

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.203/00647/2015

Jabalpur, this Thursday, the 26th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Bansilal Sahu,
S/o Shri Pritam Sahu,
Aged about 52 years,
Postal Assistant
Head Post Office Mahasamund 493445
Dist. Mahasamund (CG)

-Applicant

(By Advocate –**Shri B. P. Rao**)

V e r s u s

1. Union of India,
Through the Secretary
Ministry of Communication
Department of Posts,
Dak Bhawan
New Delhi 110001

2. The Director (Postal Services)
Chhattisgarh Circle,
CPMG Office,
Malviya Road
Raipur 492001 (CG)

3. The Sr. Supdt. Of Post Offices,
Raipur Division,
SSP Office,
Raipur 492001 (CG)

- Respondents

(By Advocate –**Shri Vivek Verma**)
(Date of reserving the order: 18.04.2018)

ORDER**By Ramesh Singh Thakur, JM:-**

The applicant has filed this Original Application seeking for setting aside the order dated 30.06.2014 (Annexure A-8) passed by the respondent No.3 as well as order dated 01.05.2015 (Annexure A-11) passed by Respondent No.2. He is also seeking direction to the respondents to treat the intervening period from date of suspension to reinstatement in service i.e. from 18.03.1994 to 17.02.2013 as in service rendered by him.

2. The applicant in this Original Application has sought for the following reliefs:

“8.1 That, the Hon’ble Tribunal be pleased to set aside the order dated 30.06.2014 (Annexure A-8) passed by Respondent No.3 as well as Order dated 1.5.2015 (Annexure A-11) passed by Respondent No.2 in the interest of justice.

8.2 That, the Hon’ble Tribunal be pleased to pass an order directing the respondents to treat the intervening period from date of suspension to date of joining back in service i.e. from 18.3.1994 to 17.2.2013 be treated as Service rendered by the Applicant for all the purpose including, Back Wages, Pay Fixation, Promotional Benefits at par with Juniors including Arrears with 10% interests and also for pensionary benefits.”

3. The brief facts of the case are that the applicant while working as a Postal Assistant at Mahasamund vide order dated 18.03.1994 issued by Senior Superintendent of Post Office in exercise of the power conferred by sub Rule (1) of Rule 10 of

Central Civil Services (Classification, Control and Appeal) Rules, 1965 placed the applicant under suspension with immediate effect. Subsequently, the applicant has been convicted in a criminal charge under Section 494A and 304(B) of Indian Penal Code passed by the Second Additional Session Judge Raipur on 29.10.1994 in ST No.74/1992 and sentencing the applicant and his father to undergo rigorous imprisonment for two years and pay fine of Rs.500 each in default of payment of fine to further undergo imprisonment for two months. The Senior Superintendent of Post Office Raipur Division vide order dated 16.01.1995 (Annexure A-2) has dismissed the applicant in exercise of the powers conferred by Rule 19 (i) of the CCS (CCA) Rules 1965. Thereafter the applicant challenged the order dated 29.10.1994 passed by the Additional Session Judge Raipur by filing a Criminal Appeal No.1329/1994 before the Hon'ble High Court of Chhattisgarh. The appeal was allowed vide order dated 30.11.2012 (Annexure A-3) and the order dated 29.10.1994 was set aside and the applicant was acquitted from the charges leveled against him. Thereafter the applicant made representation dated 22.01.2013 to the respondent-department to allow him to join his duties. The applicant was allowed to join for duties vide order dated 11.02.2013 (Annexure A-5). The applicant joined on 18.02.2013. Thereafter the applicant

submitted an application dated 21.02.2013 requesting for treating his suspension period and termination period as spent on duty. The respondent No.2 vide memorandum dated 23.06.2014 (Annexure A-6) instructed the applicant to submit his explanation within 5 days against their decision to treatment of intervening period from the date of suspension to date of reinstatement as :confining the payment of subsistence allowance during the period of suspension and no work no pay for the period from the date of dismissal to date of reinstatement and treating the said period as dies non, but to count the previous service of the applicant with present service. The applicant filed his explanation vide letter dated 26.06.2014 (Annexure A-7) stating that he has been acquitted from the alleged criminal charges by Hon'ble High Court and was allowed to join duties and in this circumstances the intervening period from the date of placing him under Suspension till allowing him duty should be treated as spent on duty will all benefits. The respondent No.3 rejected the applicant's explanation vide memorandum dated 30.06.2014 (Annexure A-8) by treating:-

- (a) The period of suspension (18.03.1994 to 15.01.1995) for all pensionary benefits and confining the payment of Subsistence Allowance paid to him.

