

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application Nos.38/2013 & 534/2013**

**Date of CAV: 21.01.2019**

**Date of Pronouncement: 31.01.2019**

Between:

Nand Kishore Ranjan, S/o. Dhaneshwar Das,  
Aged: 38 years, Occupation: Tech. II,  
(Signal Maintainer), O/o. Senior Section Engineer,  
Ongole, South Central Railway, Vijayawada.

... Applicant in both OAs

And

1. Union of India, represented by the  
General Manager,  
South Central Railway,  
Secunderabad.
2. The Senior Divisional Personnel Officer,  
South Central Railway, Vijayawada.
3. The Senior Section Engineer,  
South Central Railway, Ongole.
4. The Senior Divisional Signal and Telecommunication Engineer,  
South Central Railway, Vijayawada.

... Respondents in both OAs

Counsel for the Applicant ... Mr. K. Siva Reddy

Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for Railways.

***CORAM:***

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The legal question to be dealt in the OAs is that in a criminal case, when the accused is acquitted on “benefit of doubt”, whether, the period of suspension during his incarceration could be treated as part of qualifying service for the purpose of promotion and allied benefits?

Respondents have treated this period as one of non-qualifying service. They did not consider the case of the applicant for promotion to the post of Technician Grade -II and to pay salary, as according to them the period of suspension cannot be converted to one of duty, much less to be reckoned as a residency period in the feeder post. The applicant challenges the same through the two OAs.

The applicant, respondents and the facts of the case being the same, a common order is issued.

3. Now coming to the facts of the case, applicant while working as Technician Grade III in the respondents' organisation, cleared the Trade test conducted for promotion to the Technician Grade II in 2004. Statute mandates two years of service in the feeder cadre coupled with qualifying in the Trade test for getting promoted to the next higher post in the cadre. At the material point of time, the applicant applied for leave from 10.1.2005 to 26.1.2005 but turned up for duty only on 24.7.2006 in view of his having been in police custody for a substantial period of over 15 months (19-01-2005 to 16-07-2006) facing a criminal case u/s 498-A & 323 of IPC. The applicant represented on 28.7.2006 to allow him to join duty furnishing the exact cause for his continued absence beyond the expiry of his sanctioned leave. The period of absence from 19-01-2005, as per Rules was treated as deemed suspension vide memo dt 2.8.2006, which was later revoked w.e.f. 8.8.2006. Applicant was charge sheeted for his unauthorised absence vide charge memo (SF-5) dt 21.10.2005. It could be served only on 13.12.2006 after the applicant resumed duty. The charge sheet, however, was dropped on 23.12.2010 in the wake of acquittal of the applicant in the criminal case. However, the period of absence from 19.1.2005 to 7.8.2006 was treated as suspension and subsistence allowance

granted for the said period. The claim of the applicant is that since he has been acquitted in the criminal case he is eligible to be promoted to Tech Grade II and Grade I along with his batchmates who got promoted in 2006 and 2008 respectively. Further, the acquittal calls for the period of absence to be treated as duty and applicant be paid salary along with allowances due. Representations made seeking relief were of no avail and hence OAs have been filed.

4. The applicant's spinal argument is that the acquittal in the criminal case 144/2005 on the file of Sub Divisional Judicial Magistrate, Bhagalpur entitles him to all the benefits that would accrue but for being framed in a criminal case. Dropping of the charge sheet on 23.12.2010, issued for unauthorized absence further strengthens his cause. After dropping the charge sheet, treating the period of absence as suspension is not provided for in D&A rules. In fact there was no charge memo served to the applicant when he was due for promotion in 2006. To top it, he was acquitted in the criminal case. These factors are strongly in his favour for being promoted to Tech Grade II in 2006 and Tech Grade –I in 2008 along with his compeers. Further, it needs no mention that the period of absence has to be treated as duty. Nevertheless, while approaching the respondents to consider his pleas, applicant did appear in the subsequent Trade tests for Tech grade II to get promoted. Finally got selected in the Trade Test held on 2.12.2008 and was promoted as Tech Grade II on 5.5.2009. Later he was also promoted as Tech Grade –I on 8.4.2013. These developments, the applicant claims, should not be considered as acceptance of his ineligibility to be promoted in 2006 along with his colleagues. Lastly, the applicant contends that being in police custody and thereafter pursuing with the respondents through trade union channels were reasons for his inability to move the Tribunal earlier to the date of filing of this OA.

