

GAHC020004872021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/236/2021

C/N TAKANOMBA
R/O AG KOHIMA NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED THROUGH THE
HOME COMMISSIONER TO THE
GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2:THE SPECIAL SECRETARY
HOME POLICE ESTABLISHMENT BRANCH
HOME DEPARTMENT
NAGALAND KOHIMA

3:THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

4:THE INSPECTOR GENERAL OF POLICE (INT)
NAGALAND KOHIMA

Advocate for the Petitioner : WATI JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA**

JUDGMENT & ORDER (CAV)

Date : 17-08-2023

Heard Mr. Wati Jamir, learned counsel for the petitioner and Mr. K. Angami, learned Sr. Government Advocate for the State respondents.

2. The present petition has been filed seeking for a direction to the State respondents to pay the full salary and other consequential benefits to the petitioner for the period during which the petitioner was under suspension i.e. w.e.f 28/12/2013 to 07/11/2020.

3. The case in brief is that, the petitioner was appointed as constable, in the police department in the year 1999 and posted under the establishment of the respondent No.4 i.e. the Inspector General of Police (Int), Nagaland, Kohima. Thereafter, in the year 2008, the petitioner was attached to the Special Branch (Int) Dimapur, and served in that capacity till the petitioner voluntarily retired from service on 06/09/2021. It is the case of the petitioner that while he was posted at Dimapur he used to purchase firewood from the bordering area of Karbi Anglong (Assam) by cash payment as well as by making advance payment to the seller. On 28/12/2013 when the petitioner went to collect firewood at Kania Tokbi Goan from one John Kathar to whom the payment for the firewood was made in advance, an argument ensued as the said John Kathar demanded more money for the firewood. In the midst of the argument, some unknown person, hit the petitioner on his head from behind rendering the petitioner unconscious. It was only when the petitioner came back to his sense he found himself at the Dillai Police Station in Assam. The petitioner also came to learn that a criminal case namely Dillai Police Station Case No. 38/2013 u/s 379/307/34 IPC r/w Sec. 40/41 AFR Act r/w Sec. 25(1-a)/27 of the Arms Act was registered against the petitioner on the basis of the FIR lodged by the said John Kathar alleging that the petitioner and one Islam Choudhury were caught while stealing firewood from Kania Tokbi Goan and the petitioner had opened fire at the complainant and his friends with the intention to kill them.

4. Consequent to the registration of the criminal case and the arrest of the petitioner by the Dillai Police, the respondent No. 4, in exercise of the powers conferred by Sub-rule (1) of Rule-6 of the Nagaland Services (Discipline and Appeal) Rules, 1967, issued the order dated 31/01/2014 placing the petitioner under suspension w.e.f. 28/12/2013. The order dated 31/01/2014 inter-alia provided that during the period of suspension, the petitioner shall be entitled to draw subsistence allowance at an amount equal to the leave salary which the petitioner would have drawn if he had been on leave on half pay additional dearness allowances and other allowances as admissible from time to time.

5. That a departmental enquiry was instituted against the petitioner under Rule-9 of the Nagaland Services (Discipline and Appeal) Rules, 1967 by framing the Articles of charges against the petitioner for violation of Rule-4(1)(i) and (iii) of the Nagaland Government Servants Conduct Rules, 1968. The enquiry officer conducted the enquiry and on completion of the enquiry, submitted the enquiry report to the respondent No.4, opining that, in the absence of independent witnesses, the charges framed against the petitioner cannot be proved.

6. Pursuant to the submission of the enquiry report, the respondent No.4, concurring with the findings in the enquiry report, issued the order dated 07/11/2020 revoking the suspension of the petitioner and re-instating the petitioner's in service with immediate effect. The order dated 07/11/2020 however provided that the subsistence allowance paid to the petitioner during his suspension period will remain as such till culmination of the criminal case.

7. Subsequently by the judgment dated 25/02/2021, the criminal case pending against the petitioner was also disposed by the court of the learned Sessions Judge, Karbi Anglong, Diphu, Assam, acquitting the petitioner from the criminal liabilities of the case on benefit of doubt.

