



HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.86 of 2016

Reshamlal, S/o late Siraman, aged about 67 years, retired Head Constable, R.P.F. S.E.C.R. Raipur, R/o Village Hathbandh, Police Chowki Hathbandh, Police Station Simga, District Balodabazar (C.G.)
---- Petitioner

Versus

1. Union of India, Through the General Manager, South East Central Railway, Bilaspur, District Bilaspur (C.G.)
 2. The Chief Security Commissioner RPF / South East Central Railway, Bilaspur, District Bilaspur (C.G.)
 3. The Divisional Security Commissioner / RPF / South East Central Railway, Raipur, District Raipur (C.G.)
 4. The Senior Divisional Finance Manager, Raipur, South East Central Railway, Raipur, District Raipur (C.G.)
- Respondents

For Petitioner: Mr. Ravi Maheshwari, Advocate.
For Respondents / SECR: -
Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board
(Through Video Conferencing)

20/01/2022

1. The petitioner herein seeks arrears of salary from 28-6-2005 to 26-3-2008 and also for fixing his pensionary benefits on the basis of his last pay drawn by him. The aforesaid claim has been made on the following factual background: -
2. The petitioner while working as Head Constable in the Railway Protection Force (RPF) was placed under suspension on 28-6-2005, as offences punishable under Sections 147, 148, 302 read with Section 149 & 307 read with Section 149 of the IPC were registered against him, but no departmental enquiry was initiated against him



and ultimately, he was acquitted from criminal charges on 13-3-2008 by the jurisdictional criminal court extending the benefit of doubt to him pursuant to which he submitted joining to the respondent authorities and upon consideration, the suspension order dated 28-6-2005 was revoked by order dated 5-5-2008 and he was reinstated in service, but the period from 28-6-2005 to 26-3-2008 was treated as “no work no pay” on the basis of circular dated 5-9-1970 issued by the Railway Board and as per Rule 54-B(3) of the Fundamental Rules, which has been called in question by way of this writ petition stating inter alia that since the petitioner has been acquitted from criminal charges, therefore, he is entitled for full arrears of salary for the suspension period and also entitled for pensionary benefits and revised retiral benefits.

3. Reply has been filed opposing the averments made in the writ petition stating inter alia that since the petitioner has not been granted honourable acquittal, but he has been extended the benefit of doubt and circular dated 5-9-1970 clearly provides that in all cases of acquittal on other than benefit of doubt, the period of suspension should be treated as duty for all purposes and full pay and allowances should be given to the employees for the period of suspension. It has also been pleaded that the petitioner’s suspension is wholly unjustified, therefore, by virtue of Rule 54-B(3) of the Fundamental Rules, since the petitioner’s suspension is not justified, he will not be entitled to full pay and allowances to which he would have been entitled had he not been suspended and as such, the writ petition deserves to be dismissed.

4. Mr. Ravi Maheshwari, learned counsel appearing for the petitioner, would submit that though the petitioner has been acquitted extending



the benefit of doubt, yet, since he has been acquitted, therefore, he is entitled for full salary and wages during the period of suspension and therefore he is entitled for all the monetary benefits during the period of suspension and also on that basis, he will be entitled for revised pensionary benefits.

5. Mr. H.S. Ahluwalia, learned counsel appearing for the SECR / respondents, would submit that the circular dated 5-9-1970 clearly provides that only in cases of clean acquittal other than benefit of doubt, period of suspension has to be treated as duty for all purposes and the employees will be entitled for full pay and allowances, and since the petitioner has been extended the benefit of doubt, therefore circular dated 5-9-1970 would apply and the petitioner is not entitled for full pay and allowances during the suspension period. He would further submit that by virtue of Rule 54-B(3) of the Fundamental Rules, since the suspension was not wholly unjustified, therefore, the Railways are absolutely justified in granting 50% salary to the petitioner during the suspension period and other benefits arising out of that and as such, the writ petition deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. Admittedly, the petitioner was placed under suspension on 28-6-2005 on account of having been charge-sheeted for offences punishable under Sections 147, 148, 302 read with Section 149 & 307 read with Section 149 of the IPC in which he has been acquitted by the jurisdictional criminal court by judgment dated 13-3-2008, but his acquittal was not clean acquittal and he has been acquitted extending the benefit of doubt as per the judgment of the jurisdictional criminal





court passed in Sessions Trial No.10/2006 (State of Chhattisgarh v. Rajesh Kumar and five others), decided on 13-3-2008, and as such, it is admitted position on record that he was not acquitted honourably, but he was acquitted extending the benefit of doubt.

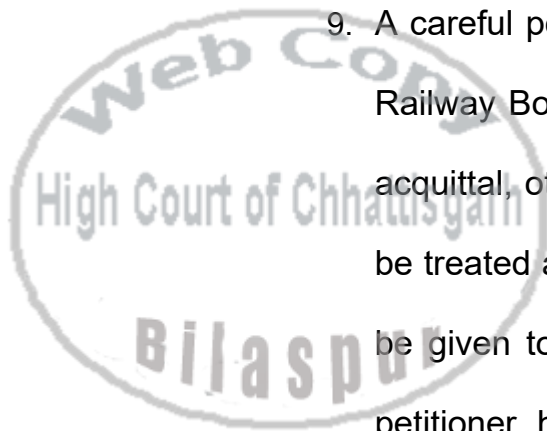
8. At this stage, it would be appropriate to refer to the circular dated 5-9-1970 which has been quoted extensively in the circular dated 4-11-1970 which reads as under: -

“3. The Board have considered the matter and decided that in all cases of acquittal on other than benefit of doubt, the period of suspension should be treated as duty for all purposes and full pay and allowances should be given to the employees for the period of suspension. This may be brought to the notice of all authorities concerned.”