5. Respondents refute the contention of the applicant on the grounds that OA is barred by limitation and latches. Batch mates of the applicant were promoted to Tech Grade II in 2006 after completing the residency period of 2 years in Tech Grade III in the normal course. The applicant's whereabouts were not known to consider him for promotion along with his peers and therefore could not be promoted. The applicant also did not protest for not being promoted in 2006 to Tech Grade II on resuming duty. Applicant's acquittal in the criminal case was on benefit of doubt. Therefore the period of absence from 19.1.2005 to 7.8.2006 was treated as being under suspension and subsistence allowance granted. Consequently, he is ineligible to be considered for promotion during the said period. In addition, the very fact that the applicant appeared in the Trade Tests and got selected to Tech Grade II in 2009 and later promoted to Tech Grade I in 2013, is ample proof of applicants acquiescence of his ineligibility to be considered for promotion in 2006. Lastly respondents contend that their action has been strictly as per rules.

6. Heard Sri K. Siva Reddy, ld. counsel for the applicant and Mrs. A.P. Lakshmi, Ld. Standing Counsel whose submissions were in tune with those made in the written submissions. We have gone through the rejoinder and the material papers/documents submitted by the applicant and the respondents.

7(I) The respondents primary objection is that the OA is barred by limitation. To respond to this objection a journey into the history of the case is necessary. The applicant went on leave from 10.1.2005 to 26.1.2005 and during the leave period he was involved in a criminal case registered due to a complaint lodged by his wife. Resultantly he was kept in police custody from 19.1.2005 to 16.7.2006. Thereafter on reporting to duty on 24.7.2006 he was kept under deemed suspension from 19.1.2005 to 7.8.2006 till it was revoked on 8.8.2006.

The charge sheet was also dropped on 23.12.2010 on grounds of acquittal in the criminal case. Consequent to this development the applicant continuously approached the respondents through trade union channels in 2010, 2011 & 2012 for relief but was negated only on 13.7.2012. As a result he could file the OA only in Dec 2012. The reasons given by the applicant are understandable. Pursuing through the Trade union channels is a legitimate right. Hence the objection of the respondents is unsustainable and hence merits rejection.

(II) The second objection raised is that the applicant appearing in Trade Tests to get selected to Tech Grade II in 2009 and getting promoted to Tech Grade I in 2013, would mean that he has no case to be promoted in 2006. This objection is unreasonable since no one can prevent an employee to pursue career growth when opportunities come in his way. Such an approach need to be appreciated. It should not be forgotten that simultaneously the applicant was constantly pursuing with the respondents through legitimate Trade union channels for relief. Only when there was a negative response the Tribunal was approached. Thus the second objection too does not stand to reason.

(III) The above objections apart, the main issues that need to be considered are:

- i. Are the respondents competent to treat the period of unauthorised absence as being on suspension after dropping the charge sheet for unauthorized absence on grounds of acquittal in a criminal case?
- ii. Another important issue to be deliberated is that whether acquittal in a criminal case on benefit of doubt can be treated as honourable acquittal?

(IV) Before advertng to the above two legal questions, one has to ascertain the difference between the two kinds of acquittal – (a) honourable acquittal and (b) acquittal on benefit of doubt.

(V) As regards intermediate degrees of acquittal, the Apex Court has held as under:-

**(a) *State (UT of Chandigarh) v. Pradeep Kumar, (2018) 1 SCC 797 :***

**10.** *The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in *Inspector General of Police v. S. Samuthiram* [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598, in which this Court held as under:*

*“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in *RBI v. Bhopal Singh Panchal* [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. 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.” (Emphasis supplied)*

**(b) *C.R. Radhakrishnan v. State of Kerala, (2017) 13 SCC 365***

*“Leave granted. The appellant is before this Court, aggrieved by the denial of the full service benefits for the period he was kept out of service on account of conviction in a criminal case. The conviction was set aside and the appellant was acquitted by the High Court vide order dated 31-7-2000 rendered in Criminal Appeal No. 298 of 1995, para 13 of the said judgment reads as follows:*

*“13. On a close scrutiny of the oral and documentary evidence, I can find that the prosecution failed to conclusively prove the guilt of the accused beyond all reasonable doubt. Therefore, the benefit of doubt has*

*to be given to the accused and he is to be acquitted. The conviction and sentence are liable to be set aside.”*

**2.** *The learned counsel for the appellant submits that since the appellant has been acquitted, under Rule 56 of the Kerala Service Rules, Part I, the appellant is entitled to full service benefits. We find it difficult to appreciate the submission. Rules 56(1) and (2) of the Kerala Service Rules, 1959 read as follows:*

**“56. (1) When an officer who has been dismissed, removed or compulsorily retired including an officer who has been compulsorily retired under Rule 60-A, is reinstated as a result of appeal or review or would have been so reinstated, but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—**

