

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

JABALPUR.

....

Original Application No. 491 of 1998

this the 27th day of February '2003.

HON'BLE MR. R.K. UPADHYAYA, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Jagdish Prasad Soni, aged about 50 years, S/o late Rammath Soni, Machinist (Skilled), Ticket No. 175, Personnel No. 0317, Ordnance Factory, Katni, resident near Kelwara Level, Crossing, Jagmohan Das Ward, Katni, Tahsil Mirwara, District Jabalpur.

Applicant.

By Advocate : Sri Rajendra Srivastava.

Versus.

1. Union of India through the Secretary to the Ministry of Defence Production, Govt. of India, New Delhi.
2. General Manager, Ordnance Factory, Katni.
3. Chairman/Director General of Ordnance Factories Board, 10-A Aukland Road, Calcutta.

Respondents.

By Advocate : Sri B. Dasilva.

O R D E R

BY MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has challenged the order dated 12.9.1997 whereby he has been denied the back wages from the period his dismissal to reinstatement after he was acquitted in appeal in a Criminal case. He has further sought a direction to the respondents to pay his entire salary from 31.10.1995 to 30.6.1997 with interest thereon at 18% per annum from 31.10.95 till realisation.

2. It is submitted by the applicant that he was working

as a labour in the Vehicle Factory, Jabalpur w.e.f. 14.7.1969 and was transferred to the Ordnance Factory, Katni w.e.f. 10.5.1975. He was promoted as Machinist (Skilled) in the Ordnance Factory, Katni, w.e.f. 31.10.1980. A criminal case was registered against the applicant in which the applicant was convicted under Section 381/34 IPC and imposed rigorous imprisonment of one year each and a fine of Rs.1000/- on each of them. In the event of non-payment of fine, one month's further imprisonment was directed vide judgment dated 7.6.1995 (Annexure A-1). It is specifically stated by the applicant that he ^{was} ~~was~~ immediately released on bail and he filed an appeal against the judgment before the First Additional Sessions Judge, Murwara (Katni), who finally decided the appeal vide judgment dated 31.5.1997 acquitting the petitioner as well as Sri Vijay Kumar Soni of the charges under Section 381/34 IPC (Annexure A-3). The applicant has further specifically stated in para 4.5 of the O.A. that during the pendency of the said criminal case, he was working as a Machinist (Skilled) in the Ordnance Factory right from 1989 onwards and he discharged his duties without any interruption, but when he informed the authorities about his conviction, the General Manager issued a show-cause notice dated 19.9.1995 to the petitioner under Rule 19 of CCS (CCA) Rules 1965 (in short Rules of 1965). The applicant gave his reply on 30.9.1995 (Annexure A-5). However, vide order dated 31.10.1995 the petitioner was dismissed from service on the ground of his conviction (Annexure A-6). Since the applicant was acquitted by the Appellate Court, he immediately informed the respondent no.2 about the same and also submitted a copy of the order passed by the Appellate Court. Accordingly, the respondent no.2

vide his order dated 26.6.1997 set-aside the order of dismissal dated 31.10.1995 and reinstated the petitioner in service (Annexure A-7). The period of absence from 31.10.1995 upto his reinstatement was to be decided by a separate order. Subsequently, vide order dated 15.7.1997 the respondent no.2 decided to treat the period from 31.10.1995 to 26.6.1997 as period covered by leave due to the credit of the petitioner or extraordinary LWP, as the case may be (Annexure A-8). Being aggrieved, applicant filed a representation against the said order, but even the same was rejected by order dated 12.9.1997 (Annexure A-10). It is these orders which have been challenged by the applicant in the present O.A. It is further submitted that he had earlier filed O.A. No. 813 of 1997, but the same was disposed of by giving a direction to the respondents to decide the appeal of the applicant. Accordingly, after receiving the Court's order on 17.11.1997, he preferred an appeal on 1.12.1997 (Annexure A-11), but in spite of six months having passed, the said appeal was not decided, therefore, the applicant has no other option, but to file the present O.A. During the pendency of the O.A., the respondents decided the appeal of the applicant by passing the order dated 31.8.1998, which was brought on record by the applicant and the same is also challenged.

3. The applicant's counsel has submitted that since the applicant had been working throughout the period during the pendency of the criminal case and he had been exonerated in the criminal appeal without giving him any benefit of doubt, the applicant was entitled to full back wages as per para 19 8(3) of the ⁶ces(CEA)K Rules of 1965. However, while deciding the said period, the authorities did not take into consideration at all the fact that the applicant had been fully exonerated in the

criminal trial, which they were supposed to take into consideration as per para 8(3) of the Rules of 1965. He has, thus, submitted that the orders passed by the respondents are liable to be quashed and the relief as prayed for may be granted to him.

4. The respondents, on the other hand, have opposed the O.A. and have submitted that since the applicant had been convicted, he had disabled himself from rendering services on the ground of his conviction, as such the applicant would not be entitled to any back wages. To substantiate their contention, they relied on AIR 1997 SC 1802.

