

**HIGH COURT OF TRIPURA
AGARTALA
WA No.154 of 2021**

Md. Abdul Nur, son of late Jahir Ali,
Resident of village-East Fulbari,
PO-Fulbari, PS- Churaibari,
District- North Tripura, Pin-799262.

---Appellant(s)

Versus

- 1. The State of Tripura**, represented by the
Secretary of School Education,
Government of Tripura, having his office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division–Agartala, District- West Tripura.
- 2. The Secretary of School Education**,
Government of Tripura, having his office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District- West Tripura.
- 3. The Director of Secondary Education**,
Government of Tripura, having its office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Agartala, District- West Tripura.
- 4. The Inspector of Schools**,
Education Inspectorate, having his office at
Panisagar, North Tripura.

---Respondent(s)

For the Appellant(s)	:	Mr. Somik Deb, Sr. Advocate Mrs. Riya Chakraborty, Advocate
For the Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. S. Saha, Advocate
Date of hearing	:	29.08.2023
Date of delivery of Judgment & Order	:	09.10.2023
Whether fit for reporting	:	Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT & ORDER

(Arindam Lodh, J.)

Challenge in this appeal is the impugned judgment and order
dated 13.01.2021 passed by a learned Single Judge of this Court in WP(C)

No.853 of 2020, whereby the learned Single Judge dismissed the writ petition preferred by the appellant-writ petitioner against the order dated 26.11.2020, passed by the Director, Secondary Education, Government of Tripura, treating the period of his suspension, *as not spent on duty* in terms of the provision of Rule 54-B(5) of the Fundamental Rules(for short, “FR”).

2. The facts and circumstances giving rise to present this intra-court appeal are that while the appellant-writ petitioner(here-in-after referred to as ‘*the appellant*’) was working as Assistant Teacher in Anandabazar H.S. School, Kanchanpur, North Tripura, his wife died an unnatural death in the intervening night of 18.11.2016 and 19.11.2016.

2.1. Due to such unnatural death of his wife, Churaibari PS Case No.2016 CRB 026 under Sections 498(A)/302/34 of IPC was registered arraying the appellant as an accused. In course of investigation, he was arrested on 22.11.2016 and detained in custody till he was enlarged on bail by an order dated 06.12.2016 passed by the learned Sessions Judge, North Tripura, Dharmanagar.

2.2. At a subsequent stage, when the appellant was on bail, the Director, Secondary Education, Government of Tripura(respondent no.3), in exercise of powers conferred by Sub-Rule(2) of Rule 10 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965(for short, *Rules of 1965*), placed the appellant under deemed suspension with effect from the date of his detention i.e. 22.11.2016 vide order dated 04.03.2017 on account of his detention beyond 48-hours in police custody. The order concluded with the following remark:

“AND WHEREAS the said Md. Nur, A/T, was detained in custody on 22-11-2016 of a period exceeding forty-eight hours.

NOW, THEREFORE, the said Md. Abdul Nur, A/T is deemed to have been suspended with effect from the date of detention, i.e. the 22nd

November, 2016 in terms of sub-rule(2) of Rule 10 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965, and shall remain under suspension until further orders.”

2.3. Later on, subsistence allowance was granted to the appellant vide order dated 30.03.2017 and the same was enhanced vide order dated 13.04.2018. Extracts of orders dated 30.03.2017 and 13.04.2018 read as under:

“Dated, Agartala, the 30/03/2017

ORDER

Md. Abdul Nur, A/D, Anandabazar H.S. School, Kanchanpur, North Tripura, who was deemed to have been suspended w.e.f. 22-11-2016 vide this office order of even number dated 04-03-2017, will be entitled to draw subsistence allowance with effect from the date of effect of the suspension in the manner indicated below:-

(a) Subsistence allowance at an amount equal to leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition dearness allowance, if admissible on the basis of such leave salary.

(b) Compensatory allowance which he was in receipt on the date of suspension”

“Dated, Agartala, the 13/04/2018

ORDER

In view of suspension of Md. Abdul Nur, A/T, Anandabazar H.S. School, Kanchanpur, North Tripura, it has been decided to vary the amount of subsistence allowance and it is ordered that Md. Nur, A/T is entitled to draw the increased rate of subsistence allowance i.e. 50% of existing rate of subsistence allowance drawn by him from the date of issue of this order.”

2.4. On the other hand, the order of suspension was first reviewed and extended vide order dated 28.07.2017 for a period of 180 days with effect from 11.07.2016, and subsequently vide order dated 30.08.2018 the same was extended for a further period of 180 days, effecting from 06.07.2018. Extracts of orders dated 28.07.2017 and 30.08.2018 read thus:

“Dated, Agartala, the 28th July, 2017

ORDER

It has been decided by the Review Committee in a meeting held on 11/07/2017 to continue the suspension of Md. Abdul Nur, A/T, Anandabazar H.S. School, Kanchanpur, North Tripura for further period of 180 days w.e.f. 11/07/2017”

“Dated, Agartala, the 30th August, 2018

ORDER

It has been decided by the Review Committee in a meeting held on 08/08/2018 to continue the suspension of Md. Abdul Nur, A/T, Anandabazar H.S. School, Kanchanpur, North Tripura for further period of 180 days w.e.f. 06/07/2018.”