8. That upon acquittal from the criminal liability of the case, the petitioner submitted the representation dated 26/08/2021 to the respondent No.4 seeking review of the order dated 07/11/2020 for the payment of the arrear pay and allowances and other

service benefits.

9. Subsequent to the representation submitted by the petitioner, the respondent No. 4 issued the order dated 06/09/2021 allowing the petitioner to draw the full pay and allowances w.e.f. the date of his re-instatement in service i.e. 07/11/2020 but denying the petitioner the arrear pay and allowances for the period of his suspension in service on the ground that as the acquittal of the petitioner was on benefit of doubt, the suspension was a justified suspension. The order dated 06/09/2021 is reproduced below;

**“GOVERNMENT OF NAGALAND
OFFICE OF THE INSPECTOR GENERAL OF POLICE (Int)
NAGALAND : KOHIMA**

No. IGP/INT/ESTT-11/DE/21-22/2655 Dated Kohima the 06th Sept. 2021

ORDER

In continuation of this Office order No. IGP/INT/ESSTT-11/DE/20-21/860 dated 07/11/2020, wherein C/N Takamongba Ao of IGP (Int) Establishment was re-instated in service from suspension with the condition that the subsistence allowances paid to him during his suspension period will remain as such till culmination of his case.

And whereas, his criminal case vide DLI PS Case No-38/13 u/s 379/307/34 IPC R/W-40/41 AFR Act, R/W 25(1-a)/27 Arms Act was culminated vide Hon'ble Court of Sessions Judge, Karbi Anglong, Diphu, Assam judgment order dated 25/02/2021 wherein he was acquitted on benefit of doubt.

Now therefore, the undersigned on perusal of his case record issue the following order regarding his pay and allowances.

- 1) Since his acquittal in the criminal case is on benefit of doubt and not honourably acquitted, his suspension is a justified suspension. Therefore, his pay and allowances paid during his period of suspension shall be treated “As such” and he shall not get more than what has been paid to him during suspension period.*
- 2) He will be allowed to draw full pay and allowances from the date of his re-instatement into service i.e. 07/11/2020. The period from the date of re-instatement till date of finalization of the criminal case i.e. 25/02/2021 shall be treated as period spend on duty as the said individual has rendered his service on bonafide Government duty.*

Sd/-
(K.Martin Pienyu) IPS
Inspector General of Police (Int),
Nagaland, Kohima ”

10. Being aggrieved by the order dated 06/09/2021 denying arrear pay and allowances to the petitioner, during the period of his suspension, the present petition has been filed.

11. Mr. Wati Jamir, the learned counsel for the petitioner, at the outset, submits that since the departmental enquiry instituted against the petitioner has been concluded with the findings that, the articles of charges framed against the petitioner has not been proved and the respondent No.4, pursuant thereto, has issued the order dated 07/11/2020 revoking the suspension of the petitioner and re-instating the petitioner's in service with immediate effect, the petitioner cannot be denied the payment of arrear pay and salary for the period of suspension by issuing the impugned order dated 06/09/2021. The learned counsel submits that since the enquiry instituted against the petitioner has not proved the charges, and the departmental enquiry has been dropped, and the petitioner re-instated in service, the petitioner has a right to be paid the full pay and allowances for the period commencing from the date of his suspension i.e. w.e.f 28/12/2013 till the date of the petitioner's re-instatement in service i.e. 07/11/2020. In support of his submission, on this point, the petitioner has cited the case of **Raj Narain -versus- Union of India & Others**, reported in **(2019) 5 SCC 809**, wherein the Hon'ble Supreme Court has held that where the disciplinary proceeding is dropped, the employee, becomes entitled to claim full salary for the period from the date of his suspension till the date of the closure of the departmental enquiry.

