

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 283 of 2003

Jabalpur, this the 3rd day of September, 2004

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

Badri Prasad, S/o. Babulal Pali,
aged about 40 years, R/o. Ranksshna
Colony, Ghamapur, Jabalpur (MP). Applicant

(By Advocate - None)

V e r s u s

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The General Manager, Vehicle Factory, Jabalpur (MP). Respondents

(By Advocate - Shri S.A. Dhamadikari)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

"10.1 to quash the order dated 4.4.2003 (Annexure A-8),

10.2 to direct the respondents to treat the period of suspension since 6.11.1993 till 24.2.2003 as period spent on duty for all purposes and to grant all consequential benefits,

10.3 to direct the respondents to pay the arrears of salary for the suspension period after deducting the amount of subsistence allowance already paid to the applicant."

2. The brief facts of the case are that the applicant is working as Labourer (Unskilled) under the respondent No. 2. such, While working as/ the applicant was arrested on 6.11.1993 and was kept under suspension w.e.f. 6.11.1993 vide order dated 7.12.1993. He was continued under suspension for more than 9 years during the pendency of the criminal trial and was paid only 50% of the salary last drawn as subsistence



allowance. In the criminal trial the applicant was acquitted vide order dated 28.1.2003, as the complainant entered into a compromise with the applicant. That after been acquitted by the Trial court the applicant applied for being reinstated on 17.2.2003 alongwith the order of acquittal. The applicant was reinstated vide order dated 24.2.2003 but has been kept in the lowest grade of the pay scale of Rs. 2550-3200/- i.e. Rs. 2550/-. A show cause notice was issued to the applicant on 24.2.2003 by the respondent No. 2. The applicant submitted his reply, but the respondents arbitrarily fixed the basic pay at the lowest grade and neither treated the period of suspension as spent on duty nor counted this period for purpose of any other benefits and treated the applicant as fresh appointee. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.

3. None is present for the applicant. Since it is an old case of 2003, we proceed to dispose of this Original Application by invoking the provisions of Rule 15 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the respondents and perused the records and pleadings carefully.

4. The learned counsel for the respondents argued that the applicant was acquitted from criminal charges on compromise basis i.e. on technical ground by the Session Judge, Jabalpur vide the judgment dated 28.1.2003. The applicant has not been fully exonerated/honourably acquitted. The suspension of the applicant was revoked with effect from 24.02.2003. The respondents further argued that the applicant has been acquitted by the Court on compromise basis i.e. on technical ground and not on the



merits of the case. As per provisions of Article 193 of Civil Service Regulation, the period of suspension is regulated as per directions given under Article 193. The instructions issued by the Army Headquarters dated 17.9.1966 are specific to a particular case where an employee who is suspended on account of his arrest and detention by the Police on criminal charges and has been acquitted by the Court on technical ground without any positive findings as to his innocence, then he cannot be said to be fully exonerated and the competent authority can consider on merit of the case and pass order as to how to treat the period of suspension and in respect of pay and allowances during the period of suspension. The respondents further argued that the Government of India, Ministry of Finance and provided that vide OM dated 28.3.1959 has amended the period of suspension is regulated under FR 54(b). Hence, the applicant who was given the benefit of technical ground has no right of getting full pay and allowances during the period of suspension. Our attention is drawn towards the judgment of this Bench of the Tribunal in the case of Ram Kumar Yadav Vs. Union of India and other connected OA (Full Bench) in OA No. 110 of 1991 decided on 20th December 1994, in which it is held that/acquittal by giving the applicant benefit of doubt he is not entitled for full salary and allowances for the period of suspension. It was further held that the competent authority can deny the payment of full salary and allowances in view of FR 54-B for the period of suspension, when the person is acquitted by giving benefit of doubt. Hence, the impugned order passed by the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the respondents and on careful perusal of the pleadings and records we



find that in the instant case the applicant has claimed reliefs to quash the order dated 4.4.2003 with direction to the respondents to treat the period of suspension since 6.11.1993 till 24.2.2003 as period spent on duty for all purposes and to grant all consequential benefits with further direction to the respondents to pay the arrears of salary for the suspension period after deducting the amount of subsistence allowance already paid to the applicant. We also find that the applicant has been exonerated from the criminal charges on compromise between the parties. Therefore, it is clear that he has not been honourably exonerated. A similar issue has already been decided by the Full Bench of the Tribunal in the case of Ram Kumar Yadav (*supra*), wherein the Full Bench has cleared that a Government servant is not entitled as a matter of right to payment of full salary and allowances for the period he remains under suspension on account of criminal charge which ends in his acquittal by giving him the benefit of doubt. It is an admitted position that the applicant has not been exonerated honourable, therefore, he is not entitled for the full salary and allowances for the period of suspension. The Hon'ble Supreme Court in the case of Union of India and others vs. Jaipal Singh, 2004 SCC (L&S) 12 has observed as under :

"4. if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for

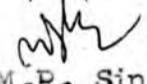


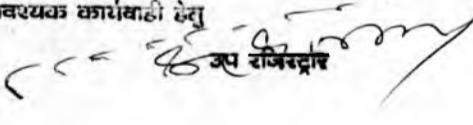
the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages is liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break.

6. In view of the aforesaid position, we are of the considered opinion that the applicant is not entitled for the salary for the period of suspension. However, he will be entitled to back wages from the date of acquittal and except for the purpose of denying the applicant actual payment of back wages, that period also will be counted as period of service, without any break. Accordingly, the Original Application stands dismissed. NO costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

पृष्ठांकन सं. ओ/व्या.....जयलपुर, दि.....
प्रतिलिपि अस्ते दिन:—
(1) सचिव, उत्तर भारतीय उत्तर विभाग, जयलपुर
(2) आवेदक श्री/श्रीमती/छ.के कार्यसल Shri Ch. Singh HC 134
(3) प्रत्यार्थी श्री/श्रीमती/छ.के कार्यसल Shri S. A. Phanadhi/cons HC 134
"SA" (4) विधिपाल, लोप्रा, जयलपुर व्यायामी
सूचना एवं आवश्यक कार्यालयी देश


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