5. We have heard both the counsel and perused the pleadings as well.

6. The counsel for the applicant tried to distinguish the judgment of the Hon'ble Supreme Court by stating that in the case before the apex court, the employee was in Jail, therefore, he could not have rendered the services, whereas in the present case in spite of his trial going on, the applicant was throughout released on bail and he had continued to discharge his duties without any interruption. Moreover, once he was acquitted in the criminal appeal, the respondents' authorities ought to have followed the procedure which is laid down under Rule 19 itself because he was dismissed under Rule 19 of the Rules of 1965. Para 8 and 8(3) for ready reference read as under :

"(8) Action when appeal/revision against conviction succeeds: (a) If an appeal/revision in higher court against conviction, succeeds and the Government Servant is acquitted, the order imposing a penalty on him on the basis of conviction, which no longer stands, becomes liable to be set-aside. A copy of the judgment of the higher Court should, therefore, be immediately procured and examined with a view to decide -

(i) Whether the acquittal should be challenged in a still higher Court; or

(ii) whether, despite the acquittal, the facts and

and circumstances of the case are such as to call for a departmental enquiry against the Government servant on the basis of the allegations on which he was previously convicted.

(b) if it is decided to take the matter to a still higher Court, action to institute proper proceedings should be taken with the least possible delay and (the penalty imposed shall not be set aside during the pendency of such proceedings.)

(c) If, on the other hand, it is decided that a departmental inquiry may be held, a formal order should be made -

(i) setting aside the order imposing the penalty on the basis of the conviction; and

(ii) ordering such departmental enquiry.

3. In cases where neither of the courses mentioned in paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed - Form at the end of this Chapter). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowance will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowances will be allowed as directed by the competent authority under FR 54(2) or FR 54(3) and the period treated as duty or non-duty under FR 54(4) or FR 54(5), as the case may be."

7. Sub para 8(3) makes it clear that in case where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay and allowances will be paid from the date of acquittal to the date of rejoining duty and the period counted as duty for all purposes, whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowances will be allowed as directed by the competent authority under FR 54(2) or FR 54(3) and the period treated as duty or non-payment under FR 54(4) or FR 54(5), as the case may be. FR 54(2) to FR 54(5) for ready reference read as under :

"(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be ;

Provided that where such authority as of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly, attributable to the Government servant it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule(7), be paid for the period of such delay, only (amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule(2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause(2) of Article 311) of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such (amount (not being the whole) of the pay and allowances) to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule(4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose; Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

8. A perusal of FR 54(2) shows that the competent authority was required to see whether the employee had been fully exonerated by the Criminal Court or was acquitted on or was giving the benefit of doubt technical ground, if it was found that the employee had been fully exonerated than he would be entitled to full pay and allowances. Therefore, it was necessary for the authorities

to apply their mind on this aspect, but perusal of the impugned order shows that the authorities have not even ^B been ~~been~~ ~~to~~ touch this aspect of the matter. On the contrary, they have relied on Hon'ble Supreme Court's judgment given in AIR 1997 SC 1802. It is seen that in that case the employee was in the jail, so naturally he could not have performed any duty, whereas in the instant case, the applicant has specifically stated that he was never put ^{he} behind the bars as had been working throughout and was dismissed for the first time by order dated 31.10.95 after his conviction. Therefore, there would be some distinguishing factors in the present case. It is also seen that the case decided by the Hon'ble Supreme Court was under Industrial Disputes Act, whereas in the present case the applicant was dismissed from service by attracting Rule 19 of the Rules of 1965 simply on the ground that he had been convicted by a court of law. Therefore, after he was exonerated in the criminal appeal, the respondents were supposed to follow the same rules and instructions laid down thereunder, which are quoted above. As stated above, since none of the authorities have applied their mind to this aspect of the matter whether the applicant's exoneration was complete or was based on some technical ground or was giving the benefit of doubt, we think that the impugned orders are not sustainable in law. Therefore, the impugned orders are quashed and set-aside and since it is required that disciplinary authority ^{should B} ~~to~~ apply his mind to this aspect specifically under sub-para 8(2) and FR 54(2), the matter is remanded back to the disciplinary authority to apply his mind to the facts as stated above and also the instructions and FR 54(2) and than pass appropriate order in accordance with law by passing a speaking and reasoned order within a period of three months from the date of receipt

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of copy of this order.

9. With the above direction, the O.A. is finally disposed of with no order as to costs.

P
(Mrs. Meera Chhibber)
Member (J)

Ch. Bagayam
(R.K. Upadhyaya)
Member (A)

GIRISH/-

पृष्ठांकल सं ओ/न्या.....जबलपुर, दि.....
परिचिनियि असरें दिएः—

(1) राज्य निवास विभाग, जबलपुर
(2) राज्य निवास विभाग, जबलपुर
(3) राज्य निवास विभाग, जबलपुर
(4) राज्य निवास विभाग, जबलपुर

सूचना द्वारा दिए गए असरें दिएः

T. J. Mehta
उपर दिएः—
8/8/03

R. Srivastava - Adc
B. dasgupta - Adc

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or 3/6/03