

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

O.A. No.1043/2014

**Reserved On:17.07.2018
Pronounced on:19.07.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri Brij Kishan Gujrati
S/o Shri J.N. Gujrati
Aged about 61 years
R/o 661, Kanungo Apartments,
71, I.P. Extn., Patparganj,
Delhi-92. ... Applicant

(By Advocate: Shri S.P. Chadha)

Versus

1. Comptroller & Auditor General of India,
9-Deen Dayal Upadhyaya Marg,
New Delhi-1100124.
2. The Principal Director of Audit,
Economics & Service Ministries,
AGCR Building, I.P. Estate,
New Delhi.
3. The Director (Admn.)
(Disciplinary Authority)
O/o The Principal,
Director of Audit (Economic & Services)
AGCR Building, I.P. Estate,
New Delhi. ... Respondents
4. Deputy Director of Audit (Admn.)
O/o The Principal Director of Audit,
Economics & Service Ministries,
AGCR Building, I.P. Estate,
New Delhi. ... Respondents

(By Advocate: Ms. Sneha Verma for Shri Gaurang Kanth)

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a Senior Auditor under the respondents, filed the OA questioning the impugned orders, whereunder the respondents have refused to treat the period from 09.08.1985, i.e., the date on which he was placed under suspension to 13.09.2009, i.e., the day preceding to the date on which he was acquitted in a criminal case.

2. The seminal facts required for the purpose of the OA are that, while the applicant was working as Senior Auditor, he was arrested and detained on 09.08.1985 beyond the period of 48 hours in connection with a criminal case registered against him under Sections 302/498A/34 IPC. In pursuance of the same, he was placed under suspension from 09.08.1985, i.e., with effect from the date of his arrest and detention. The Court of the Additional Sessions Judge, Delhi, in Sessions case No.196/99 found the applicant guilty and imposed the punishment of Rigourous Imprisonment for 3 years with fine of Rs.5000/- under Section 498A IPC and also imposed the punishment of Life Imprisonment with fine of Rs.10,000/- under Section 302 IPC vide its judgment dated 23.08.2001. However, the Hon'ble High Court of Delhi, by its judgment dated 14.09.2009 in Criminal Appeal No.631/2009, acquitted the applicant by granting benefit of doubt. However, in

the process, the applicant was incarcerated for a period in excess of 3 years. In pursuance of the acquittal of the applicant, he was reinstated in service with effect from 01.05.2011.

3. The respondents on reinstatement of the applicant, treated the period from 14.09.2009, i.e., the date of acquittal of the applicant to 01.05.2011, i.e., the date of actual joining of the applicant into service as spent on duty and granted all the benefits for the said period. However, the respondents treated the period from 09.08.1985, i.e. the date of suspension of the applicant to 13.09.2009, i.e., the day preceding the date of acquittal of the applicant as not spent on duty for the purpose of granting full pay and allowances for the said period. However, the said period was treated as period spent on duty for the purpose of granting of DCRG and Pension. When the representations made by the applicant seeking to treat the period from 09.08.1985 to 13.09.2009 as spent on duty for the purpose of granting full pay and allowances also was rejected, he filed the instant OA.

4. Heard Shri S.P. Chadha, learned counsel for the applicant and Ms. Sneha Verma for Shri Gaurang Kanth, learned counsel for the respondents and perused the pleadings on record.

5. The short point fell for our consideration in the instant OA is that whether the period from 09.08.1985 to 13.09.2009 is to be treated as spent on duty even for the purpose of granting full pay

and allowances, in view of the acquittal of the applicant from the criminal offences.

6. The learned counsel for the applicant submits that though the applicant was acquitted by granting benefit of doubt by the appellate court, but there cannot be any difference between a simple acquittal and acquittal on granting benefit of doubt, as per law. In both the cases, the respondents were required to treat the period as spent on duty for all purposes. He placed reliance on a Co-ordinate Bench decision of this Tribunal in **OA No.596/2004** and batch dated 24.12.2004 in **Ram Pal and Others etc. Vs. Commissioner of Police, New Delhi and Others** and also on the judgment of Hon'ble Punjab & Haryana High Court in **CWP No.14375/2003** dated 07.12.2004 in **Sashi Kumar Vs. the Haryana Bijli Vitran Nigam.**

7. Per contra, the learned counsel for the respondents while not disputing the aforesaid facts, however, submits that in terms of FR 54-1, if an employee is acquitted on benefit of doubt, the employer can treat the period of absence as not spent on duty for the purpose of pay and allowances. The learned counsel further submits that the applicant due to his own conduct, got himself involved in a criminal case and consequently, was incarcerated in the jail for a period of more than 3 years and also been convicted, though later acquitted in appeal. Hence, he cannot claim the full wages and

allowances for the said period prior to the date of acquittal. The learned counsel placed reliance on the judgments in **Ranchodji Chaturji Thakore Vs. The Superintendent Engineer Gujarat Electricity Board, Himmatnagar, (Gujarat) and Another, (1996) 11 SCC 603** and **Bansi Dhar Vs. State of Rajasthan Civil Appeal No.4400/2005** decided on 31.10.2006.

8. We find force in the submissions made by the learned counsel for the respondents. As rightly submitted by the respondents counsel, that the respondents are in no way responsible either in the arrest of the applicant or incarceration for a period beyond 3 years in the jail. It is not a case where the applicant was arrested due to the complaint given by the respondents or in connection with any of his official duties.

9. In **Ranchodji Chaturji Thakore** (supra), the Hon'ble Apex Court dealing with an identical situation held as under:-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is : Whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in his own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner

is not entitled to payment of back wages. The learned single Judge and the Division Bench have not committed any error of law warranting interference”.

10. Though in the decisions of this Tribunal on which the learned counsel for the applicant placed reliance, certain decisions of the Hon'ble Apex Court were cited and followed but as held by the Hon'ble Apex Court, there cannot be any hard and fast rule and each case has to be considered in its peculiar circumstances and the reasons for the absence of the employee, we are of the considered view that in view of the facts of the instant case, the decision in **Ranchodji Chaturji Thakore** (supra) is squarely applicable to the applicant's case.

11. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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