2.5. Eventually, the order of suspension was withdrawn, pending finalization of the criminal case against him, vide Memo. dated 20.06.2019 issued by the Director, Secondary Education, Government of Tripura asking him to join at Paiza Government High School, Kanchanpur, North Tripura and accordingly he joined to the new place of posting.

2.6. At a later date, trial in the Sessions Court against the appellant in Criminal Case No.S.T.(Type-1) 06 of 2018 came to an end with acquittal from the criminal charge vide judgment and order dated 27.02.2020, passed by the learned Sessions Judge, North Tripura, Dharmanagar. Operative part of the judgment recorded thus:

“.....In the totality of the case, this court find and hold that prosecution in this case has failed to prove the charge under section 302 of IPC against accused Abdul Noor beyond all reasonable shadow of doubt and thereby the balance of justice tilts towards the accused and the benefit of doubt goes in favour of the accused.

Accordingly accused Abdul Noor is found not guilty and he is acquitted from the liability of the charge for the commission of offence punishable under section 302 of IPC on the benefit of doubt. He is set at liberty.”

2.7. After his acquittal from the criminal charge, the appellant addressed a representation to the Director, Secondary Education claiming payment of outstanding pay and allowances with interest withheld during the period of his suspension.

2.8. In response thereto, the Director, Secondary Education issued notice upon the appellant vide Memo. dated 06.10.2020 asking him to explain the reasons as to why his suspension period should not be treated as *not spent on duty* in terms of the provision under F.R.54-B(5). Extract of the Memo. dated 06.10.2020 encapsulated thus:

“AND WHEREAS Md. Abdul Nur, A/T was acquitted by the Ld. Court on the benefit of doubt.

NOW, THEREFORE, the undersigned hereby ask Md. Abdul Nur, A/T to explain reasons as to why his suspension period shall not be treated as not spend on duty in pursuance of the provision of FR 54-B sub-rule(5). His reply should reach the undersigned within 7(seven) days from the date of receipt of this memo, failing which decision will be taken ex parte.”

2.9. Reply to the said Memo dated 06.10.2020 submitted by the appellant was forwarded by the District Education Officer under communication dated 09.11.2020, wherein the appellant pointed out that he was falsely implicated in the criminal case by his in-laws from which he had already been acquitted by the trial court. It was also pointed out that placing him under suspension on being enlarged on bail was fully unjustified. Asserting further it was stated that the period of delay in the termination of the criminal proceeding is not at all attributable to him. As such he prayed for treating the period of suspension as spent on duty for all purposes in terms of the provisions of F.R.54-B(3) & F.R.54-B(4) and to pay him full pay and allowances for the period of his suspension. Reply submitted by the appellant concluded thus:

“.....Under the above circumstances I pray to you honor for favor of your considered opinion on objective views taken on perusal of the judgment, while acquitted me of the criminal charge, that my suspension was wholly unjustified. I also pray you to make order (i) for payment of full pay and allowances to which I am entitled, had I not been suspended (ii), the period of suspension

shall be treated as period spent on duty for all purpose in pursuance of the provision of FR-B Sub Rule 3 and 4. As explained above, I further pray you to kindly refrain from invoking FR-B Sub Rule 5 and taking any action against me as contemplated in the memo of show cause, for it would be against Justice, equity and good conscience and in contravention with the fundamental principles of the laws of the land.”

2.10. However, the Director, Secondary Education on careful consideration of the facts and circumstances and on application of mind, vide order dated 26.11.2020 held that the period of suspension of the appellant w.e.f. 22.11.2016 to the date preceding the date of his re-joining on duty on revocation shall be treated as not spent on duty in pursuance of the provision of Sub-Rule(5) of Rule 54-B of the Fundamental Rules. Extract of the order is reproduced hereunder, for convenience:

“ORDER

WHEREAS Md. Abdul Nur, A/T, Anandanagar H.S. School, Kanchanpur, North Tripura(now at Paiza Govt. High School, Damcherra) was placed under suspension w.e.f. 22-11-2016 on the ground of criminal offence vide this office order of even number dated 04-03-2017.

AND WHEREAS the said order of suspension was withdrawn pending finalization of the criminal case against him vide this office order of even number dated 20-06-2019.

AND WHEREAS Md. Abdul Nur, A/T was asked to explain reason as to why his suspension period shall not be treated as not spend on duty in pursuance of the Provision of FR 54-B sub-rule(5) vide this office memo of even number dated 06-10-2020.

AND WHEREAS reply furnished by Md. Abdul Nur, A/T has carefully been examined and found not convincing.

NOW, THEREFORE the undersigned, going through the records in file and considering the facts & circumstances of the case and on application of mind hereby order that the period of suspension of Md. Abdul Nur, A/T w.e.f. 22-11-2016 to the date preceding the date of re-joining on duty on revocation shall be treated as not spend on duty in pursuance of the provision of FR 54-B sub-rule(5).

This order shall take effect from the date of its issue.”