12. Mr. Wati Jamir has also taken this Court to the judgment dated 25/02/2021 passed by the Court of the learned Sessions Judge, Karbi Anglong, Diphu, Assam, and submits that as the prosecution in the said case has failed to prove the case against the petitioner beyond all reasonable doubt, the petitioner was acquitted from the criminal liability of the case. The learned counsel submits that since the petitioner was acquitted from the case after a full consideration of the evidence adduced by the

prosecution it can be conveniently said that the petitioner was honourably acquitted and therefore, the authorities taking undue advantage of the word "benefit of doubt" as recorded in the judgment dated 25/02/2021 could not have denied the full pay and allowance to the petitioner for the period of suspension, by issuing the impugned order dated 06/09/2021. In support of his contention, the learned counsel has relied in the case **of Deputy Inspector General of Police and Another -versus- S. Samuthiram**, reported in **(2013) 1 SCC 598**, wherein the Hon'ble Supreme Court has held that when the accused is acquitted after full consideration of prosecution evidence and the prosecution has miserably failed to prove the charges levelled against the accused, it can be possibly said that the accused was honourably acquitted.

13. Mr. K. Angami, the learned Sr. Government Advocate on the other hand submits that consequent to the registration of the criminal case, the petitioner was placed under suspension w.e.f. 28/12/2013 by issuing the order dated 31/01/2014. A departmental enquiry was also instituted against the petitioner. However, considering that the petitioner was kept under suspension for the last 7(seven) years by paying subsistence allowance without giving any service in return, the respondent No.3 i.e. the Director General of Police, Nagaland, Kohima, issued the order dated 03/11/2020 directing the respondent No.4 who is the disciplinary authority to revoke the suspension order of the petitioner with immediate effect pending finalization of the suspension period on the outcome of the DE and the criminal case pending against the petitioner. The respondent No.4 accordingly issued the order dated 07/11/2020 revoking the suspension of the petitioner and re-instating the petitioner in service on condition that the subsistence allowance paid to the petitioner during his period of suspension will remain as such till the culmination of the criminal case. The learned Government Advocate further submitted that the petitioner's entitlement to draw subsistence allowance of 50% of his pay and allowance at the time of his suspension was further enhanced to 75% w.e.f. 07/08/2019.

14. Mr. K. Angami, the learned Sr. Government Advocate has further submitted that the petitioner was acquitted from the criminal liability of the case on benefit of doubt and this is clearly reflected in the judgment 25/02/2021 passed by the learned

Sessions Judge, Karbi Anglong, Diphu, Assam. Mr. K. Angami therefore, submits that since the acquittal of the petitioner was only by extending the benefit of doubt, the petitioner's suspension is a justified suspension and therefore, there is no infirmity in the order dated 06/09/2021 providing that the petitioner shall not get more than what has been paid to him during the suspension period. Mr. K. Angami submits that the order dated 06/09/2021 was passed by the respondent No.4 after taking all aspects into consideration as provided under the Fundamental Rule (FR) 54-B.

15. The learned Government Advocate has further submitted that, as the petitioner, during the period of suspension was paid the subsistence allowance without giving any service in return, the petitioner is not entitled to the arrear pay and allowance/back wages during the period of suspension.

16. In support of his submission, the learned Government Advocate has relied in the case of **Union of India & Others -versus- Jaipal Singh**, reported in **(2004) 1 SCC 121**, wherein the Hon'ble Supreme Court has held that the authorities are well within their rights to deny back wages to the employee for the period the employee was not in service and the authorities cannot be made liable to pay for the period for which they could not avail the service of the employee. The learned Government Advocate has also relied in the case of Deputy Inspector General of Police and Another -versus- S. Samuthiram (supra), in support of his submission that mere acquittal does not entitle an employee to re-instatement in service and the acquittal has to be honourable. This judgment has been relied in support of the submission that in the absence of any provision in the service rule for re-instatement, even if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefits including re-instatement.

