

(Reserved on 17.07.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(Circuit Bench at Nainital)**

This the **27th** day of **August** , **2018**.

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 331/01239/2017.

Chandra Pratap Mishra, 53 years, S/o Shri Ram Achchever Mishra, R/o Village & Post – Bhirala, PS – Akhand Nagar, District - Sultanpur .

.....Applicant.

VE R S U S

1. Union of India through its Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi - 110001.
2. The director General, Postal Services, Dak Bhawan, Sansad Marg, New Delhi - 110001.
3. The Chief Post Master General, Uttranchal Circle, Dehradun.
4. The Post Master General, Almora Division, Almora - 263601.
5. The Superintendent of the Post Offices, Almora Division, Almora - 263601.

.....Respondents

Advocate for the applicant : Shri S.N. Mishra

Advocate for the Respondents: Shri L.P. Tiwari

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

Heard counsel for both sides.

2. In this Original Application (in short OA), the applicant prays for a direction to the respondents to treat the period from 9.10.2001 to 5.12.2016 as duty period under the CCS (CCA) Rules and FR 54, as during this period he was under dismissal on the ground of conviction by the criminal court and subsequently and was reinstated after acquittal in criminal appeal/revision.

3. Brief facts of the case are that the applicant while working as an Assistant in Head Post Office in Rani Khet, was placed under suspension after an audit of the V.P.P. account detected some discrepancies. The applicant deposited the amount of discrepancy i.e. Rs. 7873/- after which his suspension was revoked w.e.f. 3.6.1993. The respondents also lodged the FIR against the applicant in Police Station and after investigation, police filed criminal case against the applicant, in which he was convicted by the criminal court vide the judgment dated 19.5.2001.

4. After conviction of the applicant, the respondent no. 5 dismissed the applicant vide order dated 9.10.2001 (Annexure A-2). The applicant filed criminal appeal against the conviction and the Session Judge, vide judgment dated 22.11.2002 (Annexure A-3), acquitted the applicant, after which he submitted an application dated 23.11.2002 (Annexure A-4) for reinstatement in service. But no action was taken by the respondents on this application for reinstatement. The respondent no. 5 filed a criminal revision against the acquittal order dated 22.11.2002 in 2003 and on 16.8.2011, the revision was dismissed by Hon'ble High Court. The applicant was not reinstated even then and the respondents filed SLP before Hon'ble Apex Court against order of Hon'ble High Court, which was also dismissed vide order on 10.3.2014.

5. Even after dismissal of SLP, the respondents did not reinstate the applicant in service. The applicant filed OA No. 393/2013 and vide order dated 6.9.2016 (Annexure A-9), this Tribunal directed the respondents to dispose of the representation dated 23.11.2002 and 23.9.2011 by passing a speaking and reasoned order. Thereafter, the respondent no. 5 passed the order dated 17.11.2016 (Annexure A-1) reinstating the applicant. As per the order dated 17.11.2016 also stated that the period from 9.10.2001 till the date of joining on reinstatement in service as non-duty with no pay and allowances, which has been challenged in this OA.

6. The following grounds are mentioned in the OA:-

- Under Article 20(2) of the Constitution of India, the applicant cannot be harassed and punished twice for the same cause of action. Respondents' action is arbitrary, discriminatory and delaying in tactics.
- Even after acquittal on 23.11.2002, no action was taken to reinstate the applicant in service.
- The criminal revision case and SLP filed by the respondents against the order of acquittal by the appeal court have been dismissed by Hon'ble High Court and Hon'ble Supreme Court respectively.

7. In the Counter Affidavit, the facts have not been denied and following main averments have been made:-

- The applicant was also punished with a minor penalty of reduction of pay of the applicant to lower stage in scale of pay for 5 years without cumulative effect for the misconduct of irregularity in V.P.P. account detected by audit.
- In pursuance to the direction of this Tribunal the competent authority passed the order to reinstate the applicant in service and for treating the period from the date of dismissal to the date of joining on reinstatement as non-duty without pay and allowances.
- Judgment dated 3.3.2017 of Hon'ble High Court of Bombay in the case of Mohan Moreshwar Agashe vs. The Managing Director, Maharashtra State Electricity Distribution Company Ltd. and another in support of the action of the respondents.

8. The applicant has filed Rejoinder, broadly reiterating the contentions in the OA and attaching a copy of the judgment of Hon'ble Allahabad High Court in the case of Harish Kumar Mishra & others vs. State of U.P. and others, where it is held that the principle of 'no work, no pay' is not applicable under certain circumstances.

9. We heard learned counsels for the applicant and respondents and also perused the record. The Fundamental Rule 54 referred by the applicant states as under:-

"F.R 54.

(1) When a Government servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal review or would have been so re-instated [but for his retirement on superannuation, while under suspension or not], the authority competent to order re-instatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension proceeding his dismissal, removal or compulsory retirement, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of the opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant,

it may, after giving him an opportunity to make his representations [within 60 days from the date on which the communication in this regard is served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount [not being the whole] of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be shall be treated as a period spent on duty for all purposes.

.....
....”

10. In this case, the applicant has been imposed with the penalty for irregularities detected by the respondents in the V.P.P. accounts of which he was in charge through departmental proceedings wherein his pay was reduced to a lower stage in the pay scale for a period of 5 years without cumulative effect and the applicant has also deposited the amount of discrepancy detected. Subsequent dismissal of the applicant from service was after his conviction of the crime by the criminal court and it was passed under the rule 19 of the CCS (CCA) Rules, 1965 as the order dated 9.10.2001 (Annexure A-2) indicates. It is admitted that the applicant has been acquitted in the criminal appeal, which was confirmed by Hon’ble High Court of Uttarakhand in the criminal revision filed by the respondents. The criminal appellate court in the judgment dated 22.11.2002 (Annexure A-3) has passed the following order after finding that the applicant was not found guilty:-

“The appeal is allowed. The order and judgment dated 19.5.2001 is set aside. The accused is not found guilty of the charge under section 409 I.P.C. and he is hereby acquitted. He is on bail. His personal bond is cancelled and sureties are discharged. He need not surrender in the Court.”