2.11. The said order of the Director, Secondary Education was under challenge before the learned Single Judge at the instance of the appellant

under Article 226 of the Constitution of India, *inter alia* praying for quashing/setting aside the order 26.11.2020 and for directing the respondents to release the full salary and allowances admissible to the appellant for the whole period of suspension with interest thereon, treating the suspension period as *spent on duty* for all purposes.

2.12. Learned Single Judge upon hearing the learned counsel appearing for the parties and on going through the materials on record, returned the impugned judgment and order dismissing the writ petition. Noticeably, while answering the question formulated by the learned Single Judge as to whether the competent authority of the appellant committed any error in not allowing full pay and allowances for the period the appellant was on suspension, it was observed by learned Single Judge thus:

*"As per sub-rule (3) of FR 54B thus, where the authority, competent to order reinstatement of an employee who was placed under suspension, is of the opinion that such suspension was wholly unjustified, the employee would be paid the full pay and allowances for the intervening period. **When the competent authority decides not to invoke this provision, he can have resort to sub-rule (5) under which he enjoys discretionary power to regulate the pay and allowances of the period spent under suspension.** In the present case, it cannot be stated that the competent authority committed any error in not covering the case of the petitioner under sub-rule (3) of Rule 54-B. As noted, **the order of suspension was necessitated on account of the involvement of the petitioner in a serious criminal case of murder pursuant to which he was also detained for over 48 hours. I have also perused the judgment of acquittal. By no stretch of imagination it can be stated to be an honourable clean acquittal. Whether it can be stated to be a judgment giving benefit of doubt to the accused is also hugely questionable.***

Under the circumstances, no case is made out. Petition is dismissed. Pending application(s), if any, also stands disposed of."

(emphasis supplied)

2.13. Being aggrieved by and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the present intra-court appeal came to be filed at the instance of the appellant.

3. We have heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the appellant as well as Mr. D. Bhattacharya, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the respondents.

4. Mr. Deb, learned senior counsel, at the outset drawing our attention to the undisputed facts that the appellant was taken to custody on 22.11.2016, he was enlarged on bail on 06.12.2016 and the order of suspension was issued on 04.03.2017 with deeming effect from 22.11.2016, argued that there was no justifiable logic to place the appellant under suspension on being enlarged on bail.

4.1. Referring to the provision to Rule 10(7) of the Rules of 1965 Mr. Deb, learned senior counsel further argued that the order of suspension under Rule (2) of the Rules of 1965 would not be valid after expiry of 90 days unless the same is reviewed prior thereto. In support of his contention learned senior counsel referred the decision of the Apex Court rendered in the case of *Union of India & Ors. vs. Dipak Mali*, reported in (2010) 2 SCC 222 (paras 7, 10, 11). Admittedly, the order of suspension of the appellant was issued on 04.03.2017 with deeming effect from 22.11.2016. Reckoning 90 days from 22.11.2016, the same stood expired on 22.02.2017. Since the order dated 28.07.2017 communicating the appellant that the order of suspension was extended for a further period of 180 days w.e.f. 11.07.2017, the suspension order of the appellant became *non est* in the eye of the law due to the reason that the same was reviewed and communicated after expiry

of 90 days from the date of issuing the order of suspension. Similarly, next review of the order of suspension which ought to have been made on 10.01.2018, but ultimately it was made on 06.07.2018(after expiry of 176 days from 10.01.2018) extending the order of suspension for a further period of 180 days w.e.f. 06.07.2018, and that decision was communicated to the appellant by order dated 30.08.2018. Therefore, the suspension of the appellant became *inoperative* on 11.01.2018(after expiry of 180 days from 11.07.2017) in terms of provision of Rule 10(7) of the Rules of 1965. When a suspension of a government servant is prolonged, the employer must reach a subjective satisfaction for such prolonged continuation of suspension. In support of his contention, learned senior counsel relied on the decisions of Apex Court in ***Union of India & Anr. vs. Ashok Kumar Aggarwal*** reported in (2013) 16 SCC 147(paras 21, 22, 24, 25) and ***State of Tamil Nadu represented by Secretary to Government(Home) vs. Promod Kumar, IPS & Anr.*** reported in (2018) 17 SCC 677(paras 24 to 27).

4.2. To attack principally the judgment of learned Single Judge, Mr. Deb, learned senior counsel making a reference to the provision under F.R.54-B(5) argued that in the show-cause notice dated 06.10.2020 there was no indication whatsoever, as to the amount that would be paid to the appellant. The use of the expression “*after giving notice to the Government servant of the quantum proposed*” is of immense importance. Since the show-cause notice did not indicate the quantum, proposed to be paid to the appellant, the same failed to meet the statutory requirement invalidating the show-cause notice dated 06.10.2020, consequent to which the impugned order dated 26.11.2020 suffered from illegality.

4.3. Learned senior counsel further argued that the provisions contained in F.R.54-B are crystal clear that F.R.54-B(3) & F.R.54-B(4) are the *norms* and F.R. 54-B(5) is an *exception* of the rule. The expression '*in cases other than those falling under sub-rules (2) & (3)*' appearing under F.R.54-B(5) is a pointer to the above conclusion. Unless, it is shown that the services of the government could not have been availed, even if his suspension was revoked, invocation of F.R.54-B(5) would be wholly unlawful. Furthermore, for invoking F.R.54-B(5) the respondents were under solemn obligation to show that the period of suspension of the appellant cannot be fitted in F.R.54-B(3) and hence F.R.54-B(5) is the only option available, and since the impugned order dated 26.11.2020 did not make such a revelation, the same was unsustainable.