17. This Court shall first refer to the order dated 07/11/2020 passed by the respondent No. 4 revoking the suspension of the petitioner and re-instating the petitioner in service with immediate effect. A perusal of the order dated 07/11/2020 would reveal that, the respondent No.4 i.e. Disciplinary Authority has concurred with the findings of the Enquiry Officer that the Articles of charges framed against the petitioner for violation of Rule-4 (1) (i) and (iii) of the Nagaland Government Servants Conduct Rules, 1968 has not been proved. Besides, the order dated 07/11/2020 has

also referred to the order dated 03/11/2020 issued by the respondent No.3 directing the respondent No.4 to revoke the suspension order of the petitioner pending finalization of the outcome of the Departmental Enquiry and the criminal case pending against the petitioner. From the order dated 07/11/2020, it appears that the Enquiry Officer has submitted the enquiry report only subsequent to the order dated 03/11/2020 passed by the respondent No.3. By issuing the order dated 07/11/2020 revoking the suspension of the petitioner and re-instating him in service, it is obvious that the Departmental Proceedings/Enquiry has been dropped against the petitioner. The petitioner accordingly becomes lawfully entitled to claim the full salary for the period of suspension commencing from 28/12/2013 till the petitioner's re-instatement in service i.e. 07/11/2020, provided that no other legal impediments subsists preventing the petitioner from claiming the arrear pay and allowances during the period of suspension. The condition therefore imposed in the order dated 07/11/2020 providing that the subsistence allowance paid to the petitioner during his period of suspension will remain as such till culmination of his criminal case, is found to be not legally tenable. Once the Departmental Enquiry, against the petitioner is dropped, in view of the charges not having been proved and the petitioner is re-instated in service, the petitioner's become's entitled to receive the full pay and allowances for the period of suspension. This Court accordingly holds that the condition imposed in the order dated 07/11/2020 cannot deprived the petitioner of claiming the full pay and allowances during the period of his suspension.

18. In Raj Narain (supra), the Hon'ble Supreme Court while dealing with the right of a person to claim full salary for the period of his suspension, in view, of the Disciplinary Proceedings being dropped has held that;

“7. The point that remains to be considered is whether the appellant is entitled to payment of full wages between 1979 and 1987. The appellant was placed under suspension on 23-10-1979 and his suspension was revoked on 21-10-1987. An interesting development took place during the interregnum by which the disciplinary proceedings were dropped on 21-03-1983. It is clear from the record that the appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue

of the disciplinary proceedings being dropped, the appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry. Thereafter, the respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23-10-1979 came to an end on 21-03-1983 which is the date on which disciplinary proceedings were dropped. The appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the appellant was reinstated by an order dated 21-10-1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the appellant is entitled for full wages from 23-10-1979 to 21-10-1987 after adjustment of the amounts already paid towards subsistence allowance.”

19. Secondly, a perusal of the judgment dated 25/02/2021 passed by the learned Sessions Judge, Karbi Anglong, Diphu, Assam, in Session Case No.129/2018 (corresponding to G.R Case No. 981/2013 and Dillai Police Station Case No. 38/2013) demonstrates that, the learned Sessions Judge after fully considering all the evidence on record has come to the finding that the prosecution has failed to prove the case against the petitioner beyond all reasonable doubt, thus acquitting the petitioner from the criminal liability of the case. The respondent No.4 has however issued the order dated 06/09/2021 denying the full salary/pay and allowances to the petitioner for the period of suspension solely on the ground that since the acquittal of the petitioner in the criminal case is on benefit of doubt and not honourable acquittal, the suspension of the petitioner is a justified suspension and accordingly, the petitioner is not entitled to receive more than what has been paid to him, as subsistence allowance, during the period of suspension and the petitioner will be allowed to draw full pay and allowances only from the date of his re-instatement in service i.e. 07/11/2020.

20. In this connection, it will be relevant to refer to the points formulated by the learned Sessions Judge for adjudication of a criminal case and the decision/determination rendered therein by the trial court.

