

**CENTRAL ADMINISTRATIVE TRIBUNAL****CHANDIGARH BENCH**

**OA. 060/00012/2014  
(Reserved on 10.12.2014)**

**Chandigarh, this the 6<sup>th</sup> day of January, 2015**

**CORAM:HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)  
HON'BLE DR.BRAHM A.AGRAWAL, MEMBER(J)**

Balwinder Kaur, Ex-Clerk, Government High School,  
Behlana, UT Chandigarh, resident of House No. 5232-B,  
Sector 38(West), Chandigarh.

..... Applicant

BY ADVOCATE: **SH. J.R. SYAL**

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001.
2. Union Territory, Chandigarh, through Administrator, UT Chandigarh.
3. Secretary Education, Union Territory, Chandigarh.
4. Director Public Instructions (C), Union Territory, Chandigarh.

..... Respondents

BY ADVOCATE: **NONE FOR RESPDT.NO.1. As \_\_\_\_\_.**

**SH. ARVIND MOUDGIL, COUNSEL FOR  
RESPDTS. NO. 2-4.**

**ORDER**

**HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-**

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"That impugned order dated 11.04.2002, conveyed vide Endorsement No. DPI-UT-Ad.III-13(35)99, dated 26.04.2002, passed by the Director Public Instructions (C), Union Territory, Chandigarh whereby a penalty of dismissal from service was imposed on the applicant (Annexure A-7), order of Secretary Education, Chandigarh Administration, dated 29.01.2003, conveyed vide Endorsement bearing No. DPI-UT-Ad.III-13(35)99, dated 18.02.2003 (Annexure A-9) whereby the appeal of the applicant was rejected, may kindly be set aside, in view of her acquittal, vide judgement dated 28.02.2012, passed by the Judicial Magistrate 1<sup>st</sup> Class, Chandigarh in Police Challan No. 154A of 1.10.2004 (Annexure A-10) and the order of dismissal from service as also the order of appellate authority upholding the punishment may be reviewed and the applicant may kindly be reinstated in service, with all consequential benefits flowing therefrom right from the date of dismissal, till reinstatement."

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2. Averment has been made in the OA that the applicant was issued charge sheet vide Memo No. DPI-UT-Ad.III-13(35)99-dated 09.10.2000 (Annexure A-2) alleging the misconduct, that the applicant has embezzled the Government money amounting to Rs. 3,87,575/- besides irregular contingent expenditure to the tune of Rs. 39,383/- in connivance with the then Headmistress Smt. Satya Goel. She submitted letter dated 22.12.2000 (Annexure A-3) to respondent No. 4 seeking some documents so that she could submit her representation against the charge sheet. She also denied the charges stating that the alleged confession was taken under threat and she has deposited an amount of Rs. 1.58 lakh relating to this matter. She also submitted her defence statement vide Annexure A-5 (undated). Meanwhile, on the complaint of DPI (C) against Smt. Satya Goel, Head Mistress and DDO, Government High School, Behlana and Raipur Khurd to the effect that Smt. Satya Goel, retd. DDO/Head Mistress and Smt. Balwinder Kaur, Clerk have

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committed embezzlement to the tune of Rs. 3,87,575/- during the period 1.4.1996 to 31.5.1999 as reported by the AG (Audit), FIR was lodged and charges under Sections 409/420/467/468/471 of I.P.C were framed against the applicant.

3. The Inquiry Officer held the inquiry regarding the charge sheet dated 9.10.2000 and on the basis of the confessional statement made by the applicant, he held the charges to be proved (copy of the Inquiry Report at Annexure A-6). Respondent No. 4 exercising the powers of the Disciplinary Authority imposed penalty of dismissal from service in terms of Clause 9 of Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 vide order dated 11.4.2002 conveyed vide Endorsement No. DPI-UT-Ad.III-13(35)99, dated 26.4.2002 (Annexure P-7). The applicant preferred an appeal (Annexure P-8) to the Secretary (Education), Chandigarh Administration (respondent No. 3) which was rejected vide order dated 29.1.2003 (Annexure A-9). The trial before the JMIC,

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Chandigarh concluded and vide judgement dated 28.2.2012 (Annexure A-10) it was held that the prosecution failed to prove its case beyond reasonable doubt and extending the benefit of doubt, the accused was acquitted from the charges framed against her. After the acquittal, the applicant made a request to respondent No. 4 to consider her request for reinstatement (Annexure A-11). Receiving no response from respondent No. 4, the applicant filed Memorandum/appeal to respondent No. 2-Administrator, UT Chandigarh on 30.4.2013 (Annexure A-12) with prayer to reinstate her in service with all consequential benefits.

4. Averment has been made in the OA that inaction of the respondents in reinstating the applicant in service by setting aside the orders of dismissal by the Disciplinary Authority and subsequent upholding of the order by the Appellate Authority, on the acquittal of the applicant by a court of criminal jurisdiction, is not

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sustainable in the eyes of law, interalia, on the following grounds:-

"That in Civil Appeal No. 2992 of 1995 titled as Deputy Director of Collegiate Education (Administration(Madras) Vs. S. Nagoor Meera, the Hon'ble Apex Court has made the following observations:-

"8. We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the conduct which has led to his conviction on a criminal charge and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal of reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate Court or on the ground that the said Government servant – accused has been released on bail pending the appeal."