4.4. The sum and substance of the submissions of learned senior counsel appearing on behalf of the appellant is that since the appellant was acquitted from the charge framed against him by a criminal court, the period of suspension ought to have been treated *as the period spent on duty* and all pay and allowances for the entire suspension period be paid to the appellant.

5. *Per contra*, Mr. Bhattacharya, learned G.A. refuting the submissions of learned senior counsel argued that the appellant consciously did not challenge the suspension order and review of the suspension order extending the period of suspension. The appellant confined only to challenge the decision of the authorities dated 26.11.2020 which is a consequential and final action on the period of suspension.

5.1. Mr. Bhattacharya, learned G.A then contended that F.R.54-B(5) comes into play to decide the entitlement of an employee with regard to pay and allowances with a prior notice. Notice was issued upon the appellant on

06.10.2020 to which the appellant failed to show as to how he falls in the category of Sub-Rules (3) & (4) of F.R.54-B. Mr. Bhattacharya further submitted that Sub-Rule (5) of Rule 54-B vests discretionary power to the competent authority to regulate the pay and allowances of the delinquent of the period spent under suspension. Admittedly, the appellant was not in service because of in-contemplation of a criminal proceeding against him.

5.2. Finally, Mr. Bhattacharya, learned G.A. contended that mere acquittal in the criminal case will not create a right of the appellant for full pay and allowance or back wages.

5.3. Learned G.A. relied on the decisions of *Greater Hyderabad Municipal Corporation vs. M. Prabhakar Rao* reported in (2011) 8 SCC 155 (para 8,9,10,14 and 15), *State of Madhya Pradesh & Ors. Vs. Suresh Chand Ahirwar & Anr*, reported in 2019 Legal Eagle(MP) 280(para 7, 11, 12, 13 and 17) and *Subodh Kumar Mandal vs. Union of India* reported in (2016) SCC OnLine Pat. 4796 (para 4, 7, 9, 10, 11 and 13).

6. We have carefully considered the rival submissions advanced by the learned counsel appearing on behalf of the parties and also gone through the records available before us.

6.1. Most of the arguments advanced on behalf of the appellant have not convinced us, rather we find force in the arguments of Mr. Bhattacharya, learned G.A. that the appellant did not avail the opportunity challenging the prolonged suspension order as alleged, delay caused in reviewing the suspension order extending the period of suspension, even the delay caused in passing the orders granting subsistence allowances, etc.; and the appellant confined himself only to challenge the order dated 26.11.2020 of the competent authority which is a consequential and final action on the period

of suspension. However, since we are of the view that justice is better administered if the rival claims of the parties are considered on merits and in the proper perspective, we have looked into the arguments raised on behalf of the appellant carefully.

6.2. Whether the competent authority was justified or not in placing the appellant under suspension on being enlarged on bail, we have gone through the relevant provisions under Rules of 1965. Sub-Rule (2) of Rule 10 encapsulates provisions relating to deemed suspension. The appellant was deemed to have been placed under suspension on the expiry of 48 hours since the time he was taken into custody. For a deemed suspension to take effect, even no immediate order in writing is necessary. Such suspension takes effect by the operation of law. The suspension of the appellant brought about by operation of law, had the effect infusing life into a law and the same can hardly be impeached as unjustified. We, therefore, find no reason to hold that the order of suspension of the appellant on being enlarged on bail was unjustified on facts and in the circumstances.

6.3. Rule 10(5)(a) of the Rules of 1965 ordains that subject to the provisions of Sub-Rule (7) of Rule 10, any order of suspension made or deemed to have been made under Rule 10 shall continue to remain in force until it is modified or revoked by the authority competent to do. Clause (c) of Sub-Rule (5) of Rule 10 authorizes modification or revocation of an order of suspension made or deemed to have been made under Rule 10 at any time by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. Rule 10(7) of the Rules of 1965 mandates that the authority shall review from time to time whether the suspension warrants modification/revocation in respect of a case of deemed

suspension. In the case on hand, though it is true that the competent authority of the appellant might have been remiss, reviewing the order of suspension or granting the subsistence allowance in due course of law, but at the same time one cannot also overlook the fact that the appellant never prayed that the order of suspension be revoked on a review of the prevailing facts and circumstances. He rested content with drawing subsistence allowance without putting in work till revocation of suspension order. After all, without extracting any work from the appellant but paying him subsistence allowances for more than two years, howsoever meager the quantum was in fact, a total drainage of the public exchequer. He woke up from the slumber only when the notice dated 06.10.2020 was issued asking him why the period of his suspension should not be treated as spent not on duty. The situation could well have been avoided if an informed decision was taken by the competent authority bearing in mind the fact that the appellant was facing trial in respect of commission of alleged offences quite unrelated to his official discharge of duty. However, does such remissness warrants a declaration that continuance of the suspension was unjustified and that the period spent by the appellant under suspension should have been treated to be on duty and hence he is entitled to financial benefits, we do not think so.