(b) The period of dismissal i.e. date of dismissal to date of reinstatement (16.01.1995 to 17.02.2013) has been treated as dies-non on the principles of no work no pay and said period has not been treated as for any pensionary benefits and not for any sort of Monetary Benefits/allowances.

3.1 The applicant thereafter filed an appeal dated 27.08.2014 (Annexure A-9) to the Director Postal Services. On non consideration of the said appeal, applicant approached this Tribunal by filing an Original Application No.203/00093/2015 which was disposed of on 10.02.2015 (Annexure A-10) whereby direction was passed to consider and decide his said appeal. In compliance of this Tribunal order, appellate authority has rejected his appeal vide order dated 01.05.2015 on the ground that applicant has been acquitted from the criminal court for want of evidence and on account of charges remained unproved, but he was not acquitted honorably and ordered as under:-

(i) Period of date of dismissal to date of reinstatement has been treated as Dies non and thus applicant is not entitled for any back wages of pensionary benefits etc. for the said period.

(ii) The period of service rendered prior to dismissal shall be counted along with the applicant's present services after reinstatement for all the purposes.

3.2 The applicant has relied upon various judgments which are as under:-

(i) ***Sagar Ahmad vs Union of India*** 1994 (SCC) C7S 406-it has been held that appellant having been acquitted in the criminal case, the natural consequences would be that he is entitled to be reinstated in the service and the period of absence shall however be treated for the purposes of continuity in service and for whatever benefits which his juniors have been earned may also be granted to the appellant.

(ii) ***Union of India vs. K.V. Jankiraman*** 1991 (4) SCC 109-wherein it held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his he is entitled to the payment of arrears of salary. In this Original Application, the applicant after getting the Bail from the High Court, the applicant submitted a representation before Postal Department and requested to allow him to join duties as he was granted Bail by the Hon'ble High Court.

(iii) **Munnalal Mishra vs. Union of India** 2005(3) MPHT 125-it has been held that the petitioner will be entitled to continuity of service in respect of the period between the date of dismissal and date of reinstatement and the order directing the same be treated as dies non is quashed.

(iv) **Jagroop Singh vs. The Punjab State Power Corporation Ltd.**-it has been held that dismissal from service is a simplicitor on the ground of conviction under Section 138 of the Act being upheld by this Court, therefore, any adverse orders passed without holding a regular enquiry as envisaged under the Rules, is not sustainable and deserves to be set aside. Consequently the order of removal from service was set aside and the petitioner would be deemed to be in service with all consequential benefits.

(v) The Principal Bench of Central Administrative Tribunal New Delhi held on 12.02.2015 in Original Application No.4236/2012 **Rajesh vs. Govt. of NCTD and others** held that-once the conviction is set aside or quashed the dismissal order must fall to the ground. An acquittal of a person of a criminal charge by a higher Court setting aside the conviction passed by a subordinate or an inferior court is tantamount to, the person not having been convicted at all.

The setting aside of a wrong order of a court results in the position as if such order was never in existence though as a fact the order was passed and lasted till it was set aside.

4. The respondents in their reply submitted that the police registered a case against the applicant and his father under Section 304-B/34 IPC. Thereafter the applicant was placed under suspension and was paid subsistence allowance as per rules. It is further submitted that the Hon'ble High Court vide order dated 30.11.2012 has acquitted the applicant from the charges leveled against him and allowed the appeal. Thereafter the applicant preferred representation before the competent authority for reinstatement of service but as per the instruction under fundamental rules the order has been issued that the period of benefit and confining the payment of subsistence allowance pay to him. The period of dismissal i.e. the date of dismissal to the date of reinstatement (16.01.1995 to 17.02.2013) has been treated as dies non on the principal of "No work No pay" and the said period has not been treated as any pensionary benefits and also not entitled for monetary benefits/allowance. It is well settled principle of service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words the doctrine "No work no pay" is based on justice, equity and goods conscience and

his absence of valid reason to the contrary it should be applied. Though the agreed person ought to have joined the post he was reinstated but he did not to do show. Reinstatement was found to be legal. It was held that he cannot claim salary for the period he did not work.

