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**Central Administrative Tribunal
Jabalpur Bench**

OA No.1018/05

Jabalpur, this the 5th day of December 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

1. Smt.Urmila Bai
Widow of late Shri Rammani
R/o Village Umarai
Post Umarai, Bahora
Thana Raipur Karchuliyan
District Rewa (MP).
2. Shri Basant Lal Vishwakarma
S/o late Rammani Vishwakarma
R/o Village Umarai, Post Umarai
Bahora, Thana-Raipur Karchuliyan
District Rewa (MP). Applicants.

(By advocate Ms.P.L.Shrivastava)

Versus

1. Union of India
through General Manager
Central Railway, Mumbai
Mumbai.
2. Divisional Mechanical Engineer
Central Railway Jabalpur
Jabalpur. Respondents

(By advocate Shri M.N.Banerjee)

ORDER

By A.K.Gaur, Judicial Member

The applicants have claimed the following reliefs:

- (i) Quash the order dated 16.2.2005 (A-14).
- (ii) Direct the respondents to fix the pay scale of the 2nd applicant's father by granting all benefits including pay scale revisions, i.e. 4th and 5th CPC; grant all arrears of monetary benefits with interest at the rate of 18% per

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annum and direct that the pension be determined and released accordingly.

(iii) The order of suspension be held to be bad and illegal for the facts and reasons mentioned above and period of suspension i.e. 10.6.84 to 17.4.2001 be treated as on duty.

2. The brief facts are that the applicants are widow and son of deceased Ram Mani who, while working under respondent No.2 as Fitter at New Katni Junction was removed from service vide order dated 21.3.1986. Against the removal, the deceased moved the Tribunal by filing OA No.669/89 which was disposed of directing the respondents to place him under suspension. Accordingly the respondents placed the deceased under suspension because of a pending criminal case against him. Thereafter, the deceased moved the Tribunal again by filing OA No.283/96 for getting subsistence allowance, thereupon the subsistence allowance was paid to the deceased. The deceased filed another OA No.504/2000 seeking to quash the suspension order and for enhancement of subsistence allowance. The representation made by the deceased in compliance with the direction of the Tribunal in that regard was not decided. Consequent on the acquittal of the deceased from the criminal case, he was reinstated in service vide order dated 27.3.01. It has been averred in the OA that the deceased was denied annual increments and bonus since 1984 and he was denied the revised pay scale after his reinstatement. The deceased was paid suspension allowance at the rate of 50% since 1995 till his retirement. Various representations made by the applicants regarding the service benefits of the deceased have not been responded to by the respondents. Hence the applicants have filed this OA seeking the aforesaid reliefs.

3. The respondents in their reply statement have contended that late Ram Mani was suspended w.e.f. 10.6.84 on account of the initiation of criminal case of theft against him. Later his suspension came to an end on account of his removal on 19.3.86. He was already under suspension from 10.6.84 till 19.3.86 when he was removed. The Tribunal set aside the removal and directed to place him under

suspension from the date of removal i.e. 19.3.86. Hence the suspension continued further from 19.3.86 He was earlier paid suspension allowance from 10.6.84 to 19.3.86 i.e up to the date of removal. The deceased employee was not entitled to increased subsistence allowance as there was no provision for such increase. Moreover, the recommendations of 5th Pay Commission were implemented from 1.1.96. Hence this did not apply to the deceased in the matter of enhancement of subsistence allowance. After his reinstatement on 17.4.2001, the late employee continued in service up to the date of superannuation on 31.8.2001 and no grievance was raised by way of representation. The employee on his reinstatement was promoted as Technician Grade-II and his pay was fixed on the promotional post in the prescribed grade (R-3) under the 5th Pay Commission. As his period of absence from suspension to reinstatement was treated as suspension only, he was not entitled to any increment for the suspension period as it was not treated as on duty. Therefore, he was promoted in the minimum scale of pay. As the employee retired two months after his promotion, he did not become eligible for any annual increment. Regarding railway passes, the respondents contended that during the suspension period it was given. From the date of removal till the date the removal was set aside by the Tribunal, the employee was not entitled to free passes and was not granted. Bonus is paid to employees on the basis of one's working days. Since the deceased employee was not on duty, no bonus was payable to him. The employee was paid all dues which he was legally entitled to under the rules. The respondents have finally contended that the deceased had not exhausted the departmental remedy. No appeal/representation against the order dated 16.2.2005 was filed before the higher authorities. Hence the application is premature and liable to be rejected.

4. The applicants have filed a rejoinder reiterating the averments contained in the OA. It has been averred in the rejoinder the as per FR 54-B, the competent authority ought to make a specific order whether the period of suspension shall be treated as period spent on duty. The

department passed the order dated 16.2.2005 only after the deceased had move the Tribunal. Hence it is incorrect to say that he did not make any representation.