6.4. True it is, the appellant faced a criminal trial in respect of offences which did not relate to his official discharge of duties. In so far as delayed conclusion of the criminal trial is concerned, as we find mentioned by the appellant while replying the show-cause notice dated 06.10.2020, it could be so that the appellant was not at fault. Equally, the competent authority too cannot be faulted for such delay. It was not within the power of competence of the competent authority to urge that the trial be expedited.

6.5. The contention of learned senior counsel that the show-cause notice did not mention the quantum proposed to be paid under Rule 54-B(5). Fundamental Rule 54-B contemplates a show-cause notice separately where the competent authority is of the view that the employee should not be paid the full salary for the period he was under suspension. A bare perusal of Sub-Rules (3) and (5) of the Fundamental Rule 54-B shows that the competent authority shall take a decision about the amount to be paid to government servant during the period of suspension (not less than the subsistence allowance already received by him) after giving notice to the employee with respect of quantum proposed and after considering representation, if any, made by him. In our opinion, the expression, ***“after giving notice to the Government servant of the quantum proposed”*** should not be read and interpreted so narrowly. *According to us, the word “quantum” in the expression embodied in Sub-Rule 5 of Rule 54-B means the balance of his actual pay and allowances minus the subsistence allowance which was paid to him during the period of suspension.* The expression made in the show-cause notice that ***“.....as to why his suspension period shall not be treated as not spent on duty.....”*** itself indicates that *since the period of his suspension would not be treated as the period not spent on duty he would not be entitled to receive the balance quantity of money out of his actual pay and allowance.*

(emphasis supplied)

6.6. *That apart, the scope of F.R.54-B is entirely different. The legislative intention to issue show-cause notice is that when competent authority thinks that entire salary should not be paid to the Government servant for the period of suspension, such an order entails into civil*

consequences to the delinquent employee. Keeping in view the well-entrants principle of fairness and fair play and consistent with the doctrine of natural justice, the F.R.54-B Sub-Rules 3 and 5 mandates the issuance of a show-cause notice and thereafter an order needs to be passed by the competent authority after considering representation, if any of the delinquent employee. Provision of issuance of show-cause notice is made only to afford an opportunity to the delinquent employee to apprise him the proposed decision of the competent authority that the balance quantum of his salary other than the quantum of pay and allowances that is paid against subsistence allowance would not be paid to him. So, the quantum of salary which would not be paid to the delinquent becomes easily attributable to the delinquent employee, and in this situation he can submit representation in his defense.

(emphasis supplied)

7. Now, coming back to the finding returned by the learned Single Judge, we find that the learned Single Judge decided the matter observing that if the competent authority decides not to invoke the provision of Sub-Rule (3) of FR 54-B, he can have resort to Sub-Rule (5) under which he enjoys discretionary power to regulate the pay and allowances of the period spent under suspension. It was also opined that the order of suspension was necessitated on account of involvement of the appellant in a serious criminal case of murder pursuant to which he was also detained for over 48 hours, and above all, from the judgment of acquittal, by no stretch of imagination it can be stated to be an honourable clean acquittal.

8. In the backdrop of aforesaid observations of the learned Single Judge, the moot question falls for consideration before us, in the facts and circumstance of the instant case, is *as to whether the learned Single Judge*

committed any error of law affirming the decision of the respondents, which treated the period of suspension of the appellant 'as spent not on duty.

9. Before advertng to the above issue, we feel it necessary to answer whether the period of suspension of the appellant is liable to be regularized under F.R.54-B(3) or under F.R.54-B (5). It is not in dispute that Rule 54-B of the Fundamental Rules is one of the relevant rules that applied to the appellant. F.R.54-B (1) to (9) are extracted hereunder, in *extenso*, for convenience:

"(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(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 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 be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under Sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under Sub-rules (2) and (3) the Government servant shall, subject to the provisions of Sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under Sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in Sub-rule (1) who shall make an order according to the provisions of Sub-rule (3) or Sub-rule (5), as the case may be.

(7) In a case falling under Sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires that such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(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.

(9) The amount determined under the proviso to Sub-rule (3) or under Sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

9.1. From a bare reading of F.R.54-B(3) it is crystal clear that a Government servant is entitled to be paid the full pay and allowances to which he would have been entitled had he not been suspended, only when the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, in that event, the period of suspension shall be treated as a period spent on duty for all purposes, as provided in F.R.54-B(4).

9.2. On the other hand, as per F.R.54-B(5), in a case other than those falling under Sub-rules (2) and (3) the Government servant shall, subject to the provisions of Sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled to had he not been suspended, as the competent authority may determine. As per F.R.54-B(7), in a case falling under Sub-rule (5), the period of suspension shall not be treated as period spent on duty unless the competent authority specifically directs that it shall be so treated for any specific purpose.