“5. Points for determination are:

“i. Whether the accused person on 28/12/2013 at about 10:30 A.M at vill:- Kania Tokbi Goan under Dillai Police Station in furtherance of common intention committed theft of firewood and thereby committed an offence punishable under section 379/34 of the Indian Penal Code?

ii. Whether the accused person on 28/12/2013 at about 10:30 A.M. at vill:- Kania Tokbi Goan under Dillai Police Station in furtherance of common intention attempted to murder Shri Noken Tokbi, Shri. John Kathar and Shri. Mongal Sing Kathar and thereby committed an offence punishable under section 307/34 of the Indian Penal Code?

iii. Whether the accused person on 28/12/2013 at about 10:30 A.M. at vill:- Kania Tokbi Goan under Dillai Police Station possessed one .22 pistol along with one magazine, 25 Nos. of .22 live ammunition, 5 Nos. of .22 blank cartridges and 2 Nos. of 7.65 mm live ammunition and thereby committed an offence punishable under section 25(1-A) of Arms Act.?”

The prosecution examined as many as 10(ten) witnesses and the petitioner/accused was also examined under section 313 Cr.P.C.

The learned Sessions Judge after examining the evidence adduced by the prosecution and upon hearing the parties answered the points of determination as follows;

“29. So far the first point for determination is concerned i.e. whether the accused person on 28/12/2013 at about 10:30 A.M at vill:- Kania Tokbi Goan under Dillai Police Station in furtherance of common intention committed theft of firewood and thereby committed an offence punishable under section 379/34 of the Indian Penal Code, I have found that the informant had alleged in his FIR that the accused person were stealing firewood from Kania Tokbi Goan. During examination-in-chief PW-1 has deposed that an argument was taken place between him and the accused when he resisted them from taking firewood from Kania Tokbi Basti. But PW-2 has deposed that on the day of occurrence his brother-in-law (PW-1) had called him and informed him that there was a quarrel between him and the accused person regarding collection of firewood. Interestingly, PW-1 has stated that the accused persons are from his village. PW-3 has deposed that there was a quarrel between the complainant and the accused persons and the accused persons assaulted the complainant. PW-4 has not said anything about the

commission of theft by the accused persons. PW-5 has deposed nothing about the commission of theft but he stated that there was a quarrel between the complainant the accused regarding firewood. PW-6 has deposed that there was a quarrel between a Naga person and the Karbi people. PW-8 has deposed that one day there was an altercation between the complainant and the accused Takamongba Ao over some firewood.

30. *From the above evidence, it is found that the complainant had alleged in the FIR that the accused persons were stealing firewood from Kania Tokbi Goan but no PWs have deposed that the accused persons were caught while they were stealing firewood from Kania Tokbi Goan. The prosecution has failed to prove beyond all reasonable doubt that the firewood whatsoever was collected by the accused persons belonged to the Kania Tokbi Goan or to the complainant. The complainant could not prove whatsoever that the firewood was belonged to him or Kania Tokbi Goan. Here also raised the point in my mind that as the complainant has stated in his examination-in-chief that the accused was belonged to his village then how the accused persons could steal the firewood from his own village. The prosecution could not show any such order or tradition that nobody to collect firewood from this forest. If the complainant can have rights over the firewood by dint of being villagers, then why the accused persons cannot claim the firewood being the villagers of the same village. The complainant could not show by any evidence that he was the absolute owner or the possessor of the disputed firewood. In view of all these above facts and circumstances I am of the considered view that the prosecution has failed to prove the material ingredients of S.379/34 IPC against the accused person and thus failed to prove the first point for determination beyond all reasonable doubt.*

31. ***With regard to the second point for determination i.e. whether the accused person on 28/12/2013 at about 10:30 A.M at vill:- Kania Tokbi Goan under Dillai Police Station in furtherance of common intention attempted to murder Shri Noken Tokbi, Shri. John Kathar and Shri. Mongal Sing Kathar and thereby committed an offence punishable under section 307/34 of the Indian Penal Code, I have gone through the material evidence on record and found that in the FIR the informant had alleged that while they resisted the accused persons from stealing firewood from the Kania Tokbi Goan, accused Takamongba Ao opened fire by aiming at the complainant and his friends and tried to kill them. But interestingly in the course of the examination-in-chief the complainant nor any of the PWs of the village have not deposed anything like the allegation of the FIR. In view of these facts and circumstances I***

am of the considered opinion that prosecution has failed to prove the second point of determination beyond all reasonable doubt.

