

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.651/04

Jabalpur, this the 10th day of March, 2005.

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Sukhlal Patel
S/o Kharge Patel
R/o Village Chowkital
Lamhetaghat Road
Post. Tilwaraghat
Dist.Jabalpur.

Applicant.

(By advocate Shri S.Byohar)

Versus

1. Union of India through its
Secretary
Ministry of Defence
Department of Defence Production
New Delhi.
2. General Manager
Vehicle Factory, Jabalpur
District. Jabalpur.

Respondents.

(By advocate Shri Anil Khare)

ORDER

By Madan Mohan, Judicial Member


By filing this OA, the applicant has sought the following main reliefs:

- (i) Direct the respondents to pay the back wages to the applicant for the period from 1.10.97 to 22.12.003 according to law.
- (ii) Direct the respondents to consider the claim of the applicant for the payment of back wages according to law.



2. The brief facts of the OA are that the applicant was initially appointed on the post of Tool Hardness. In 1997, on the basis of a false complaint, an offence under Section 498-A of I.P.C. was registered against the applicant wherein he was convicted by the trial court for the said offence and sentenced for a period of three years. On account of the conviction, the penalty of dismissal from service was inflicted upon the applicant vide order dated 15.3.99 (Annexure A1). The applicant filed an appeal before the Hon'ble High Court of M.P., which was registered as criminal appeal No.2073/98 and by judgment dated 22.8.03 the applicant was released by the Hon'ble Court under the provision of Probation of Offenders Act with a further direction that the conviction u/s 498-A of I.P.C. shall not affect the applicant's service. After serving a legal notice, the applicant was reinstated in service vide order dated 23.12.2003 without back wages and treating the intervening period including the suspension period as dies non (Annexure A5). Feeling aggrieved by the denial of back wages, the applicant served a legal notice to the respondents. But no action has been taken by the respondents. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that though the applicant was convicted by the trial court, but the Hon'ble High Court had released the applicant by giving the benefit of the provision of Probation of Offenders Act and also further mentioned in the judgment that the conviction of the applicant u/s 498-A of I.P.C. shall not affect the applicant's service. After sincere efforts by the applicant, he was reinstated in service w.e.f. 23.12.2003 but no back wages was ordered to be given and the intervening period including the suspension period has been treated as dies non vide impugned order dated 23.12.03 (Annexure A5), which is absolutely illegal because the applicant was released by the Hon'ble High Court. Hence the OA deserves to be allowed.



4. In reply, the learned counsel for the respondents argued that the applicant was not acquitted by the High Court. Thus the High Court has not set aside the order of conviction passed by the trial court. He was released on bond under section 4 of the Probation of Offenders Act. If a convict who was released on bond under Probation of Offenders Act is always a convict. The applicant was reinstated in service w.e.f. 23.12.03 without back wages and the intervening period was rightly ordered to be treated as dies non, according to rules. Our attention is drawn towards 1997 (2) SLJ page 38 – Ranchhodji Chaturji Thakore Vs. The Superintendent Engineer, Gujarat Electricity Board, in which it is held that “when one is convicted and dismissed on its basis but is later acquitted due setting aside of conviction he is not entitled to back wages on reinstatement”. Hence the action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant was convicted by the Additional Sessions Judge, Jabalpur and the applicant was convicted under Sections 498-A, 304-B, 34 IPC to rigorous imprisonment for 3 years and a fine of Rs.2000 and in default of fine, he was to undergo 9 months’ RI vide judgment dated 31.8.1998. The applicant had filed an appeal before the Hon’ble High Court, registered as No.2073/98 which was decided by judgment dated 22.8.03. By this judgment, the applicant was ordered to be released on his executing a personal bond worth Rs.5000/- for keeping good conduct for a period of 1 year and giving the benefit of Section 4 of the Probation of Offenders Act. The Hon’ble High Court did not acquit the applicant from the conviction imposed by the trial court though the amount of fine was ordered to be refunded, if deposited by the applicant but it does not mean that the applicant was acquitted from the conviction. In spite of sentencing the applicant to 3 years rigorous imprisonment and a fine of Rs.2000, the High Court has given the benefit of Section 4 of the Probation of Offenders Act and the applicant was released on executing a personal bond. We have perused the ruling of

1997 (2) SLJ page 38 (supra) in which it is held 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 back wages on reinstatement", while in the present case, the applicant was not acquitted. He was also found guilty by the High Court.

6. Considering all facts and circumstances of the case, we find that the OA has no merit. Accordingly, the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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Issued
On 14.3.05
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पृष्ठंकल सं ओ/न्या.....जबलपुर, दि.....

परिचयिणी ओ/न्या.....

(1) रजिस्ट्रार, उच्च न्यायालय का कार्यालय, जबलपुर

(2) अवर न्यायाधीश/न्यायाधीश, जबलपुर

(3) प्रत्यक्षी, न्यायाधीश, जबलपुर

(4) न्यायाधीश, उच्च न्यायालय, जबलपुर

सूचना एवं आवश्यक कार्यवाही का

रजिस्ट्रार

S. P. Singh 0030

P. K. Singh 0030