9.3. Thus, from the provisions contained in F.R.54-B it is clear that a Government servant on reinstatement in service after revoking the suspension has no right to be paid the full pay and allowances for the period under suspension or to treat the period of suspension as period spent on duty for all purposes, even if he is acquitted in the criminal proceedings. The period of suspension will have to be regularised by the competent authority in accordance with the provisions under F.R.54-B. Only if the competent authority is of the opinion that the suspension was wholly unjustified, the Government servant is entitled to be paid the full pay and allowances during the period of suspension and also to treat the period of suspension as period spent on duty for all purposes. If the competent authority is not of the opinion that the suspension was wholly unjustified, the Government servant is entitled only to such amount (not being the whole) of the pay and allowances as the competent authority may determine, and in such a case, the period of suspension shall not be treated as period spent on duty unless the competent authority specifically directs that it shall be so treated for any specific purpose.

9.4. In the case on hand, as we already discussed in the preceding paragraphs, the appellant was placed under suspension when it came to the notice of the competent authority that the appellant was detained in custody of a period exceeding 48 hours. However, the order of suspension was issued on his being enlarged on bail. The competent authority of the appellant granted him subsistence allowance, which was enhanced thereafter and the authority competent, by its first review extended the order of suspension for a period of 180 days and thereafter further extended it for

another 180 days. Subsequently, by an order the suspension was withdrawn pending finalization of the criminal trial. On the other hand, the appellant was tried by the Court of Sessions and he was acquitted on the ground that the prosecution failed to prove the charge beyond reasonable doubt. Thus, the appellant remained under suspension during the period when he was detained under custody and when the criminal case against him was under investigation or trial. On revocation of suspension order when he prayed for granting full pay and allowances for the period of suspension he was issued a show-cause notice asking him as to why his period of suspension should not be treated as a period not spent on duty in terms of F.R.54-B(5). The authority competent, considering his reply submitted by him, being not satisfied, issued the impugned final order holding that the period of his suspension will be treated as spent not on duty in terms of F.R.54-B(5). Thus the competent authority was not of the opinion that the suspension of the appellant was wholly unjustified. On the other hand, the competent authority found that the suspension was unavoidable as the appellant was facing investigation and trial in a criminal case and that the suspension was justified in such circumstances.

9.5. In our view, the competent authority was right and justified in taking the view that the suspension of the respondent was justified. When a Government servant is facing trial in a criminal case he is liable to be placed under suspension under the CCS(CCA) Rules. Admittedly, the appellant was facing trial in a criminal case during the entire period of suspension. Hence the competent authority was right in holding that the suspension of the respondent was justified.

9.6. It is noteworthy that under F.R.54, when a Government servant is reinstated in service after suspension, while regularising the period of suspension what is to be considered by the competent authority under F.R.54-B is “*whether the suspension was wholly unjustified.*” The question whether the suspension of an employee was wholly unjustified or not, can be determined only with reference to the time when he was placed under suspension and when he continued under suspension. The nature of the acquittal at the end of the criminal proceedings cannot be the criterion for deciding whether the suspension was justified or not. Hence the question to be considered in the instant case, is whether there was sufficient justification for placing the appellant under suspension when he was placed under suspension by the competent authority. Since the appellant was admittedly taken into custody in connection with a criminal offence and was facing investigation in the criminal case at that time, it would be wrong to say that the competent authority was not justified in placing the respondent under suspension in exercise of his power under Rule 10(2) of the CCS(CCA) Rules. Thereafter, having been satisfied *prima facie* his complicity with the crime he was charge-sheeted, however after trial he was acquitted on benefit of doubt. The suspension of the appellant was justified not only when the order of suspension was issued, but also during the entire period he was kept under suspension because during the said period, the appellant was facing trial in a criminal case and the CCS(CCA) Rules provided for keeping a Government servant under suspension during such period. In such circumstances, we do not find any illegality or material irregularity in the decision of the competent authority that the suspension of the appellant was justified, and hence the regularisation of the period of his suspension could

not be under F.R.54-B(3) and (4). F.R.54-B(3) and (4) are applicable only when the competent authority is of the opinion that the suspension was wholly unjustified. We also uphold the decision of the authorities that the period of suspension of the respondent is liable to be regularised only under F.R.54-B(5).

9.7. By issuing the show-cause notice dated 06.10.2020 the competent authority has taken the view that the appellant was acquitted as the prosecution failed to establish the charge. On a perusal of the judgment of the learned trial court, it cannot be said that the appellant was "honourably acquitted" by the trial court because the acquittal is based on the findings that *the prosecution has failed to prove the charge beyond reasonable shadow of doubt and thereby the balance of justice tilts towards the accused and the benefit of doubt goes in favour of the accused. Accordingly accused Abdul Noor is found not guilty and he is acquitted from the liability of the charge for the commission of offence punishable under section 302 of IPC on the benefit of doubt.* There is difference between 'acquittal' and 'honourable acquittal'. A person is honourably acquitted only when the court finds that the case against him is false and not when the court finds that he is entitled to the benefit of reasonable doubt or that the prosecution did not succeed in proving the case against him beyond reasonable doubt.

9.8. We are of the view that the justifiability of the suspension should depend on the circumstances under which and the reasons for which the Government servant was placed or kept under suspension and not on the result of the trial of the criminal case. In this context the difference between F.R.54 and F.R.54-B assumes significance. Under F.R.54 while regularising

the period of absence from service the authority should consider whether the officer was fully exonerated whereas under F.R.54-B the authority needs only consider whether the suspension was wholly unjustified. Hence, even assuming that the acquittal of the appellant was honourable, the suspension of the appellant cannot be said to be wholly unjustified and therefore F.R.54-B(3) cannot apply in his case.