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

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

*(c) in the case of an officer who was compulsorily retired under Rule 60-A and subsequently reinstated, for the recovery of the relevant benefits, if any, already paid to him.*

**(2) Where the authority competent to order reinstatement is of opinion that the officer who had been dismissed, removed or compulsorily retired, has been fully exonerated, the officer shall, subject to the provisions of sub-rule (6) be paid the 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 officer had been delayed for reasons directly attributable to the officer, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the officer 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.** *This is not a case where the appellant has been fully exonerated, meaning thereby an honourable acquittal. The learned counsel for the appellant submits that going by the judgment, the finding arrived at by the High Court in the criminal appeal regarding benefit of doubt is not correct. We are afraid, under the present proceedings, we cannot appreciate the above submission. The correctness or otherwise of the*

*judgment in the criminal appeal is not the subject-matter of this case. In these proceedings we can only look at the findings in the judgment. The acquittal is only on benefit of doubt. Thus, we find no merits in these appeals and the same are, accordingly, dismissed.*

**(c) Krishnakant Raghunath Bibhavnekar v. State of Maharashtra, (1997) 3 SCC 636**

*4. .... It is true that when a government servant is acquitted of offences, he would be entitled to reinstatement. But the question is whether he would be entitled to all consequential benefits including the pensionary benefits treating the suspension period as duty period..... ? .... . Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellant is also not entitled to any other consequential benefits..... “*

(VI) It would be seen that in the above cases there have been certain rules or regulations applicable to the respective organization which have been cited. In so far as the case of the applicant is concerned, he being governed by the Railway rules, it is to be seen whether any such authority exists either in the rules or Instructions issued underneath such rules. One such OM with the caption “Erroneous detention or detention without basis” has been issued vide OM [Department of Personnel & A.R. OM No. 35014/9/76-Estt. (A) dated 08.08.1977] and the same reads as under:-

***Erroneous detention or detention without basis***

*One of the items considered by the National Council (JCM) in its meeting held in January, 1977 was a proposal of the Staff Side that a Government servant who was deemed to have been placed under suspension on account of his detention or on account of criminal proceedings against him should be paid full pay and allowances for the period of suspension if he has been discharged from detention or has been acquitted by a Court.*

2. During the discussion, it was clarified to the Staff Side that the mere fact that a Government servant who was deemed to have been under suspension, due to detention or on account of criminal proceedings against him, has been discharged from detention without prosecution or has been acquitted by a Court would not make him eligible for full pay and allowances because often the acquittal may be on technical grounds but the suspension might be fully justified. The Staff Side were, however, informed that if a Government servant was detained in police custody erroneously or without any basis and thereafter he is released without any prosecution, in such cases the official would be eligible for full pay and allowances.

3. It has accordingly been decided that in the case of a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and thereafter released without any prosecution having been launched, the competent authority should apply its mind at the time of revocation of the suspension and re-instatement of the official and if he comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed. (Emphasis supplied)

Based on the above, even the Railway Board has issued similar circular vide No.E(D&A) 76 RG-6-56, dated 18.10.1977 as under:

*“When a Government servant who was deemed to have been placed under suspension due to his detention in police custody erroneously or without basis and was released without any prosecution having been launched, the competent authority shall apply its mind at the time of revocation of the suspension and reinstatement of the employee and if it comes to the conclusion that the suspension was wholly unjustified, full pay and allowances may be allowed to him for the said period.”*

Thus, even the Railway Board circular stipulates that it is for the respondents to take a view on how to treat the period of suspension.

(VII) The learned counsel for the applicant has submitted the citation of Honourable Supreme Court, in U.O.I v K.V.Janikiraman (AIR 1991 SC 2010) in CA 3018-21/of 1987. Even in this citation it was held as under:

*“We are, therefore, broadly in agreement with the -finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher*

*post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:*

*"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."*

(VIII) The above clearly reflects that it is the discretion of the competent authority to treat the period of suspension as duty or otherwise and such a discretion cannot be challenged when judiciously used.

(IX) Keeping in view the above authoritative decisions of the Apex Court and the OMs, answer to the two legal issues referred to above could be answered as under:-

1. The respondents are fully competent to treat the period of unauthorised absence as being on suspension after dropping the charge sheet for unauthorized absence on grounds of acquittal in a criminal case.