5. We have heard the learned counsel appearing on both sides. Learned counsel for the applicant has relied upon a decision of this Tribunal in S.Samson Martin vs. Union of India and others - 1990 (12) ATC 643. This Tribunal while relying upon the decision of Karnataka High Court in M.K.Balappachar vs. The State of Mysore and others - 1975 (1) SLR 809, has come to the conclusion that "once a person is acquitted, whether such acquittal is on account of lack of evidence, or on account of any defect in the procedure in the trial or on account of the Court extending the benefit of doubt, so long as such acquittal stands, the presumption of innocence of the accused, should be given the full effect and he must also be regarded as being acquitted of the blame flowing from any of the acts or omissions which formed the subject matter of the charge". The Calcutta Bench of the Tribunal in Kartick Chandra Bose vs. Union of India - 1989 7 ATC 676, has observed that "the words 'benefit of doubt' had been misapplied to the facts and circumstances of the case. It is clear from the inquiry report that as the prosecution had not been able to establish the charges leveled against the applicant by adducing proper evidence which was obligatory on them, the applicant was exonerated of the charges. It is not clear to us as to why in such circumstances a benefit of doubt could be given in favour of the applicant. Now the respondents like to avail of those words in denying the rightful claim of the applicant." Similar view has been taken by this Tribunal in M.Jayarangam vs. Senior Superintendent of Post Offices, Vridhachalam - 1988 7 ATC (C.A.T., Madras), which rejected the plea of distinction between 'acquittals' on the basis of a Division Bench judgement of the Madras High Court in Union of India by Secretary Finance Department v. Jayaram Damodhar Timiri - 1960 1 Madras Law Journal 410 (Mad). Hon'ble Supreme Court has also taken similar view in Brahma Chandra Gupta. vs. Union of India - 1984 2 SCC 433. In that case, the

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officer concerned was convicted by the trial court. The conviction led to his dismissal from service. He was acquitted on appeal. On being acquitted, he was reinstated in service. For the period during which he was out of employment, the concerned authority took the view that from the perusal of the judgement of the criminal court, the applicant could not be said to have been fully exonerated of the charge and a direction was given that he should be given 3/4th of the salary for that period. The matter ultimately came to the Supreme Court and the Supreme Court observed as follows:-

“Keeping in view the facts of the case that the appellant was never hauled up for the 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 the appeal, set aside the judgement of the first appellate court as well as of the High Court and restore the one of trial court with the modification that the amount decreed shall be paid with 9% interest p.a. from the date of the suit till realization, with costs throughout.”

6. The judgement rendered by the Madhya Pradesh High in Umashankar Choubey vs. Union of India and others is also on the same point. The M.P. High Court, relying upon the decision of this Tribunal in S. Samson Martin vs. union of India and others (supra) has held that “whatever the circumstances of acquittal, when the disciplinary authority has chosen to suspend on the facts of criminal proceeding only and to wait till the end of the proceeding, it has no discretion in the matter of pay and allowances and it has to abide by the verdict of the Criminal Court. In the present case the disciplinary authority has placed the petitioner under suspension only because of his detention for more than 48 hours in a criminal charge and the said criminal proceeding has ended in acquittal. Admittedly, the disciplinary authority has not initiated separate disciplinary

proceedings and has waited for the decision of the Sessions Court in the criminal case and has also reinstated the petitioner in service pursuant to the judgement of acquittal of the Sessions Court in the criminal case. This being the position, the petitioner was entitled for same treatment as per sub-rule (3) of FR 54-B as if the suspension was wholly unjustified and he would be entitled to full pay and allowances to which he would have been entitled had he not been suspended". Accordingly the Division Bench of the High Court granted the benefit of full pay and allowances for the period of suspension in accordance with sub-rule (3) of FR 54-B.

7. Learned counsel for the respondents, on the other hand, has cited AIR 1997 460 – Smt.K.Ponnamma vs. State of Kerala and AIR 1997 SC 1434 - Krishna Kant Raghunath Bibhavnekar vs. State of Maharashtra and others, and argued that when the suspension period was treated as suspension pending trial and even after acquittal, he was reinstated in service, he would not be entitled to consequential benefits. Learned counsel for the respondents has placed reliance on following observations of the Hon'ble Supreme Court in Krishna Kant Raghunath (supra) reproduced hereunder:

"If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz. it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding, that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period not on duty".

Learned counsel for the respondents has also cited the decision of the Tribunal in OA No.896/05 in support of his contention. A detailed analysis of the aforesaid decision of the Supreme Court and the decision rendered by this Tribunal as well as by the High court, we consider it more apt and proper to decide the controversy in question taking into consideration the decision rendered by the Apex Court in Smt.K.Ponnamma and Krishnakanth Raghunath case (supra). In our considered view, the competent authority has exercised its jurisdiction in accordance with the dictum of the Supreme Court in not paying salary during the period of suspension except the suspension allowance already paid. We are firmly of the view that the competent authority has not committed any error warranting our interference.

8. In view of the aforesaid discussion, the OA fails and is dismissed. No costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Gaurav
(Dr.G.C.Srivastava)
Vice Chairman

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पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....
पंचिलिपि अचेरे लिख:-

- (1) संविध. हाई कोर्ट अधिकारी गार. प्रो.विश्वासन, जबलपुर
- (2) अधे. ए. डी. इन्डिया/कु.....के काउंसल
- (3) प्रहरी थो/र्व.जारी/कु.....के काउंसल
- (4) गवर्नर, के.प्र.अ., जबलपुर राजालयील
सूचना एवं आवश्यक कार्यवाही हेतु

P.L.Srivastava
Adv 200

M.L.Benarjee
Adv 23

उपराजित

D.S.M.
on 7/12/06
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