
(1988) 09 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 277 of 1980

L/Nk Chhotelal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-09-1988

Acts Referred:

Citation : (1989) 1 GLJ 22 : (1989) 1 GLR 307

Hon'ble Judges : B.L.Hansaria, J and J.Sangma, J

Bench : Division Bench

Advocate : B.B.Narzary, S.C.Das, Sk.Chand Mohammad, Advocates appearing for Parties

Judgement

Hansaria, J.—The petitioner was appointed as a Sepoy of the Central Reserve Police Force(CRPF) sometime in 1968. He came to be promoted to the rank of Lance Naik in 1972. In 1976, however a case was registered against 7 CRPF personnel including the petitioner under sections 448/354/147/149/347 of the Indian Panel Code. This led to the suspension of the petitioner with effect from 25.4.77. The petitioner's name in the approved list of promotion to higher rank also came to be cancelled because of the pendency of the criminal case. This order was passed sometime in March, 1977. On 5. 7. 1978, however, the petitioner came to be acquitted by the Criminal Court. The petitioner was thereafter reinstated but he was not granted full pay and allowance nor was his name relisted in the approved list of persons fit for promotion. He made certain representations, but to no effect. Ultimately, this Court has been approached under Article 226 of the Constitution of India.

2. A perusal of the impugned order shows that the benefit of full pay and allowances was not given because the authority took the view that the acquittal was on benefit of doubt and, as such,, it did not amount to full exoneration.

3. We have perused the acquittal order passed by the learned Judicial Magistrate, Kailashahar, Tripura) and we find that it took the view that the prosecution had

failed to prove the charges beyond all reasonable doubt. Because of this observation, it cannot, first, be held that the petitioner was acquitted by giving him any benefit of doubt inasmuch as a criminal case has to fail on merit if the prosecution fails to prove the charge beyond reasonable doubt. Secondly, even if the acquittal can be said to be on the ground of giving benefit of doubt to the petitioner, we cannot hold that such an acquittal is, in any way, less than acquittals on full merits. Shri Das has, in this connection, referred us to Mohan Lai vs. Union of India and others 1981 (2) SLJ 489, in which it was held that even where a person is acquitted on benefit of doubt, it cannot be said that he is acquitted due to noncompliance with the technical rules of procedure. The further observation in this case is that in criminal law an acquittal on benefit of doubt is a complete acquittal on merits. We are in respectful agreement with this view expressed by the learned Single Judge of the Delhi High Court. We have also been referred in this connection to Balwant Singh vs. The Inspector General of Police & ors 1983 (1) SLJ 176 (P & H), in which the acquittal on the ground that the prosecution had failed to produce witnesses despite being given 6/7 opportunities was not held to be an acquittal on technical ground. We are not expressing any opinion as to such acquittals, but would say that when the accused is acquitted on the ground of benefit of doubt, the same cannot be regarded as acquittal on technical ground. As to when an acquittal would be on technical ground, we may mention about acquittal due to lack of sanction in those cases where sanction is required. In the present case, however, the acquittal order was passed by the Learned Magistrate after going through the evidence led in the case which did not satisfy the mind of the learned trial Court, because of which it was stated that the prosecution had failed to prove the case beyond all reasonable doubt

4. We would, therefore, direct the respondents to pay full pay and allowances to the petitioner for the period during which he was under suspension by treating the period of suspension as period spent on duty for all purposes.

5. Another grievance of Shri Das is that the petitioner was denied promotion unjustly and illegally. As to this we would say that as the petitioner's acquittal has to be regarded as full exoneration, his case has to be considered for promotion in accordance with law. We would, therefore, direct the respondents to consider the case of promotion of the petitioner with effect from that date by which he had become fit for promotion. If, in doing so, the petitioner would be required to be given retrospective promotion, the same shall also be done. Such a decision in the matter would be taken within a period of three months from the date of receipt of this order by the respondents.

6. In the result, the petition is allowed, as indicated above.

Sangma, J.

I agree.