9. A careful perusal of the aforesaid circular would clearly show that the Railway Board has clearly taken a policy decision that in all cases of acquittal, other than benefit of doubt, the period of suspension should be treated as duty for all purposes and full pay and allowances should be given to the employees for the period of suspension. Since the petitioner has admittedly been acquitted giving him the benefit of doubt, his period of suspension cannot be treated as duty for all purposes and he is not entitled for full pay and allowances, as the circular dated 5-9-1970 issued by the Railway Board is still in force and applicable to the parties. As such, the petitioner is not entitled for full pay and allowances during the period of suspension treating the suspension period as duty.

10. There is one more reason for not extending such benefit to the petitioner. Sub-rules (3) and (8) of Fundamental Rule 54-B which are applicable to the petitioner state as under: -

“F.R. 54-B





(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant, shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the 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 60 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 be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5), shall be subject to all other conditions under which such allowances are admissible.”

11. A careful perusal of the aforesaid rule would show that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant is entitled for full pay and allowances to which he would have been entitled, had he not been suspended, but subject to the provisions of sub-rule (8) of Rule 54-B of the Fundamental Rules.

12. At this stage, decision of the Supreme Court in the matter of Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao¹ may be noticed profitably herein. In this case, the Supreme Court has held that Fundamental Rule 54-B empowers the competent authority to grant full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. It was further held that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the

1 (2011) 8 SCC 155



authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which he deserves it. Their Lordships observed in paragraphs 9, 10 and 15 as under: -

"9. The rationale, on which sub-rule (3) of FR 54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in *Union of India v. K.V. Jankiraman*². At SCC p. 121 in para 26 P.B. Sawant, J., writing the judgment for the Court in the aforesaid case further observed:

"26. ... However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. In such circumstances, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests."

10. It will be clear from what this Court has held in *Union of India v. K.V. Jankiraman* that even in cases where acquittal in the criminal proceedings is on account of non-availability of evidence, the authorities concerned must be vested with the power to decide whether the employee at all deserves any salary for the intervening period, and if he does, the extent to which deserves it. In the aforesaid case, this Court has also held that this power is vested in

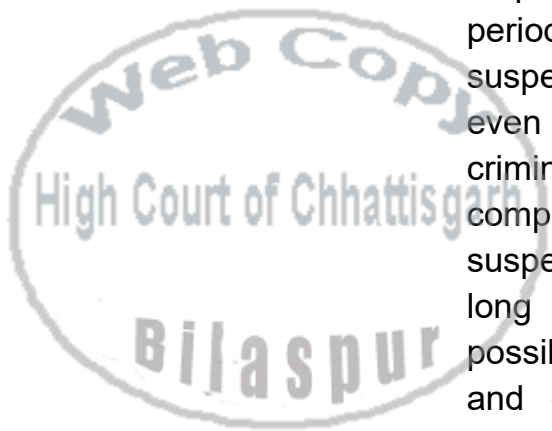




the competent authority with a view to ensure that discipline in administration is not undermined and public interest is not jeopardized and it is not possible to lay down an inflexible rule that in every case where an employee is exonerated in the disciplinary/criminal proceedings he should be entitled to all salary during the period of suspension and the decision has to be taken by the competent authority on the facts and circumstances of each case.

15. Sub-rule (3) of FR 54-B does not state that in case of acquittal in criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of FR 54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub-rule (3) of FR 54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if it is of the opinion that the suspension of the employee was wholly unjustified. Hence, even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before it, such opinion of the competent authority would not be interfered with by the Tribunal or the Court.”

13. Reverting to the facts of the case in the light of the provisions contained in FR 54-B(3) as well as the decision rendered by the Supreme Court in Greater Hyderabad Municipal Corporation (supra), it is quite vivid that the respondents by order dated 1-6-2015 have clearly held that since the petitioner has been acquitted after giving him the benefit of doubt, therefore, the period from 28-6-2005 to 26-3-2008 will be treated as suspension period for all purposes. Even otherwise, it is not the case of the petitioner that he has been honourably acquitted by the jurisdictional criminal court and therefore his suspension was wholly unjustified. Since the petitioner has been





acquitted giving the benefit of doubt, which goes to show that the Railway authorities were justified in placing the petitioner under suspension and as such, placing the petitioner under suspension was not without material, therefore, his suspension from 28-6-2005 to 26-3-2008 cannot be held to be wholly unjustified to hold him entitled for full pay and allowances during the period of suspension.

14. In view of the aforesaid analysis, I do not find any merit in the writ petition and it is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma





HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.86 of 2016

Reshamlal

Versus

Union of India and others

Head Note

In case of acquittal on the ground of benefit of doubt, Railway authorities are justified in not granting full wages during suspension period.

संदेह के लाभ के आधार पर दोषमुक्त किए जाने के मामले में, रेलवे अधिकारियों द्वारा निलंबन अवधि के दौरान पूर्ण वेतन नहीं दिया जाना न्यायोचित है।