32. With regard to the third point of determination i.e. whether the accused person on 28/12/2013 at about 10:30 A.M. at vill:- Kania Tokbi Goan under Dillai Police Station possessed one .22 pistol along with one magazine, 25 Nos. of .22 live ammunition, 5 Nos. of .22 blank cartridges and 2 Nos. of 7.65 mm live ammunition and thereby committed an offence punishable under section 25(1-A) of Arms Act, I have found that in the FIR the informant had alleged that the accused persons Takamongba Ao had opened fire to the informant and tried to kill him. But during his examination-in-chief the complainant has not alleged anything about the firing from the fire arms to him by the accused persons nor he was the seizure witness. Apart from this no PWs have alleged about the using of firearms by the accused persons. Although the PW-7 has stated about examination of fire arms and PW-9 (I/O) has deposed that found one .22 pistol with magazine, 25 rounds of .22 live ammunition, 5 rounds of .22 blank cartridges, 2 Nos. of 7.65 mm live ammunition were recovered from the accused persons but the statement of PW-9 and recovery of search and seizure of the said firearms is not corroborated by any seizure witness nor any other independent witness including the complainant. In view of these facts and circumstances it cast a doubt in my mind about the recovery of the said alleged firearms from the possession of the accused persons. It is also pertinent to mention that in the course of examination u/s 313 Cr. P.C the accused Takamongba Ao has only admitted that mobile handset was recovered from him but denied of recovery of any firearms from him. In view of the above facts and circumstances and after careful scrutinizing of the evidence I am of the considered opinion that prosecution has failed to prove the third point of determination.

33. In conclusion I conclude my view taking note of all evidence on record of the instance case that the prosecution has failed to prove the case u/s 379/307/34 IPC R/W Sec. 25(1-A) of Arms Act against the accused persons Shri. Takamongba Ao and Md. Samsul Islam Choudhury @ Islam Choudhury @ Rajib beyond all reasonable doubt. Hence, the accused Shri. Takamongba Ao and Md. Samsul Islam Choudhury @ Islam Choudhury @ Rajib are acquitted on benefit of doubt and set at liberty.”

21. It is clear that the learned Sessions Judge, only after considering the prosecution evidence on record, has come to a finding, acquitting the petitioner, on the ground that the prosecution has failed to prove the case against the petitioner beyond

all reasonable doubt. The State respondents however without reading the entire judgment dated 25/02/2021 has only relied/extracted the word "*acquitted on benefit of doubt*" from paragraph-33 of the said judgment, in the impugned order dated 06/09/2021 to deny full pay and allowances to the petitioner during the period of suspension, which according to this Court is unreasonable and not legally justifiable.

22. In the case of the **Deputy Inspector General of Police and Another -versus- S. Samuthiram** (supra), the Hon'ble Supreme Court while dealing with the meaning of the expression "honourable acquittal" has held that the expression 'honourable acquittal', 'acquitted of blame', 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. The criminal case, in which the petitioner was acquitted, is no exception. Therefore, the order dated 06/09/2021 denying full pay and allowances to the petitioner for the period of suspension solely on the ground that the acquittal of the petitioner is on benefit of doubt and not honourable acquittal cannot be accepted. The learned Sessions Judge having held that the prosecution has failed to prove the case against the petitioner beyond all reasonable doubt, the petitioner is assumed to be innocent and entitled to the arrear pay and allowances for the period of suspension. Even otherwise a reading of the order dated 07/11/2020, by which the petitioner was re-instated in service, leads to an inference, that the payment of salary/pay and allowances to the petitioner for the period of his suspension would depend on the outcome of the criminal case.

