

(2019) 10 CAT CK 0075
In the Central Administrative Tribunal
Case No : Transfer Application No. 12 Of 2016

Daljit Singh

APPELLANT

Vs

Delhi Transport Corporation Vs

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 304B, 498A

Citation : (2019) 10 CAT CK 0075

Hon'ble Judges : Ashish Kalia, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : A.K. Attri, Himanshu Pathak, Rajeev Kumar

Judgement

Ashish Kalia, J

1. The reliefs claimed by the applicant are as under:-

"i) to issue a writ of mandamus, or any other writ, order or direction directing the respondent to pay to the petitioner full wages for the period from 17.05.1992 to 19.01.1994 and also from 20.01.1994 to 03.07.1997

ii) to order the respondent to allow 5 annual increments to the petitioner for the years 1992 to 1997 withheld by the respondent without any order whatsoever, with interest;

iii) to pass such other or further order which this Hon"ble Court may deem fit in the facts and circumstances of the case;

iv) to order the respondent to pay costs of this petition."

2. Brief facts of the case are that the applicant's wife committed suicide. On returning to home from duty, applicant was arrested and sent to judicial lockup under FIR No.276/92 under Section 498-A/304-B IPC registered against him on 15.5.1992. Under the belief, the police will inform his employer about his arrest. However, he has informed the same on 2.6.1992. The applicant was released on

bail on 27.10.1993 and on 5.4.1997 he was acquitted by the Addl. Sessions Judge, Delhi. Thereafter he has been chargesheeted by the respondent on 2.7.1997 on account of unnatural death of his wife and his arrest by the police has not been disclosed to the Department, which amounts to serious irregularity and the applicant has sent a leave application of 21.5.1992 for the period from 17.5.1992 to 26.5.1992 in which he did not mention anything about the incident narrated hereinabove. Thus, he was suspended w.e.f. 19.1.1994 and the same was revoked w.e.f. 3.7.1997. Regular departmental proceedings were initiated against him. In the enquiry, it was held that the charges levelled against him were held proved and payment of subsistence allowance from 17.5.1992 to 19.1.1994 not to be paid and half wages to be paid for the period from 20.01.1994 to 03.07.1997. Appeal and revision petitions filed by the applicant were dismissed. The applicant has relied upon the judgment of the Hon"ble Calcutta High Court in Jitendra Nath vs. State of West Bengal, AIR 1969 Cal 461, "when a delinquent is suspended in consequence of the criminal proceedings against him, on acquittal or discharge, he is deemed to be reinstated.

He is entitled to full salary and allowances." His five increments were withheld without any reasons w.e.f. 1992 to 1997. Feeling aggrieved of this, he has approached the Hon"ble High Court of Delhi where notices were issued to the respondent who has filed reply. However, pursuance to enactment of Central Administrative Tribunals Act, 1985, this matter has been transferred to this Tribunal.

3. The applicant has further submitted that he was released on bail on 28.10.1993 and he has tried to join his duty but he was prevented from joining duty by the respondent. A chargesheet has been issued to him after a lapse of four years. The applicant was re-instated on 3.7.1997 after the period of 04 months from the date of acquittal and through the present application/petition, he has prayed for five annual increments w.e.f. 1992 to 1997.

4. The respondent has filed his reply and submitted therein that the order passed by the respondents does not suffer from any vice or infirmity. The applicant has intimated to the respondent first time on 2.6.1992 about his arrest but he was awarded a punishment of "censure" against the said. The applicant preferred his appeal/revision were rejected. The punishment was set aside by the Chairman and Managing Director of the respondent and it was ordered that he is entitled to subsistence allowance for the period of suspension and he has been paid the subsistence allowance from 19.1.1994 to 3.7.1997 along with his salary bills every month. By way of this applicant is not entitled for increment as prayed for in the present TA.

