

**Reserved**

**Central Administrative Tribunal, Allahabad Bench,  
Allahabad**

**Original Application No.330/00549/2007**

**Pronounced on 30<sup>th</sup> July, 2019**

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

Hari Singh son of late Sri Lala Ram resident of village and post Office Tarauli, District- Mathura.

Applicant

By Advocate; Sri Rajesh Nath Tripathi

Versus

1. The Union of India through Ministry of Communication, Director General of Post Office, New Delhi.
2. Senior Superintendent of Post Offices, Mathura Division, Mathura.

Respondents

By Advocate : Sri Lal Mani Singh

**ORDER**

**HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)**

Applicant, Hari Singh, a GDS BPM, Tarauli, District- Mathura was involved in a criminal case in Sessions Trial No. 383/98 (State of U.P. Vs. Subhash and others) u/s 147, 148, 302/149, 307/149 Indian Penal Code (IPC) registered at Police Station, Chhata, District- Mathura.

2. In pursuance of the first information report (FIR), the applicant was taken into custody on 6.2.1998. The respondents put the applicant off duty w.e.f. 6.2.1998 under Rule 9 of Extra Departmental Agent Conduct and Service Rules (Old Rules) analogous to Rule 12 of GDS (Conduct and Engagement) Rules (New Rules).

3. Subsequently, the applicant Hari Singh was given the benefit of doubt and thereafter, acquitted vide judgment and order dated 18.12.2004.

4. The applicant secured bail on 18.2.1998. Thereafter, he moved an application for re-engagement and after verifying his claim, the applicant was allowed reengagement on 1.3.2000.

5. Respondent have filed their counter reply claiming that this O.A. is highly time barred as well as without any merit. It is stated that under relevant Rules, 25% of compensation is permissible during the period of put off duty as ex-gratia payment. They have further claimed that this ex-gratia payment has already been made to the applicant. They have drawn the attention of this Tribunal towards the Service Rules for EDA Staff, 7<sup>th</sup> Edition, 1999, copy of which is available on record as Annexure R-1.

6. The fact is that equivalent to 25% Time Related Continuity Allowance (TRCA) has been paid to the applicant as ex-gratia payment.

7. Heard Sri Rajesh Nath Tripathi counsel for applicant and Sri Lal Mani Singh, counsel for respondents.

8. This O.A. was filed along with Misc. Application no. 1111/2007 for condonation of delay in filing the O.A. It appears that request of applicant for payment of remaining part of compensation was dismissed on 3.1.2005 but he filed the present O.A. on 18.5.2007. Since the O.A. is pending before this Tribunal for last 12 years, it shall be appropriate if this Tribunal decide the O.A. on merit instead of dismissing it on technical ground of delay. Hence delay is condoned.

9. The Department of post is the only department of the Government of India where there is a special category of employees working as part times and for whom regular conditions of service have been laid down by a set of statutory rules. Presently, these rules are known as GDS (Conduct and

Engagement) Rules, which provides that such employee shall not be required to perform duty beyond a maximum period of 5 hours in a day. This requirement symbolizes the special category of such workers. Rule 3-A provides that such workers shall be outside the Civil Service of the Union and shall not claim to be at par with the Central Government employees. A residence in post village/ delivery jurisdiction of the post office shall be mandatory for such employee. Such workers are required to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family. Ordinarily, the regular employees are prohibited from having a separate livelihood other than salary and allowances paid by the Government. But these workers have to give an undertaking to the effect that they have other sources of income i.e. a qualification for their engagement. Therefore, the person working as EDA, GDS cannot be treated similar to the regular Government employees.

10. The engagement conditions of these workers are governed under the GDS (Conduct and Engagement) Rules and Executive orders issued from time to time.

11. Rule 12 of said rules provides that in certain conditions a GDS can be put off duty. Rule 12 is reproduced as below:-

"12. Put-off duty

- (1) The Recruiting Authority or any authority to which the Recruiting Authority is subordinate or any other authority empowered in that behalf by the Government, by general or special order, may put a Sevak off duty:

- (a) Where a disciplinary proceedings against him is contemplated or is pending; or

**(b) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial;**

12. Rule 1(b) provides sevak can be put off duty where a case against him in respect of any criminal offence is under investigation, enquiry or trial.

13. Rule 3 of the said rules provides as under:-

"3. A Sevak shall be entitled per month for the period of put off duty to an amount of compensation as ex-gratia payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance."

14. This payment has already been made by the department to the applicant as is evident from Annexure SA-1 filed with Supplementary Affidavit dated 19.4.2017 by applicant himself.

15. After acquittal, the applicant is seeking the remaining amount of TRCA for the period he was put off duty.

16. I have carefully gone through the Rules, There is nothing in rule to support the claim of applicant. In any case, the claim of applicant has already vitiated by the fact that he was not acquitted cleanly. The relevant portion of the judgment of Session Trial is reproduced as below:-

"Accused Subhash, Manvendra, Radhey Shyam, Bhagwan Sinch, Om Prakash and Harish Chand **are given benefit of doubt and they are hereby acquitted** for the charge u/s 147, 148, 302/149 & 307/149 IPC. They are on bail. Their bail bonds are cancelled and sureties stands discharged."

17. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceedings is preponderance of probabilities.

18. The applicant was not honorably acquitted. Therefore, he cannot take benefit of this judgment completely. He was put off duty for almost a period of 2 years and for that period, he cannot claim the payment of compensation withheld by the department. This is permissible under the law as said by Hon'ble Apex Court in the case of **Commissioner of Police and another Vs. Mehar Singh reported in (2013) 7 SCC, 685:-**

"20. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. [In R.P. Kapur v. Union of India](#)[11] this Court has

taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

21. The expression 'honourable acquittal' was considered by this Court in *S. Samuthiram*. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under [Section 509](#) of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in [Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal](#)[12], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to [the Criminal Procedure Code](#) or [the Penal Code](#). They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can

possibly be said that the accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. **If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature.** Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it."

19. Came back to the facts of the present case, it is apparent that applicant was not honorably acquitted. He was given benefit of doubt. He was taken back by the department but was not given any compensation for the period he was put off duty. It is pertinent to point out that relevant rule do not provide that a Sevak shall be entitled to remaining part of compensation withheld by the department during the period of put off duty.

20. The engagement of applicant being a special category engagement, is to be governed by the Rules in this regard. GDS (Conduct and Engagement) Rules are specific rule in this

regard. In absence of any specific rules, remaining part of compensation cannot be paid to the applicant.

21. Considering all the facts and circumstances, this O.A. is devoid of merit and is accordingly, dismissed. No order as to costs.

**(JUSTICE BHARAT BHUSHAN)**  
**MEMBER (J)**

**HLS/-**