23. In a more or less similar case decided by the Hon'ble Supreme Court, in **Brahma Chandra Gupta -versus- Union of India**, reported in **(1984) 2 SCC 433**, the appellant who was serving as a permanent Upper Division Clerk in the Defence Account department was prosecuted under section 19(f) of the Indian Arms Act and under section 5 of the Indian Explosives Substances Act. Pending investigation of the

case, the appellant was suspended from service w.e.f. 14/05/1962 but entitled to draw subsistence allowance equal to leave salary which he would have drawn had he been on leave on half pay together with admissible dearness allowance. By the judgment dated 15/09/1964, the appellant was convicted and sentenced to suffer imprisonment for a period of one and half year. The appellant was accordingly dismissed from service effective from 31/10/1964. Against the conviction, the appellant preferred an appeal which was allowed by judgment dated 31/10/1964 and consequent to which the appellant was re-instated in service effective from 03/09/1965. While ordering re-instatement in service the concerned authority was required to decide how the period of suspension was to be decided. The period of suspension of the appellant was divided into two parts, the first being from 14/05/1962 to 31/10/1964 when the appellant was acquitted and the second being from 31/10/1964 to 03/09/1965 when the appellant was re-instated in service. With regard to the later period, the concerned authority directed the payment of full salary after giving credit for the suspension allowance that was drawn by the appellant and accordingly there was no dispute for this period. For the period from 14/05/1962 to 31/10/1964, the authority was of the opinion that the appellant could not be said to be fully exonerated and therefore, a direction was given that the appellant should be given $\frac{3}{4}$ th (three-fourth) of his salary for the period of suspension. The consequence was that for the period i.e 14/05/1962 to 31/10/1964, $\frac{1}{4}$ th (one-fourth) of the salary was not paid to the appellant. No departmental enquiry was however instituted against the appellant. The appellant accordingly approached the civil court against the denial of $\frac{1}{4}$ th (one-fourth) of his salary, during the period of suspension, which was decreed, in favour of the appellant. The learned District Judge however reversed the judgment and the decree of the trial court and dismissed the suit. After an unsuccessful appeal before the High Court, the appellant filed the appeal by special leave petition before the Supreme Court. The Hon'ble Supreme Court while deciding the appeal has held as follows;

“6. Mr. R.K. Garg, learned counsel for the appellant wanted us to examine the scope and ambit of [Article 193](#) and Mr. Gujaral learned counsel for the Union of India was equally keen on the other side to do the same thing. We steer clear of both. The appellant was a permanent

UDC who has already retired on superannuation and must receive a measure of socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry; that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because three-fourth of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9 percent interest p.a. from the date of suit till realisation with costs throughout.”

24. Furthermore, in the case of Jagmohan Lal -versus- State of Punjab through Secy. to Punjab Govt. Irrigation and Others, reported in AIR 1967 Punjab 422 (V 54 C 118), the learned Single Judge of the Punjab High Court while deciding a claim for payment of full pay and allowances for the period of suspension in view of the reinstatement of the petitioner in service after acquittal from criminal case which was however rejected by the authority on the ground that the period of suspension cannot be treated as a period spend on duty, held that;

“(3).....The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt

of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying Rule 7.5 can be no other except this: the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.

(4). My view finds support from [Ghulam Nabi Baba v. State of Jammu and Kashmir](#), AIR 1966 J and K 27 where while interpreting a similar rule it was held that "the effect of the order of discharge, therefore, clearly is that the petitioner was acquitted or exonerated of the blame or of the allegations, which were made against him by the prosecution. Such a discharge, therefore, in my opinion, is clearly covered by the words 'acquitted of blame' as used in Rule 109 of the said rules. Once this interpretation is placed on the words 'acquitted' of blame' there can be no room for doubt that the Government was not entitled to withhold the salary of the petitioner during the period of his suspension."

(5). The Madras High Court also in the [Union of India v. Jayaram Damodhar Timiri](#), AIR 1960 Mad 325, has taken the same view. It has been observed, "There is no conception like 'honourable acquittal' in [Criminal Procedure Code](#). The onus of establishing the guilt of accused is on the prosecution, and, if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted. Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated, he is entitled under the general law, to the full pay during the period of his suspension. To such a case [Article 193\(b\)](#) of the Civil Service Regulation does not apply."

