

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.1579/2015

Order reserved on 18.01.2017
Order pronounced on 24.01.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)
HON'BLE MR K.N. SHRIVASTAVA, MEMBER (A)

Ashutosh, aged about 50 years,
Conductor, ND, B.No.18813,
S/o Sh. Ishwar Nath,
R/o AM-41, Shalimar Bagh,
New Delhi.

...Applicant

(By Advocate: Mr. Anil Mittal and Ms. Komal Aggarwal)

VERSUS

Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002.

(through Chairman-Cum-Managing Director)

...Respondent

(By Advocate: Ms. Ruchira Gupta and Ms. Mona)

:ORDER:

DR BRAHM AVTAR AGRAWAL, MEMBER (J):

The applicant, a conductor with the respondent, had been under suspension during the period from 02.04.2001 [i.e., the date of his arrest in a criminal case under sections 409/471/120B, IPC] to 20.01.2015 [i.e., the date immediately prior to assignment of duty after his acquittal (vide Annexure A-4)]. During the said period, he was paid subsistence allowance at 50%, later increased to 75%.

1.2 It may also be noted that the applicant was in police/judicial custody during the period from 02.04.2001 to 30.08.2001 [i.e., the date of grant of bail].

1.3 The respondent issued to the applicant the SCN dated 09.02.2015 (Annexure A-7), which reads as under:

"It has been noticed through a press cutting as published in the Times of India dated 05.4.2001 that a criminal case was registered against you and this fact has been confirmed by PS, Ambedkar Nagar on the letter issued by DM, GTK to the SHO, PS Ambedkar Nagar vide No.GTK/AI(T)/2001/1347 dated 25.4.2001. Accordingly, you were suspended vide letter No.GTK/AI(T)/CS-19/2001/248 dated 26.4.2001.

From the perusal of the above said case and papers available in the file, it is observed that a police case was registered against you in PS Ambedkar Nagar vide FIR No.139/2001 dated 21.3.2001 and you were arrested on 02.4.2001 but intimation about this case has not been given by you to DM GTK Depot within 48 hrs. of the incident which is mandatory as per rule on the day of incident as you were working under the administrative control of DM GTK. This shows concealment of facts on your part.

Further in the criminal case though the acquittal is totally on flimsy ground specially when there is no dispute that you were working with DTC and sanction to prosecute you U/s 179 CrPC was also obtained from DTC. You have been acquitted by the Hon'ble Court in the above police case on giving the benefit of doubt as such why during the suspension period, the pay and allowances be restricted to payment already made as subsistence allowance and that period of suspension be treated on duty only for the purpose of continuity in service and not for any other benefits.

You are hereby explain you position in this regard within 72 hours of the receipt of this memo, failing which final action will be taken against you as per the merits of the case."

(sic)

1.4 The applicant's reply dated 02.03.2015 (Annexure A-8) reads as under:

"I received your Show Cause Notice dated 11.2.2015 through I/C Sech. Section in which I have been accused of not giving information of being arrested, which is wrong and

baseless. Information of my arrest had been given by my relative on dated 1.4.2001. My court case has been finalized & I had given you the final orders after that you resumed my services in DTC. I was acquitted in this case. Both the allegations leveled by you against me are false and baseless. The salary which you had paid to me from 2.4.2001 to 21.1.2015 is not sufficient. Therefore, after considering all these facts you are requested to pay the unpaid salary from 2.4.2001 to 21.1.2015 with all dues like ACP, DA, increments, leaves, pay commission according to my position and what I am entitled for. You are requested to withdraw your show cause notice."

(sic)

1.5 Followed the respondent's order dated 20.03.2015

(Annexure A-1), which is reproduced hereinunder:

"Reply dated 2.3.2015 given by Mr. Ashutosh, Conductor B.No.18813 to notice sr.no.359 dated 9.2.2015 was duly considered and the same was not found satisfactory. During the suspension period, the pay and allowances be restricted to payment already made as subsistence allowance and that period of suspension be treated on duty only for the purpose of continuity in service and not for any other benefits."

1.6 The applicant has filed the instant OA praying that the aforesaid order dated 20.03.2015 (Annexure A-1) be quashed and that the respondent be directed to pay to the applicant full salary and allowances for the aforesaid period along with interest.

2. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

3. The issue involved in this case is governed by the provisions of FR 54B, which reads, *inter alia*, as under:

"(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

...

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

... ."

4. It is within the judicious discretion of the competent authority to take a view on the question of back wages. Employee's conduct is relevant and mere acquittal is not enough to allow him full pay and allowances for the whole period of suspension.

5.1 As regards the first allegation in the aforesaid SCN that the applicant did not intimate to the DM GTK Depot about his arrest within 48 hours thereof, it has been pleaded by the applicant and not denied by the respondent in its reply, that the required information was sent by the applicant's wife on the date of arrest itself (vide Annexure A-2).

5.2 As regards the second allegation in the aforesaid SCN that the acquittal was on "flimsy ground" and by giving benefit of doubt, the learned counsel for the applicant has relied upon the Hon'ble Punjab and Haryana High Court's judgment dated

12.03.2012 in **Bhim Singh Vs. State of Haryana & Ors.** [2012

(3) SLR 545 (Pb. & Hry.)], wherein in paragraph 9 it has been observed as under:

'Further, this Court in the case of Jagmohan Lal vs. State of Punjab, AIR 1967 (P&H) 422 had gone to the extent of holding in a case which had nothing to do with his official work or duties that the moment he is acquitted of the charge, he is acquitted of the blame and it does not make a difference whether the acquittal was after giving benefit of doubt or for other reasons. Relevant portion of the judgment reads as follows:-

"The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being doubt in the mind of the court the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this; the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to except a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

Thereafter, two Division Benches of this Court in Shashi Kumar vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576 : [2005(1) SLR 659 (Pb. & Hry.)] and Shiv Kumar Goel vs. State of Haryana and another, 2007(1) SCT 739 : [2007(1) SLR 633 (Pb. & Hry.)], have again held that acquittal in criminal proceedings either by giving benefit of doubt or

honourable acquittal by the criminal court by recording finding that there was no evidence to prove the charge against the employee, he would be entitled to the benefit of pay and allowances over and above the subsistence allowance.'

6. The Criminal Court in its judgment dated 10.02.2014

(Annexure A-4) had concluded as under:

"Accused Randhir and Ashutosh stand exonerated for the offence they are charged with as prosecution has not been able to establish its case beyond reasonable doubt against them."

7. In this case, we find that the impugned order (Annexure A-1) is a non-speaking order and, therefore, legally unsustainable for the said reason alone. Accordingly, we quash it. Nevertheless, as we cannot substitute our own view, the respondent will afresh consider the case of the applicant as per law and after affording him a fresh opportunity of hearing pass a speaking order.

8. The OA is disposed of with the above directions. No order as to costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

/jk/