

(2003) 11 MP CK 0083
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2320 of 2003

Madhu Ram

APPELLANT

Vs

Chairman, Bharat Sanchar Nigam Ltd. and Others

RESPONDENT

Date of Decision : 11-11-2003

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 29
Penal Code, 1860 (IPC) — Section 326, 354

Citation : (2004) 1 MPJR 449

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : R.K. Gupta and Mr. Rajnish Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in this writ petition is assailing the order P.1 dated 31.7.2002 and also the order P.3 dated 28.5.2003.

Petitioner was involved in offence under Sections 354 and 326 IPC and was giving benefit of doubt. Petitioner was suspended during the pendency of said criminal case on 20.8.90 and was reinstated after his acquittal by the criminal Court giving benefit of doubt on 20.3.2002. The order P.2 was passed by the disciplinary authority on 22.3.2002 regularizing the period of suspension and it was ordered that the period of suspension from 20.8.90 to 20.3.2002 will be treated as a period spent on duty for all purpose. Petitioner should be paid full pay and allowances for the entire suspension period. Regarding leave entitlement and other dues, the workman is entitled for all consequential benefit as per rules. However, he will not be entitled for bonus as he has actually not worked during this period. Appellate Authority took the matter u/s 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 issued notice to show cause P.6 to the Petitioner on 3.7.2002, why the order passed by disciplinary

authority be not reconsidered and why Petitioner should not be deprived of full payment and allowances of the period of suspension whereas the same has to be counted for the pension purposes. The ground was mentioned that Petitioner was given benefit of doubt and acquittal was not clean. Thus, considering the facts and circumstances of the case Petitioner was not entitled for full pay and allowances for the period of suspension. Petitioner submitted reply which has been considered by the appellate authority and order P.1 was passed on 31.7.2002 and it has been held that acquittal was not clean and Petitioner was given benefit of doubt, Petitioner is not entitled considering the conduct in the criminal case for full pay and allowances for the period of suspension of 12 years from 1990 to 2002. The order was challenged by the Petitioner in a revision before the concerned authority. Revision has been dismissed as per order P.3 dated 28.5.2003. Hence, the present writ petition has been filed against the orders P.1 and P.3.

Shri R.K. Gupta, learned Sr. counsel with Shri Rajnish Gupta appearing for the Petitioner, has submitted that the orders P.1 and P.3 are illegal. It was not open to the appellate authority to have taken up the matter under Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and order passed by the disciplinary authority was final. Rule 29(1)(v) provides the Appellate Authority, within six months of the date of the order proposed to be revised or may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed. In my opinion, when Petitioner was suspended and period has been regularized as per order P.2, it was open to appellate authority to exercise the power under Rule 29 which is specifically provided in Rule 29.

In Depot Manager, Andhra Pradesh State Road Transport Corporation, Hanumakonda Vs. V. Venkateswarulu and Another, etc. etc., , it has been laid down that if an employee has been suspended owing to the involvement in criminal charge, is not entitled to full salary as of right. Competent authority is bound to examine each case in terms of Regulations 21(1) and 21 (2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned. In Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, , it has been held by the Apex Court that if a public servant is suspended owing to the criminal trial and has been acquitted later on, reinstatement with all consequential benefits with backwages should not be granted as a matter of course. Thus, in my opinion, when the benefit of doubt has been given, Petitioner has not been acquitted clearly on the ground of false implication. He is not entitled to the full salary and allowances for the period of suspension as it cannot be said to be wholly unjustified in the circumstances of case. Orders P.1 and P.3 are proper, no interference is called for.

Resultantly, the orders P.1 and P.3 call for no interference. I find no merit in this petition. Writ petition is dismissed.