

GAHC010212302021



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

Case No. : WP(C)/6816/2021

MAJOR RAM LOCHAM
S/O LATE RAM LOK LOCHAM,
RESIDENT OF FLAT NO. FH 5/403, GTM FOREST AND HILLS, MOHKAMPUR,
OPP. IIP, HARIDWAR ROAD, DEHRADUN, UTTARAKAND, PS NEHRU
COLONY, DEHRADUN

VERSUS

OIL AND NATURAL GAS CORPORATION LIMITED AND 5 OTHER
OFFICE OF THE DEENDAYAL URJA BHAWAN, 5A, NELSON MANDELA
MARG, VASANT KUNJ, NEW DELHI 110070, REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR,

2:OIL AND NATURAL GAS CORPORATION LIMITED.
OFFICE OF THE GM HEAD
HR ER
ASSAM ASSET NAZIRA ONGC
NAZIRA
DIST SIVASAGAR
ASSAM 785685

3:THE ASSET MANAGER

ASSAM ASSET NAZIRA ONGC
NAZIRA
DIST SIVASAGAR
ASSAM 785685

4:THE CGM(HR)
ONGC LIMITED. OFFICE OF CGM(HR) I/C CORPORATE D AND A
GREEN HILLS
TEL BHAWAN

DEHRADUN
248003

5:THE ED CHIEF ER
ONGC
DEENDAYAL URJA BHAWAN
PLOT NO. 5 A -5B
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI 110070

6:THE DIRECTOR (ONSHORE)
ONGC LIMITED
DEENDAYAL URJA BHAWAN
PLOT NO. 5A-5B
NELSON MANDELA ROAD
VASANT KUNJ
NEW DELHI 11007

Advocate for the Petitioner : MR. PRAN BORA

Advocate for the Respondent : MR. M K DAS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 25.04.2024

Heard Mr. P. Bora, learned Senior Counsel assisted by Ms. K. Sharma, learned counsel for the petitioner. Also heard Mr. M.K. Das, learned Standing Counsel, ONGC.

2. This writ petition is filed by the petitioner aggrieved by the order dated 21.01.2022 passed by the Chief General Manager (HR) of the ONGC, whereby the petitioner was directed to be given such proportion of pay and allowances as the competent authority may specify and consequently he was allowed 95% of his pay and allowances for the relevant period under which he was placed

under suspension. That apart the period of suspension was not treated to be on duty.

3. It is submitted by the learned counsel for the petitioner that the petitioner was an employee of the ONGC and at the relevant point in time he was serving as the Deputy General Manager (Civil) and was posted in Sivasagar. During the period of his service, certain allegations were made against the petitioner that he was caught red handed accepting a bribe while discharging his official duties. Accordingly, an FIR was lodged and it culminated into criminal case being R/C-017/2016/0008/CBI/ACB/Ghy dated 07.06.2016. Charge-sheet dated 27.09.2016 was filed for offences punishable under Section 7 and Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 in case of RC No.8/(A)/2016-GWH dated 07.06.2016. The trial proceeded and ultimately by Judgment and Order dated 07.04.2021, the petitioner was acquitted of all the charges as the trial Court held that the prosecution failed to prove its case against the accused beyond all reasonable doubts. The judgment was rendered by the Special Judge, CBI, Assam, Additional Court No.2, Chandmari, Guwahati. It is mentioned that during the currency of the proceedings initiated by the CBI, the petitioner was placed under 'deemed suspension' by order dated 09.06.2016. The case of the petitioner was reviewed by the Review Committee and it recommended that the suspension of the petitioner be continued keeping in view the allegations made. Subsequently, the petitioner was permitted to superannuate by order dated 28.03.2018. He was allowed to superannuate provisionally while under suspension subject to final orders based on the outcome of the petition received.