10. At this juncture, we may gainfully refer the decision of the Hon'ble Apex Court rendered in the case of ***Greater Hyderabad Municipal Corporation***(supra), as relied on by the learned G.A. In that case, the Apex Court 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 authority concerned must be vested with the power to decide whether the employee at all deserves any salary and/or pay and allowance for the intervening period, and if he does, the extent to which he deserves it. Their Lordships in that case observed in paragraphs 8, 9, 10 and 15 as under: [SCC pp 158, 159, 160 paras 8, 9, 10, 15]

“8. Sub-rule (3) of FR 54-B extracted above, thus, vests power on the competent authority to order reinstatement to form an opinion whether suspension of a government servant was wholly unjustified and if, in its opinion, the suspension of such government servant is wholly unjustified, such government servant will be paid the full pay and allowances to which he would have been entitled, had he not been suspended. The proviso to sub-rule (3) of FR 54-B, however, states 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 then 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. In other words, even where the competent authority is of the opinion that the suspension was wholly unjustified, the government servant may still not be entitled to be paid the whole pay and allowances, but may be paid such pay and allowances as may be determined by the competent authority.

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**¹. 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 nonavailability 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

¹ (1991) 4 SCC 109

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.”

(emphasis supplied)

10.1. We may also profitably refer the decision of the Division Bench of Patna High Court rendered in the case of **Subodh Kumar Mandal**(supra). In that case, the petitioner, who was working as a Gangman in Indian Railways, arrested on 29.06.1992 in a criminal case for offence under Sections 147/148/302/149 of IPC read with Sections 4 and 5 of the Explosive Substance Act. On account of custody, the petitioner was suspended, but no departmental proceeding was initiated against him. He was acquitted in the criminal trial on 07.10.2005 and stood reinstated in service on 06.12.2005. The petitioner claimed that the period of suspension should be treated as duty period and he should be paid pay and allowance on account of acquittal in the criminal trial. While deciding that case the Division Bench of Patna High Court at paras 6, 10, 11 and 12 observed thus:

*“6. We have heard learned counsel for the parties and find no merit in the present writ petition. **The suspension of the petitioner was on account of his involvement in a murder case and not on account of any dereliction on duty or at the instance of the employer.** For such act, which led the petitioner to judicial custody, the employer cannot be burdened with financial liabilities.*

*10. The order passed by the Divisional Railway Manager is in tune with sub-rule (3) of Rule 2044-B(F.R. 54-B) when it is found that **the suspension cannot be said to be wholly unjustified as the petitioner was involved in a criminal case of murder. Once the petitioner was involved in a criminal case, his involvement cannot be rewarded with full pay and allowances from a public exchequer.***

*11. The petitioner was suspended, being involved in a murder case. Therefore, there is nothing wrong in the impugned order not to pay full pay and allowance for the period of his suspension. **The employer cannot be saddled with financial burden as it had no role in involvement of the petitioner in a criminal case.***

12. The order passed by the Tribunal is fair and reasonable and we do not find any illegality in the same, which may warrant interference in the writ jurisdiction of this Court.”

(emphasis supplied)

10.2. We have also gone through the decision returned in the case of **Suresh Chand Ahirwar**(supra), wherein a Division Bench of Madhya Pradesh High Court relying its earlier decision passed in **Prakash Kumar Sahu v. Union of India & others, 2012 (2) MPLJ 347**, held in paras 7 and 8 thus:

“7. A Division Bench of this Court in Prakash Kumar Sahu v. Union of India & others, 2012 (2) MPLJ 347 dwelling on the issue as the present one has held :

“10. The question as to how the period of suspension, where the suspension is because of the criminal prosecution, on its revocation after acquittal of the Government servant, is it to be treated, is governed by Rules, viz., Fundamental Rules 54 B. Sub-rules (1), (3) and (8) of FR 54 B are relevant in the context. These sub rules stipulate:

“xxx xxxx xxxx”

Sub-Rule (1) obligates the competent authority in case where Government servant who was suspended is reinstated to make a specific order (i) regarding pay and allowances to be paid to Government

servant for the period of suspension ending with reinstatement (ii) whether or not the said period shall be treated as a period spent on duty. The decision to be taken under sub-rule (1) is bridled with the decision required to be taken under sub-rule (3), i.e., where the suspension is held to be wholly unjustified, then the government servant is entitled for full pay and allowance subject to provisions of sub-rule (8). In other words even executive instructions issued to that effect will hold the field when it comes to payment of full pay and allowances. Whereas sub-rule (1) and sub-rule (3) makes a provision regarding pay and allowances to be paid in the events mentioned therein. Sub-rule (8) provides for payment of allowances contains under which such allowances are payable.

11. However, in a case where the suspension is held to be wholly justified, an employee will not be benefited of sub-rule (3) and sub-rule (8) of FR 54 B. In such circumstances, the petitioner is not benefited by the verdict in Umashankar Choubey (supra) wherein the instance was of the case where the suspension was held as unjustified.

