonment and fine. Applicant preferred an appeal being aggrieved with the Judgment of conviction before the Hon'ble High Court. Hon'ble High Court accepted the appeal of the applicant, extending the Doctrine of Benefit of doubt in favour of the convict. Hon'ble High Court has remarked "Even if it is assumed that the two possibilities are equally balanced on the totality of consideration of the prosecution evidence then also the benefit of doubt goes to the accused. It is, therefore, held that the prosecution in this cases has failed to prove its case beyond all reasonable doubt and the accused is, therefore, entitled to acquittal." Apart from that Hon'ble High Court has passed the strictures against the senior officers as under:-

"It is also a case in which it is unintelligible as to why the railway officers were permitting Tej Singh to mostly remain in a drunken state of affairs and even to remain absent from service after drinking heavily during office hours. This could not have

been possible except with collusion or connivance, conscious or unconscious or protection of some high officers and again that could not have been without consideration. It was the duty of the railway officers to tell Tej Singh to get rid of this vice of drinking the wine during office hours atleast and then if he persisted on it inspite of it, to get rid of the drunkard from the railway office. The fact that neither of the two was done, reveals a sorry state of affairs in the railway department at Gangapur and in that background the role of Phool Singh in acting as a companion in the liquor drinking with his boss Tej Singh and then becoming an informer of the police officers in the Dak Bungalow for getting his boss arrested in the act of bribe certainly depicts his character."

2. Hon'ble High has further stated that in view of the above, it is seen that this case provides two possibilities which are equally balanced.

3. Thus, the Hon'ble High Court has extended the benefit of doubt and also held that Tej Singh was getting the protection of high officers may be for some consideration and was doing on account of the connivance with the higher officers. With this background and the probability of two views possible, Tej Singh was acquitted. Mr. Kaushik, appearing on behalf of the applicant, has invited my attention to Annexure A-6, para 2044 (F.R. 54), clause (2). It provides that where the authority mentioned in sub-rule (1) is of the opinion that the railway servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the railway servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

4. Mr. Kaushik has also invited my attention to Annexure A-9, the clarifications issued by the railway authorities. He submitted that from the perusal of the clarifications, an acquittal by a Court is acquittal from the charges framed against the accused and it has to be treated as such. In such circumstances, cases of acquittal by a Court of Law should be viewed as such and they should be distinguished from cases in which Courts set aside orders of Government on technical grounds like failure to follow the prescribed procedure, failure to fulfill the requirements of Article 311 of the Constitution, etc.

5. Mr. Kaushik submits that his client has been acquitted whatever may be the observations of the Court, his client is entitled in the light of the clarification dated 29.4.85 read with Rule No. 2044 (FR-54).

6. I have heard the contentions of Mr. Kaushik. Use of words "fully exonerated" is very significant. Rule making authority in its wisdom has used the words "fully exonerated" instead of word "exonerated". The word "fully" denotes that

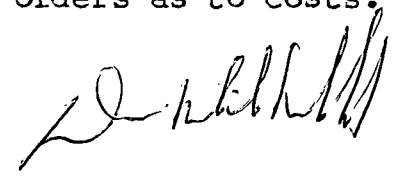
if the two views are possible in the matter and the courts subsequently say that two views are possible and thereafter extract the benefit of doubt then the position may be otherwise. In the instant case, there are two factors which goes against the applicant. One is the observation and finding of the court about the applicant himself that he was drunkard and used to take drinks even during office hours. The court has also held that this could not have been possible except with collusion or connivance, conscious or unconscious or protection of some high officers and again that could not have been without consideration. Thus, there is a finding of the High Court that the applicant had the protection of high officers on account of consideration, whatever it was, and the applicant was taking drinks during office hours. This finding of the High Court goes against the applicant even though he has been acquitted on the charge of taking bribes. Apart from that once the High Court has taken the view that two views are possible and for this reason they are extending the benefit of doubt in favour of the applicant.

7. One must understand that the corruption is rampant in the country and lenient approach of the judiciary towards the corrupt officers by extending the advantage of the benefit of doubt may be one of the causes for the corruption. Judges should not be and are not of the wavering mind. Apart from that now the burden has also been shifted on the accused. The criminals cases and the cases of disciplinary proceedings and further more, the question of payment of the salary stand on different footings. The finding of the court that two views are possible and for this reason, they are extending the benefit of doubt in favour of the accused may itself be sufficient, in some circumstances, for punishing the accused though he has been acquitted by the court. With this background in mind, the framers of the rule have used the words "fully exonerated" in the rule itself and have not used the word "exonerated" simpliciter.

A2/4

8. The applicant has been extended the pensionary benefits and for the pensionary benefits, his services rendered as a continuous one. Earlier, his representation was rejected in 1982, however, the Railway Board considered the matter again on his subsequent representation and held that it was agreed to treat the period as spent on duty for the purpose of retirement benefits and post-retirement passes only and Board have directed that the same may be decided by the appropriate Railway authority. G.M. has accepted the decision. Thus, benefit extended is sufficient to satisfy the applicant. In fact, it was a case in which, after the judgment and the observation of the Hon'ble High Court, they should have initiated the proceedings against the officers concerned and should have passed the appropriate orders. But they have taken a very lenient view. They have not initiated further proceedings and they have only passed the order that the time spent during suspension from 1971 to 1978 should not be considered on duty for the payment of salary. Other pensionary benefits have been extended to him. As such, this is not a case in which the Tribunal should interfere.

9. The O.A. is rejected, with no orders as to costs.



(D.L. MEHTA)
Vice-Chairman

Copy sent to the app. Counsel
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Date 10 - 5 - 93

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