(8). In the present case, the finding recorded by the criminal court, which tried the petitioner in the first instance, was that the prosecution had failed to bring home the charge to the accused beyond reasonable doubt. He was consequently found not guilty and acquitted. Similarly, the finding recorded by the High Court was that the petitioner was rightly acquitted and the High Court found no reason to interfere. It is not even mentioned in any of the two judgments that benefit of doubt was given to

the petitioner, although, as I have already stated, it would not make any difference so far as the interpretation of Rule 7.5 is concerned.

(9). As a result, the petition succeeds and the orders passed by the Government against the petitioner, as contained in Annexure 'C' and 'D', are hereby quashed. It is held that the petitioner is entitled to his full pay and allowances for the period of his suspension. In the circumstances, there will be no order as to costs."

25. On the submission made by the learned Government Advocate that as the petitioner was paid the subsistence allowance during the period of suspension without giving any service in return, the petitioner has no right to claim arrear pay and allowances nor any back wages for the period of suspension. In support of this contention the State has referred to the Jaipal Singh (supra) wherein the Hon'ble Supreme Court while dealing with the case of an employee who was convicted by the trial court but subsequently acquitted by the High Court and directed to be re-instated in service with full back wages and consequential benefits, held that the appellants/Union of India are well within their rights to deny back wages to the respondents for the period he was not in service and the authorities cannot be made liable to pay for the period for which they could not avail the services of the employee concerned. The facts in Jaipal Singh (supra) is completely distinguishable from the present case. In the case at hand, the petitioner was exonerated from the charges framed against him in the Departmental Enquiry and re-instated in service thereby entitling the petitioner to claim the arrear pay and allowances for the period of suspension and furthermore, the petitioner was acquitted by the court of the first instance (i.e. trial court) on the ground that the prosecution has failed to prove the case against the petitioner beyond all reasonable doubt. It cannot also be lost sight of the fact that during the period of suspension the petitioner's entitlement to subsistence allowance of 50% of his pay and allowances was further enhanced to 75% w.e.f. 07/08/2019. Jaipal Singh case is therefore not relevant to decide the entitlement of the petitioner in the present case.

26. In the case of **Ramchhodji Chaturji Thakore -versus- Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another**, reported in **(1996) 11 SCC 603**, the Hon'ble Supreme Court has held that the

question of back wages would be considered only if the authorities have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and the employee was unlawfully prevented from discharging the duties. The present case is not about a claim for back wages on the ground that the Disciplinary Proceedings initiated against the petitioner was unsustainable in law, but the claim for payment of arrear salary/pay and allowances for the period of suspension, on the ground that the Departmental Enquiry instituted against the petitioner was dropped for failing to prove the charges, and the criminal case registered against the petitioner also ended in acquittal as the prosecution failed to prove the case against the petitioner beyond all reasonable doubt, thus declaring the innocence of the petitioner. The question therefore raised by the State that the petitioner is not entitled to receive the back wages is therefore not relevant in the context of the present case.

27. In the light of the discussion made above and having held that the petitioner is entitled to receive the full salary/pay and allowances for the period of his suspension i.e. from 28/12/2013 to 07/11/2020, the part of the order dated 06/09/2021 (Annexure-F to the writ petition) issued by the respondent No.4 which provides that;

“Now therefore, the undersigned on perusal of his case record issued the following order regarding his pay and allowances.

1) Since his acquittal in the criminal case is on benefit of doubt and not honourably acquitted, his suspension is a justified suspension. Therefore, his pay and allowances paid during his period of suspension shall be treated “As such” and he shall not get more than what has been paid to him during suspension period” is hereby quash and set aside.

28. The State respondents are directed to pay the full salary/pay and allowances to the petitioner for the period 28/12/2013 to 07/11/2020 after adjustment of the amount already paid to the petitioner towards subsistence allowance.

29. The arrear salary/pay and allowances shall be paid by the State respondents within a period of 90(ninety) days from the date of passing of this order, failing which the State respondents shall have to pay interest at the rate of 9% p.a. on the arrear

amount from the date of filing of the present petition till final payment.

30. Writ petition allowed. No cost.

JUDGE

Comparing Assistant