12. Sub-rule (3) of F.R. 54-B cast the discretion in the competent authority to form an opinion whether the suspension of a government servant is wholly unjustified.

13. In the case at hand, the petitioner was placed under suspension not because of the pending departmental enquiry nor in contemplation of a departmental enquiry. The suspension was because of his arrest in connection with a criminal charge. Such a suspension has been held to be a statutory suspension. In Union of India v. Rajiv Kumar (2003 AIR SCW 3507) it is held:

“15. Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of Court of law or an order passed by the Appellate or reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expressions “until further orders” in the said sub-rules to emphasise that such a prescription is missing in Sub-rule (2). Therefore, it is urged that the order is effective for the period of

detention alone. The plea is clearly without any substance because of Sub-rule 5(a) and 5(c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Sub-rule (2). The said provision under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, specifically it encompasses an order under Rule 10(2). If the order deemed to have been made under Rule 10(2) is to lose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as contended by the respondents and there was no need to make such provisions as are engrafted in Rule 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.”

And are held to be justified even when the employee/accused is exonerated of charges and acquitted (Please see 1968 MPLJ 49 and 466).

14. In Ranchhodji Chaturji Thakore (*supra*) it is held:

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration

in jail. Under these circumstances, the petitioner is not entitled to payment of back wages.”

15. In Jaipal Singh (supra) it is held :

“4. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service.....”

16. The principle then was followed in Baldev Singh (supra) in following terms:

“7. As the factual position noted clearly indicates the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board.”

17. True it is that these were not the cases regarding FR 54 B; however, the suspension, the circumstances which led to such suspension and the consequence in the event of the revocation was dwelt upon in these cases, wherein it is unanimously held that criminal case not at the instance of the department, a revocation of suspension after his acquittal will not entitle him for back-wages as such suspension cannot be said to be unjustified.”

8. The impugned order when tested on the anvil of the above analysis cannot be given the stamp of approval. Consequently, it is set aside. The respondent/petitioner is held not entitled for wages for the period from 29.05.2013 to 22.08.2015.”

10.3. We have an opportunity to go through the decision of the Apex Court rendered in ***Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra & Ors.*** reported in **(1997) 3 SCC 636** wherein the Hon’ble

Apex Court while addressing a similar issue held thus: [SCC pp 637, 638 para 4]

*“4. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and shows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. **The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Penal Code, 1860. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. ...”***

(emphasis supplied)

11. In the light of the relevant provisions contained in FR 54-B and the decisions rendered by the Apex Court as well as the High Courts, as

referred to above *supra*, it can safely be held that the suspension of the appellant was on account of his involvement in a serious murder case and not on account of any dereliction of duty or at the instance of the employer. For such act, which led the appellant to remain in custody, as a consequence thereof he was placed under suspension and he had to face the trial. So the impugned order dated 26.11.2020 passed by the competent authority cannot be said to be wholly unjustified as the appellant was involved in a criminal case of murder. Once the appellant was involved in a criminal case, his involvement cannot be rewarded with full pay and allowances from a public exchequer. Moreso, it is quite obvious that the appellant was acquitted from the criminal charge on benefit of doubt, as we find from the judgment of the trial court dated 27.02.2020 wherein it was observed that '*the benefit of doubt goes in favour of the accused*', and therefore, the impugned order passed by the competent authority cannot be held wrong holding that the period from 22.11.2016 to the date preceding the date of re-joining on duty on revocation of suspension shall be treated as not spent on duty in pursuance of the provision of F.R.54-B(5). Even otherwise, it is not a case of the appellant that he has been honourably acquitted by the jurisdictional criminal court and therefore, his suspension was wholly unjustified. However, we should make it clear that even in honourable acquittal, it is not that the employer, as a matter of rule has to treat the period of suspension as spent on duty and that the delinquent employee as a matter of right would be entitled to claim all pay and allowances. In furtherance thereof, the power under Sub-Rule (5) of Rule 54-B of the F.R. being discretionary, in the opinion of this Court, the court will ordinarily not sit in appeal to interfere with the discretionary order passed by a competent authority in absence of any

complain of arbitrariness and *malafide*. In the case in hand, the competent authority is vested with the power to decide whether the suspension order of the appellant was wholly unjustified or not. The appellant was under deemed suspension as he was under custody beyond 48-hours and his suspension period was continued due to his involvement in a serious crime. So, in this circumstance, it would be improper to say that the appellant was suspended at the behest of the respondents.

12. In view of the aforesaid discussions on facts and law, the two-folds submissions of learned senior counsel appearing on behalf of the appellant have been answered in the manner as under:-

- (i) The plea of the appellant that his suspension order was continued illegally without making any review after the expiry of the statutory period has not been accepted by this Court since the appellant has not challenged such continuation/extension of his suspension period at the appropriate time;
- (ii) We find no error in the decision of the learned Single Judge that the suspension of the appellant was not wholly unjustified; and
- (iii) We do not find any infirmity in the impugned order dated 26.11.2020 treating the period of suspension of the appellant *as not spent on duty*.

Accordingly, the instant appeal stands dismissed.

(ARINDAM LODH, J)

(APARESH KUMAR SINGH, CJ)