Since in a criminal case, the applicant has been acquitted of the charges, the impugned order of dismissal passed by the respondent No. 4, upheld by the respondent No. 3 are required to be reviewed in a manner that the applicant suffers no prejudice. Non-review of the orders of dismissal of the disciplinary/appellate authority by the respondents, is against the spirit of the aforesaid judicial pronouncement, referred to above and as such, the same is likely to be set aside."

Since the applicant did not get any response to the representations/Memorandum filed by her, hence this OA.

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5. In the counter reply filed on behalf of the respondents, the facts of the matter have not been disputed. It has been stated that the applicant's claim for reinstatement into service on the basis of her acquittal in criminal case by giving her benefit of doubt cannot be entertained because the orders passed by the Punishing and Appellate Authority with respect to her dismissal from service have not been impugned in any case and have never been quashed by any Court of Competent Jurisdiction. The criminal case titled State Vs. Balwinder Kaur was decided by JMJC Chandigarh on 28.2.2012 and the applicant has been given the benefit of doubt and acquitted from the criminal charges. Acquittal from Court for criminal proceedings does not give her the right to claim reinstatement because the findings of the Inquiry Officer, charge sheet, order of dismissal by the Appointing Authority and order of rejection of appeal by the Appellate Authority remains unchallenged and are still in force.

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6. It has further been stated that the case of the applicant is hopelessly time barred, as the order of dismissal is dated 11.4.2002 and the appeal filed by the applicant was rejected by the Secretary, Education vide order dated 29.1.2003. Even the judgement & order passed in the criminal case is dated 28.2.2012 and as such, the present OA deserves to be dismissed on the ground of delay and latches. Further, it is well settled law by the Hon'ble Apex Court that in case an application for condonation of delay is not filed, then this Tribunal cannot decide the case on merits.

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant narrated the background of the matter and stated that the defence statement filed by the applicant had not been considered in proper perspective. He stated that the amount of around Rs. 1.58 lakh was deposited by the applicant, just to save her service. He stated that the applicant had been tried in a criminal case on the same

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charges as were the subject of the charge sheet. The witnesses were the same and she had been acquitted in the criminal case. Thus, the applicant was entitled to be reinstated in service. He also relied on **Managing Director State of Hyderabd & Anr. Vs. P. Kata Rao, 2008(3) RSJ Page 362** wherein it had been held as follows:-

In G.M. Tank Vs. State of Gujarat and Ors., 2006(5) SCC 446, noticing a large number of decisions operating in the field, it was observed:

"The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

8. Learned counsel for the respondents stated that the amount of Rs. 1.58 lakh paid by the applicant was deposited through cheques issued over a period of two months and the applicant could not claim that these have

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been deposited under duress. He also stated that the applicant had been dismissed from service in 2002 and the appellate authority had rejected the appeal in 2003. Thereafter, the applicant did not impugn these orders before the CAT, but had only filed this OA in January, 2014 after her acquittal in a criminal case which happened on 28.2.2012. The learned counsel stated that the applicant had been acquitted giving her the benefit of doubt and in such a case when the disciplinary proceedings had already been concluded and the applicant had not impugned these in any manner, there was no ground to reinstate the applicant in the service of the respondents.

9. We have given our thoughtful consideration to the matter. A perusal of the material on record shows that the applicant was acquitted in the criminal case filed against her as the learned JMIC held that "the necessary ingredients of the offence of forgery, cheating or criminal breach of trust, are not made out beyond the shadows of

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reasonable doubts, against the accused". It has also been mentioned in the judgment that the prosecution failed to produce the copy of the Audit Report which was one of the listed documents although 24 witnesses were examined by the prosecution. The charge sheet and the inquiry report on the basis of which the applicant was dismissed from service vide order dated 11.4.2002 and against which the appeal filed by the applicant was rejected, related to embezzlement of Government money, preparation of bogus bills and proper records of stock taking of items purchased not being maintained. The list of documents relied included interalia the confessional statement of Smt. Balwinder Kaur and only two witnesses were listed in the charge sheet. The Inquiry Officer in finalizing the inquiry report mainly relied upon the documentary record and confessional statement of Smt. Balwinder Kaur. The claim made in the OA that the confessional statement was recorded by the applicant under pressure does not appear to be believable as she

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has deposited an amount of Rs. 1.58 lakh through cheques spread over a fairly long period of time and such action could not have been taken under pressure. It is, therefore, observed that the charges in the disciplinary case were different from those in the criminal proceedings and the list of documents and witnesses were also different.

10. The disciplinary proceedings culminated in the dismissal order dated 11.4.2002 and the order of the appellate authority was issued on 29.1.2003. The applicant did not impugn these orders through an OA, but had only come before this Tribunal nearly twenty months after her acquittal in the criminal case through judgement dated 28.2.2012. The disciplinary proceedings against the applicant had gained finality since she did not challenge the order of the appellate authority before any forum earlier. The charges in the disciplinary proceedings and the proceedings in the criminal case are materially different as discussed above. Hence the applicant cannot

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claim reinstatement in service on the basis of her acquittal in the criminal case. Hence, we see no merit in this OA and the same is rejected. No costs.

**(RAJWANT SANDHU)  
MEMBER(A)**

**(DR. BRAHM A.AGRAWAL)  
MEMBER(J)**

**Dated: JANUARY 6 2015.**

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