2. Acquittal in a criminal case on benefit of doubt cannot be treated as honourable acquittal.

(X) The Ld. applicant counsel has submitted the Honourable Principle CAT bench judgment in OA 603/2014 dt 15/12/2014 to support his contention that acquittal under benefit of doubt is as good as honourable acquittal. Code of Criminal Procedure speaks only about being acquitted or discharged and nothing via media. Besides, the observations of the Honourable Supreme Court at para 6 and para 7 in U.O.I vs K.V.Janakiraman reported in AIR 1991 SC 2010 ( CA 3018-21/1987) were cited to seek the relief sought.

(XI) The above decision of Honourable Principle Bench dated 15/12/2014 cited on behalf of the applicant, obviously has not taken into account the decision of the Apex Court in the case of ***Krishnakant Raghunath Bibhavnekar*** which was of the year 1997. Again, the said decision has not kept in view the OM dated 08-08-1977 of the Ministry of Home Affairs and the Railway Board circular dated 18.10.1977. In view of the same, the said order of the Principal Bench, in our respected view, is *per incuriam*. Besides, the Honourable Supreme Court judgment cited by the Learned counsel for the applicant, as explained above, provides the discretion to the respondents as to how to treat the period of absence.

(XII) One another issue in the OA which needs a little more elaboration is as to whether the period of absence can be treated as duty to grant pay and allowances to the applicant?

To answer the question, let us look at the definition of duty. Duty is defined as the work that you have to do for your job. Mark the words "You have

to do". In the case in question it was the applicant who had to do the work. The respondents did not prevent him from doing any work by any decision of theirs. It was the applicant who went on leave and thereafter got involved in a criminal case which led him to be taken into police custody for nearly 15 months. The cause for such incarceration was the applicant himself and the respondents definitely not. Therefore, the applicant has to face the consequences of such absence. Saddling the responsibility of the burden of salary and allowances by treating the period of absence as duty would not be in the realm of logic. If the period of absence were to be treated as duty accompanied by payment of salary it would be tantamount to negative equality. Those who worked and those who did not are put on the same platform. Positively it would be inequitable to those who worked for getting the salary. The respondents, based on the acquittal under benefit of doubt, using discretion vested with them, have treated the period of absence as under suspension and paid him subsistence allowance. Expecting more than this by the applicant may not be a fair preposition.

(XIII) The issue of payment of salary and allowances during the period of absence has been dealt by Honourable Supreme Court, in quiet a few judgments which support the decision of the respondents. The respondents did cite a few relevant judgments, which are extracted as under, to drive home the point that the period of absence cannot be treated as duty. Resultantly no pay and allowances for such periods can be drawn.

In *Chhinder Pal Vs. Commissioner, Municipal Corporation, Ludhiana & Others*, the Hon'ble High Court of Punjab & Haryana held that

*"As discussed in Jai Bhawan's case (supra), the cases of the employees claiming arrears fall in two categories. One is where an employee is suspended on account of disciplinary action initiated or contemplated by the employer. In such cases, on exoneration in the departmental inquiry*

*proceedings, the employee shall be entitled to arrears of salary, but in case, where an employee is suspended on account of his involvement in a criminal case not at the instance of the CWP No. 11994 of 2007 (7) employer, the employer cannot be saddled with the liability of payment of arrears of salary on the principle of “no work-no pay”, as such action was not initiated at the instance of the employer. In view of the aforesaid judgment, we do not find that the claim of the petitioner for arrears of salary for the period, he remained out of work, for no fault of the respondents, is legally tenable.”*

***In Ranchhodji Chaturji Thakore vs The Superintendent Engineer, Gujarat Electricity Board [1996 (11) SCC 603]***, the Hon’ble Apex Court held that :

*“The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding 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 its 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. “*

***In Union Of India And Ors vs Jaipal Singh, 2004(1) SCC 121***, the Hon’ble Apex Court has held that:

*“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. “*

In *Management of Reserve Bank of India vs Bhopal Singh Panchal (D.N.)*, (1994 AIR 552), (1994 SCC (1) 541), Hon'ble Apex Court held that:

*“During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable.”*

The learned counsel also pleaded, that at the material time when the applicant was to be promoted as Technician Grade II, there was no charge memo. This submission pales into insignificance given the fact he was under police custody during the said period.

(XIV) In view of the subsequent decisions of the Apex Court stated at para 7(V) supra, read with the OM dated 08-08-1977 of the Department of Personnel & A.R., Ministry of Home Affairs and the Railway Board Circular No.E(D&A) 76 RG-6-56, dated 18.10.1977 which are still under currency and the decisions of the Honourable Supreme Court cited by the respondents support fully the case of the respondents. Hence, the OAs, being devoid of merit, deserve dismissal, which are accordingly ordered. There shall be no order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**  
**MEMBER (JUDL.)**

Dated, the 31<sup>st</sup> day of January, 2019

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