5. Heard the learned counsel for the both the parties and have perused the pleadings and documents available on records.

6. In the instant case Original Application, it is not disputed by both the parties that the applicant was working as Postal Assistant and was convicted under Section 494A and 304 (B) of the Indian Penal Code, which was upheld by the Additional Session Judge Raipur. It is also not disputed that the applicant has approached the Hon'ble High Court of Chhattisgarh in Criminal Appeal No.1329/1994 and the applicant was acquitted from the charges leveled against him vide order dated 30.11.2012 (Annexure A-3). It is also not disputed that the applicant made representation on 22.01.2013 (Annexure A-5) and applicant was allowed to join his services on 18.02.2013. The fact regarding application of the applicant, requesting for treating his suspension period and termination period as spent on duty and also prayed for payment of suspension allowance. But the respondent-department has made a period between the suspension and reinstatement as dies non. The

applicant thereafter had filed an appeal to the appellate authority which was rejected vide order dated 01.05.2015.

7. In the instant case, the only point on determination is whether the applicant is entitled for treating the period between suspension and reinstatement (18.03.1994 to 15.01.1995) for pensionary benefits and for payment of subsistence allowance. The respondent-department has rejected the claim of the applicant on the principle of no work no pay. The applicant has relied upon the judgment passed by the Hon'ble Apex Court in the matter of ***Sagar Ahmad vs Union of India*** 1994 (SCC) C7S 406, ***Munnalal Mishra vs. Union of India*** 2005(3) MPHT 125, ***Jagroop Singh vs. The Punjab State Power Corporation Ltd.*** and the order passed by the Principal Bench of Central Administrative Tribunal New Delhi on 12.02.2015 in Original Application No.4236/2012 (***Rajesh vs. Govt. of NCTD and others***). While relying on the judgments it has been submitted by the counsel for the applicant that acquittal in the criminal case, the natural consequences would be that the applicant is entitled to be reinstated in the service and the period of absence shall however be treated for the purpose of continuity in service. The counsel for the applicant has also relied upon the judgment passed by the Hon'ble Apex Court in the matter of ***Union of India vs. K.V. Jankiraman*** 1991 (4) SCC 109. While

relying on the judgment the learned counsel for the applicant has submitted that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. The submission of the applicant is that the principle of 'no work no pay' will not apply in this case as the applicant has been acquitted by the Hon'ble High Court of Chhattisgarh for the offences charged against him.

8. It is the basic principle of the criminal law that during the trial the accused is presumed to be innocent. The natural corollary of acquittal by the Hon'ble High Court of Chhattisgarh is that the Hon'ble High Court has acquitted the applicant from all the charges leveled against him. As it is clear from the impact of the Hon'ble Apex Court in the matter of Sagar Ahmad (supra) and also as per the judgment of Munnalal Mishra (supra) that between the date of dismissal and date of reinstatement could not be declared as dies non. Similarly, the instant case is covered by the order passed by the Principal Bench of this Tribunal in the matters of Rajesh (supra) has also held that an acquittal of a person of a criminal charge by a higher Court setting aside the conviction passed by a subordinate or an inferior court tantamount that, the person not having been convicted at all.

9. Regarding the principle of no work no pay the Hon'ble Apex Court has clearly held in the matter of *K.V. Jankiraman* (supra) that the principle of no work no pay will not apply where the opportunity has not been given to the employee to work. In the present case also the applicant was suspended and thereafter dismissed. On judgment passed by the Hon'ble High Court, when the applicant was acquitted from the offence charged against him, the act of the applicant for absence from duty is not voluntarily act and the respondent-department by passing order has restrained the applicant not to work. Hence, the principle of 'no work no pay' is not applicable in the instant case. So, the applicant is entitled for all the benefits.

10. In view of the above, the Original Application is allowed. Impugned orders dated 30.06.2014 (Annexure A-8) and 01.05.2015 (Annexure A-11) are quashed and set aside. Respondents are directed to treat the intervening period from date of suspension to date of joining back in service i.e. from 18.3.1994 to 17.2.2013 be treated as service rendered by the applicant for all intends and purposes. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member