5. Heard learned counsel for the parties at length, perused the records and also appreciated the legal position. The applicant was submitted to departmental proceedings for non-disclosure of criminal case pending against him followed by his arrest/detention. On culmination of judicial proceedings, the applicant was acquitted from the charges levelled against him in the criminal case. In this

regard, separate departmental proceedings have been initiated against the applicant. As per enquiry report submitted by the enquiry officer, all charges were proved against the applicant. The applicant has submitted reply to the show cause notice issued to him pursuant to the receipt of enquiry report. The disciplinary authority reduced the penalty proposed by the Enquiry Officer from one stoppage of an annual increment with cumulative effect "to that of" "reprimand" and the subsistence allowance paid during the period of suspension shall be deemed to be full salary (wages) vide order dated 24. 4.1998. The applicant preferred an appeal to Regional Manager against the order of the disciplinary authority dated 24. 4.1998, which was also rejected by the appellate authority on 24.6.1998. The applicant has approached to the Grievance Cell which has also not interfered in the appellate order. The applicant has filed second appeal to PM House, which was put up before the Chairman cum Managing Director (CMD) of DTC. After considering his second appeal, the CMD set aside the punishment and directed to pay subsistence allowance for the period of suspension. On 21.10.1999, subsistence allowance was paid to him.

6. The Hon"ble Calcutta High Court in the case of Jatindra Nath Mondal vs State Of West Bengal And Ors., AIR 1969 Cal 461, it was held that when a delinquent is suspended in consequences of the criminal charge against him on acquittal or discharge, he is deemed to be reinstated. He entitled to full salary and allowance.

7. The Hon"ble Supreme Court in the case of Commissioner of Police, New Delhi and another vs. Mehar Singh, (2013) 7 SCC 685, held 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".

8. The Hon"ble High Court of Madhya Pradesh at Jabalpur in the matter of Archana Nagar vs. State of Madhya Pradesh (Writ Petition No.19628/2017 decided on 23.3.2018) has considered the similar issue and observed as under:-

"16. In view of the foregoing discussion, in my considered opinion, the finding recorded by the Director General of Police, Bhopal in the impugned order Annexure P/7 dated 13.7.2017 incidentally stating that the acquittal of the petitioner is on the basis of the benefit of doubt, is unsustainable in law, therefore, the reasons to deny the benefit of payment of the wages do not find to be tenable in the eyes of law, hence the said finding stands set aside quashing the impugned order Annexure P/7 dated 13.7.2017.

"17. Now looking to the provisions of the Fundamental Rule 54, the order for reinstatement as well as to pay the full salary & allowances is required to be passed by the competent authority, therefore, by setting aside the impugned order Annexure P/7 dated 13.7.2017, it is hereby directed that the competent authority shall reconsider the application of the petitioner and take a final decision in terms of the provisions of Fundamental Rule 54(2) within a reasonable time in view of the observations made hereinabove.

18. Accordingly, this petition succeeds and is hereby allowed to the extent indicated hereinabove. The impugned order Annexure P/7 dated 13.7,2017 passed by the Director General of Police, Bhopal stands set aside. The respondent No.2/Director General of Police, Bhopal is directed to reconsider the application of the petitioner for grant of all consequential benefits in terms of the Fundamental Rule 54(2) and to take a final decision thereon within a period of two months from the date of communication of this order. It is made clear here that if the petitioner is found entitled to the benefit, the same shall be extended to her within a further period of one month otherwise appropriate reasoned order may be passed by the competent authority within the time frame. In the facts & circumstances of this case, the parties are directed to bear their own costs."

9. In the instant case, initially payment of full salary and wages has been withheld by the competent authority. Let us examine the legal position in this regard. The sub-Rule (2) of Rule 54 of FR provides that :

"(2) Where the authority competent to order reinstatement is of 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 the full pay and allowances to which he would have been entitled, had he not been dismissed, removed 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 representation within sixty 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."

In other words, when the competent authority passed an order for reinstatement by setting aside the order of dismissal or removal or compulsory retirement and fully exonerating him from the charges, the employee shall be entitled for full salary and allowances to which he would have 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, and the employee shall be entitled to full pay and allowance subject to the provisions of sub-rule (6) of Rule 54 of FR which stipulates that if the proceedings instituted against the Government servant is delayed due to the reasons directly attributable to the Government servant, the authority may pass order. In the present case, CMD has passed order set aside the aforesaid punishment order vide its order dated 21.6.1998 but have not recorded any reasons for withholding of 50% of the applicant's salary and wages during the period of suspension. The criminal case pending against the applicant was due to suicide committed by his wife. The

applicant was implicated and ultimately acquitted by the learned Additional Sessions Judge. Thus in terms of FR 54, the applicant should have been paid full salary and allowances including increment(s).

10. In view of the above discussion and facts and circumstances of this case, we direct the respondents to reconsider the case of the applicant for grant of all consequential benefits in terms of FR 54(2) and take a final decision within a period of two months from the date of receipt of this Order. There shall be no order as to costs.