

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4461/2017

Reserved on : 25.07.2018.

Pronounced on : 13.08.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Dharam Pal, 58 years
S/o Late Sh. Ved Pal,
R/o Village Ridhau, P.O. Pharmana,
Tehsil Khar Khoda,
Sonipat, Haryana-131408.

.... Applicant

(through Ms. Pooja Tandon, Advocate)

Versus

1. Chairman,
DTC Headquarter,
I.P. Estate,
New Delhi-110001.
2. Depot Manager,
DTC, Bawana Depot,
Delhi-110039.

.... Respondents

(through Mr. Anmol Pandita for Ms. Divya Jyoti Singh, Advocate)

ORDER

The applicant in the current O.A. is working as Asstt. Fitter in Delhi Transport Corporation (DTC). He along with some other persons was involved in a Criminal Case No. 329/2016. On account of the said case, he was placed under suspension from 09.08.2016 to 23.08.2016. The applicant was acquitted of the charges framed against him vide judgment dated 21.03.2017 passed by Additional

Sessions Judge, Sonipat. The relevant portion of the judgment reads as under:-

"As the sequel to above discussion, it is held that since there is no incriminating evidence against the accused person which can be relied and acted upon beyond all shadows of reasonable doubt to connect them with the charge as framed against them. Therefore extending benefit of doubt to the accused persons, I acquit them of the charges as framed against them. They are acquitted accordingly."

2. The applicant was also informed of his acquittal by the respondents on 22.05.2017, stating that:-

"Further to this office Hindi memo No. BD/AI(T).Susp/2016/210 dated 31.08.2016, vide which you were suspended for involving in a criminal case and remained under Lock-up in Jail w.e.f. 09.08.2016 to 23.08.2016. You have already been released from suspension vide this office memo No. BD/AI(T)/2017/1009 dated 31.03.2017, after court decision dated 21.3.2017. In this case, you have been acquitted of the charges as framed U/S 316, 323, 34, 342, 406 and 498A, by extending benefit of doubt.

The subsistence allowances already paid, during the period of suspension, are considered as adequate."

3. The grievance of the applicant is that despite several requests made by him to the respondents, his salary for the suspension period has not been released and he has also not been granted the increment due to him during the period, he remained under suspension. The respondents vide letter dated 16.10.2017 have declined to grant him salary and annual increment etc. for the suspension period. Aggrieved, the applicant has prayed for the following reliefs:-

"(i) Quash the orders passed vide office letter No.BD/AI(T)/2017/2939 dated 16/10/2017 (**Annexure A-1**) and officer letter No. BD/AI(T)/2017/2757 dated 22/09/2017 (**Annexure A-2**) to the appeals of the applicant.

(ii) Direct the respondents to release the complete salary along with allowance for the suspension period during 09/08/2016 to 31/03/2017 along with the annual increment applicable."

4. The respondents in their counter submit that the applicant along with his wife and two sons was arrested in a dowry case on 09.08.2016 and remained imprisoned upto 23.08.2016, when he was granted bail. Vide the decision of Addl. Sessions Judge, Sonipat, on 21.03.2017, he has been acquitted by giving him benefit of doubt. The departmental case against the applicant has also been closed in the light of the aforesaid decision.

5. A legal opinion on the representations received from the applicant was obtained to confirm whether he was entitled for the allowances/wages for the period he remained under suspension w.e.f. 09.08.2016 to 30.03.2017. The legal opinion of the Standing Counsel of Delhi Transport Corporation is that since the applicant (Sh. Dharam Pal) Asstt. Fitter was arrested and faced criminal prosecution, and since his acquittal is only on bona fide doubt, it does not entitle him for full pay and allowances. This opinion was seconded by another counsel Ms. Avnish Ahlawat, Advocate. Respondents have relied upon the Central Service Revised Pay Rules, 2008 stating that Government Servant will have to render more than 6 months of service on 1st July of a year to be eligible to draw

an annual increment on that day. In case, he renders less than 6 months of service as 1st July of a year, his date of increment will fall 12 months later on the next 1st July. Since the workman here remained under suspension for more than 06 months, he is ineligible to draw annual increment for that year.

5. During the course of hearing, the learned counsel for the applicant Ms. Pooja Tandon vociferously argued that the acquittal order has not been challenged by the respondents in any higher judicial forum. She relied upon the Rules and Regulations applicable to the employees of Delhi Transport Corporation, Clause-15(4)(b) of Delhi Road Transport Authority (Conditions of Appointment & Service) Regulations, 1952, which provides that:-

“(b) When the suspension of an employee is held to have been unjustified or when an employee who has been dismissed, removed or suspended is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty.

- (i) If he is acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or
- (ii) If otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause(i) the period of absence from duty will be treated as period spent on duty. In a case falling under clause (ii) it will not be treated as a period spent on duty unless the revising or appellate authority so direct.”

5.1 Learned counsel also relied upon the decision of Hon'ble High Court of Punjab and Haryana in the case of **Mahesh Kumar Gupta Vs. Uttar Haryana Bijli Nigam Ltd.**, 2016(6)SLR 277. She stated that in the aforesaid order, the Hon'ble High Court has discussed the judgment of **Joginder Singh Vs. Union Territory of Chandigarh**, Civil Appeal No. 2325 of 2009 decided on 11.11.2014 wherein the Hon'ble Apex Court has held that:-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in *RBI v. Bhopal Singh*. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

Similarly, Hon'ble High Court of Delhi in the case of **UOI Vs.**

Jagdamba Singh [WP(C)-6152/2015] on 02.07.2015 has held that:-

"14. The Tribunal has further relied upon in the case of *Jagmohan Lal v. State of Punjab Through Secretary to Punjab Government Irrigation and Others*, reported at AIR (54) 1967 Punjab and Haryana 422 (Punj.) Relevant portion of the judgment reads as under:

"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 a doubt in the mind of the court the accused is acquitted."**

6. I am indeed surprised that the respondents have chosen not to grant the necessary salary alongwith increment etc. to the applicant (for the period under suspension) despite the fact that they have not challenged the judgment dated 21.03.2017, and have even closed the disciplinary proceedings against the benefit of the said judgment.

7. I am inclined to agree with the contention of the applicant that once he stands acquitted from the charges by an order of the Competent Court then the time period for which he has been suspended has to be considered as spent on duty and he should be given all the necessary service benefits as he would have normally got while in service.

8. The action of the respondents in not releasing his complete salary for the period of suspension and denying his annual increment on the ground that he remained suspended during the period is not tenable in law. The applicant is armed with a judicial decision in his favour, which paradoxically has been followed by the respondents

in the departmental proceedings themselves and which has attained finality not having been challenged by the respondents in any Court of Law. The judgment in the case of **Joginder Singh** (supra) deals with the same issue and the rationale applied therein is squarely applicable to the present case as well. The O.A. is accordingly allowed. Consequently, orders dated 16.1.2017 and 22.09.2017 are quashed and set aside. The respondents are directed to release the salary along with allowance for the suspension period w.e.f. 09.08.2016 to 31.03.2017 along with annual increment applicable to the applicant, as per law. No costs.

(Praveen Mahajan)
Member (A)

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