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**(2008) 07 DEL CK 0152**  
**In the Delhi High Court**  
**Case No : C.W.P No. 2591 of 1992**

Shri. Satish Kumar Malhotra

APPELLANT

Vs

Punjab and Sind Bank and Others

RESPONDENT

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**Date of Decision :** 07-07-2008

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2009) 1 ILR Delhi 377

**Hon'ble Judges :** Pradeep Nandrajog, J

**Bench :** Single Bench

**Advocate :** Dinesh Agnani, for the Appellant; Rajat Arora, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—The question which I am supposed to answer in the instant petition is, whether the office memorandum dated 26.11.1991 informing petitioner that he would not be paid regular pay nor would he be granted any increments for the period he remained suspended from 12.11.1988 till 14.10.1991 is legal and valid? For record I may note the stand of learned counsel for the respondent, who states that save and except not granting any increment in the scale in which petitioner was placed during afore-noted period, for all other purposes like continuity in service etc. the said period is being taken into account for the service career of the petitioner.

2. Employed as a Stenographer under Punjab & Sind Bank, the petitioner and his brothers came to be treated as suspects by the local police in the murder of one Shiv Kumar. Shiv Kumar was admittedly found grievously injured; injury being a result of stab wounds in the intervening night of 11th & 12th November, 1988. He died. An FIR No. 323/1988, u/s 302/ 34 IPC P.S. Moti Nagar was registered. Petitioner was arrested as an accused in the said FIR. He was sent for trial along with his co-accused i.e. his brother. The effect of registration of aforesaid FIR and petitioner's detention firstly by the police and then in the judicial custody was his suspension with effect from 12.11.1988.

3. Vide judgment and order dated 17.8.1991, at the sessions trial vide Sessions Case No. 68/1989, petitioner and his brother were acquitted of the offence they were charged of in FIR No. 323/1988, P.S. Moti Nagar. The acquittal was by giving the benefit of doubt to both accused persons i.e. the petitioner and his brother.

4. Challenge by the State to the order of acquittal failed when this Court refused to grant leave to appeal to the State in Criminal Misc. No. 281/1991. Thus, the acquittal of the petitioner attained finality for the reason the State did not further prosecute the matter.

5. On 14.10.1991 the suspension of the petitioner was revoked and he was taken back in service.

6. Needless to state, during the period 12.11.1988 till 14.10.1991 for which he remained under suspension, subsistence allowance as per rules was paid to the petitioner.

8. Disciplinary action and relatable procedure between the respondent No. 1 bank and its employees became a subject matter of an agreed Bipartite Settlement between the Union representing the employees of the Bank and the Management. Detailed provisions were agreed pertaining to disciplinary action including suspension and payment of allowances etc. to the employees charged with misconduct. Clause 19.3 of the Bipartite Settlement extensively deals with issues of suspension in respect of offences committed by an employee. Clauses (a), (b) and (c) thereof are relevant which read as under:-

19.3 (a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below.

(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct.

7. It is not in dispute that as per clause aforesaid where an employee of a bank is acquitted at a criminal trial, it is open to the Management to proceed to conduct a disciplinary inquiry. It is equally open to the Management to hold no such inquiry and take back the erring employee. In the instant case Management has opted for that course.

8. Thus, with effect from 14.10.1991 the petitioner has started working under the Bank and has no grievance on said score.

9. The petitioner claimed differential of the salary due and payable to him and the subsistence allowance which was paid to him for the period 12.11.1988 to 14.10.1991. He alleges that this is the benefit which accrues to him as a result of his acquittal at the criminal trial. Additionally, petitioner claims that the 2 increments which he would have earned between 12.11.1988 and 14.10.1991 be also given to him.

10. The Management asserts that under the Bipartite Settlement vide sub-para (c) of Clause 19.3, if acquittal is result of benefit of doubt being given to the erring employee it is within the discretion of the Management to pay or not to pay to him full wages for the period of suspension as also to treat the said period as not spent on duty. Meaning thereby that the Management may deny full salary for the period of suspension as also not treat the period as spent on duty.

11. The arguments of the petitioner and the respondent would have 2 extremes. The extreme on the side of the employee would be that having been acquitted by the Court, acquittal may be by giving benefit of doubt, he has no other remedy available but to accept the tainted acquittal for the reason law does not permit him to question the taint in the acquittal. It would be possible for the employee to argue that in said circumstances he should be entitled to all benefits.

12. The other extreme end could be the view by the employer. The same would be that the employer is in no way connected with what has happened. As in the instant case, if the employee is charged with murder, an act committed not during course of employment, the employer is not to be blamed if the employee was sent to judicial custody, meaning thereby, preventing the employer from availing the services of the employee.

13. Law has found favour with the latter view. The reason for the law need not be noted by me as it has formed the basis of numerous decisions. 1 note only 2.

14. The first is the decision of a 3 Judge Bench of the Hon''ble Supreme Court reported as AIR 1994 552 (SC) Management of Reserve Bank of India Vs. Bhopal Singh Panchal. The second is a 2 Judge Bench decision of the Hon''ble Supreme Court reported as Union of India (UOI) and Others Vs. Jaipal Singh,

15. In a nutshell, the Hon''ble Supreme Court has held that if, as a citizen, the employee gets involved in a criminal case of a grievous nature and is detained in judicial custody, the employer would not be at fault in suspending such an employee and denying to him full wages as also not counting the period in

detention as period spent on duty for the reason the employer was not to be blamed for what had happened.

16. The Bipartite Settlement, which, needless to state, has the force of law between the Management and the employees empowers the Management to deny the differential between the subsistence allowance paid and full pay payable to the petitioner as his acquittal is by giving him the benefit of doubt. Additionally, the Bipartite Settlement empowers employer to consider how the period of suspension has to be treated. The employer has treated the period of suspension as not on duty for a limited purpose, namely, for purposes of increments which petitioner would have otherwise earned had he continued to serve blamelessly under the Management.

17. I find no infirmity in the action of the respondent. It need hardly be reemphasized that petitioner's acquittal at the criminal trial where he was charged for the offence of murder is by giving to him the benefit of doubt.

18. The petition is dismissed. No costs.