Hon’ble High Court confirmed the above order passed by the appellate court and the SLP filed against the order of Hon’ble High Court was dismissed. As stated in the criminal appeal order, the criminal charge was for an amount of Rs. 7873/- which was deposited by the applicant. It cannot be considered to be a reflection on his conduct.

11. The judgment cited by the respondents in the Counter Affidavit in the case of Mohan Moreshwar Agashe (supra) relates to a case where the employee was acquitted by the trial court and as per the judgment of the trial court, he was acquitted since the prosecution failed to prove the charge beyond reasonable doubt. In the instant OA before us, the applicant was first convicted and then acquitted in the appeal court, with the finding that the

accused was not guilty. It was not acquittal on benefit of doubt. Hence, the cited case is factually distinguishable. In this case, Hon'ble Bombay High Court held as under:-

“As can be seen from said Regulation, as employee who is acquitted should be reinstated in service, but would not be eligible for any payment from the date of termination of his service to the date of his reinstatement, on the principle of “NO WORK NO PAY”.

The finding in above judgment is based on Regulation 10-A, which is not applicable for Central Government servants. Hence, the cited judgment will not support the case of the respondents.

12. The applicant has cited the judgment in the case of Harish Kumar Mishra & others vs. State of U.P. the facts are distinguishable. In this case, the dispute was not relating to termination of service on account of conviction, but for other reasons and there was an interim order of the Court to continue the employee concerned in the service which was not complied by the employer in that case. In this backdrop, payment of back wages was ordered.

13. We note the fact that in a case of Union of India vs. Jaipal Singh AIR 2004 SC 1005, Hon'ble Apex Court has held as under:-

“.....If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent

actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.”

As per the ratio of above judgment, if an employee faces a criminal charge and is convicted and then dismissed due to his conviction, then the employer cannot be compelled to pay the salary for the period the employee concerned was continuing as a convicted accused and the employee will be entitled for back wages from the date of acquittal. In this OA, the prosecution of the applicant was due to the criminal case initiated by the respondents, who were also filing criminal revision and SLP before Hon'ble High Court and Hon'ble Supreme Court against the order of acquittal by the Criminal appeal Court. The respondents also delayed in taking action on the representation of the applicant for reinstatement after the applicant was acquitted in criminal appeal vide judgment dated 22.11.2002. For about 14 years after acquittal, the respondents pursued the criminal case, in which the appeal court found the applicant-accused not guilty. The criminal action was initiated and pursued by the respondents for more than 15 years after the dismissal of the applicant, who was found not guilty in the criminal appeal and no other misconduct has been reported against the applicant. There was no involvement of the applicant in any other crime or there is any misconduct reported against him as per the record before us.

14. Taking into account the fact that the dismissal of the applicant from service was entirely due to his conviction in the criminal case and applying the ratio of the judgment of Hon'ble Apex Court in the case of Jaipal Singh (supra), we are of the considered view that the applicant should not be penalized for the delay on the part of the respondents in reinstating the applicant in service after his acquittal by the criminal appeal court vide order dated 22.11.2002 in a criminal case instituted by the respondents themselves. Accordingly, he is entitled for the relief after his acquittal.

15. Learned counsel for the applicant submitted written submission after final hearing of the O.A on 17.07.2018, enclosing copy of certain portion of a book on CCS (CCA) Rules, 1965. It has also referred to the para 117 of the Postal Manual (Annexure -1 to the written submissions), which states that on acquittal in criminal appeal, the punishment order based on conviction is to be set aside. The said para 117 of the Postal Manual states as under: -

“117.

In the case where neither of the courses mentioned above is followed, a formal order should be made setting aside the previous order of dismissal or removal or compulsory retirement. The period between the date of dismissal and the date on which he resumed duty should be dealt with under F.R. 54. But in doing so, he should be deemed to be entitled to full pay and allowances from the date of acquittal, and the period counted as duty for all purposes and from the date of dismissal to the date of acquittal, he should not be allowed pay and allowances less than what would have been admissible to him had he been under suspension.”

16. In the circumstances, the OA is allowed in part and the respondents are directed to treat the period after his acquittal on 22.11.2002 i.e. from 23.11.2002 till the date of his joining duty in pursuance to the order dated 17.11.2016 as duty with full salary and allowances as per the rules. The period from 9.10.2001 to 22.11.2002 shall be treated as per the order dated 17.11.2016, with continuity in service for seniority and pension. The respondents are directed to comply with this order and release the arrears in salary due to the applicant as per this order within three months from the date of receipt of a certified copy of this order. It is made clear that failure on the part of the respondents to release arrear salary due to the applicant within time as per this order, will entail payment of interest to the applicant at the rate of 9% per annum with stipulation that the competent authority can recover the interest paid to the applicant for delayed release of his arrear dues to the applicant, from the employees/ officials found responsible for such delay in releasing the payment to the applicant as per this order in accordance with the provisions of law.

17. The OA is allowed in part in terms of para 14 and 15 above. No costs.

(GOKUL CHANDRA PATI)

(JUSTICE BHARAT BHUSHAN)

MEMBER-A

MEMBER-J

Anand...