4. The writ petitioner has placed reliance in support of his contention on the Judgment of the Apex Court rendered in *Deputy Inspector General of Police and*

Anr. Vs S. Samuthiram reported in (2013) 1 SCC 598. Relying on the Judgment the learned counsel for the petitioner submits that once an acquittal is granted by the Trial Court after full consideration of the prosecution evidence and that the prosecution had failed to prove the charges levelled, it can be possibly said that the accused was honourably acquitted. It is submitted that the Apex Court held that the expressions 'honourable acquittal', 'acquitted of blame', and 'fully exonerated' are unknown to the Code of Criminal Procedure or the Penal Code and these are coined by judicial pronouncements. He has further referred to and relied upon the Judgment of *Union of India Vs K.V. Jankiraman* reported in *AIR 1991 SC 2010*, to submit that where an employee has been completely exonerated and is not visited with any penalty, he has to be given the benefit of his salary and allowances which would have been entitled to him but for the criminal proceedings.

5. As discussed, the Trial Court by Judgment and Order dated 07.04.2021 exonerated the writ petitioner from all charges on the ground that the prosecution failed to prove all the charges beyond reasonable doubt. Pursuant to his retirement, the petitioner preferred a representation dated 12.04.2021 before the competent authority ONGC for release of his pending dues. The disciplinary authority rejected his representation for release of the full salary and allowances during the suspension period. Being aggrieved he preferred an appeal before the appellate authority dated 21.01.2022. The appellate authority although accepted the acquittal of the petitioner granted by the trial Court, however, invoking Regulation 12 (3) (b) of the ONGC, decided to allow the petitioner 95% of his pay and allowances due for the relevant period. Being aggrieved, the present writ petition has been filed.

6. The respondents have contested the case by filing their affidavit-in-

opposition.

7. It is submitted by Mr. Das, learned counsel appearing for the ONGC that the authorities have rightly passed the order granting 95% of pay and allowances under the relevant provisions of the Regulation of the ONGC. Although the Trial Court has acquitted the petitioner, but the acquittal is not at all an honourable acquittal as the acquittal was on the ground that the prosecution failed to prove its case against the accused beyond all reasonable doubts.

8. Learned counsel for the respondents has referred to the ONGC pay and allowances Regulations 1972 and executive instructions. He has referred to Clause 12 of the said Regulation to submit that under Clause 12 (3) (b) read with Clause (c), there is a power on the authority to release the pay and allowances as found justified. He has further referred to the Judgment of the Apex Court rendered in *Gurpal Singh Vs High Court of Judicature of Rajasthan* reported in (2012) 13 SCC 94 to submit that in respect of reinstatement of the employee with regard to full back wages or full wages, there is no hard and fast rule. Everything has to be decided on the materials available and the authorities are within their rights to decide the extent of back wages or full back wages required to be granted to an employee. Relying on the judgment, learned counsel for the respondent submits that in the present case, where the rules provide that the authorities are to decide on the extent of back wages required to be placed and the authorities have decided that 95% of the back wages or allowances payable to the petitioner are to be released, there can be no infirmity found in the order. The writ petition, therefore, being devoid of merit should be dismissed.

9. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused.

10. It is seen that the petitioner was placed under suspension on certain allegations made against him, which ultimately culminated in a criminal proceedings being Criminal Case No. R/C-017/2016/0008/CBI/ACB/Ghy dated 07.06.2016. The Charge-Sheet was filed on 27.09.2016 and the matter proceeded to trial and by the Judgment and Order dated 07.04.2021, the Trial Court acquitted the accused, namely, the petitioner holding that the prosecution had failed to prove its case against the accused beyond all reasonable doubt. While the petitioner pursuant to the institution of the criminal proceedings has placed under suspension, his suspension was never revoked and during his suspension he was permitted to superannuate from his service. Pursuant to his superannuation petitioner preferred a representation before the authorities for release of all his allowances and pay particularly during the period of his suspension with a further request to regularize his period of suspension to be 'on duty'. This request made by the petitioner by way of representation was rejected by the disciplinary authority and against which he had preferred an appeal before the competent authority. The appellate authority, also partially allowed the appeal by permitting release of 95% of his pay and allowances. The petitioner is aggrieved that notwithstanding his acquittal by the criminal Court, the authorities could not have curtailed release of his pay and allowances to the extent of 5%.

11. The ONGC has its Regulations, namely, Pay and Allowances Regulations, 1972 and Executive Instructions. Clause 12 of the said Regulation relates to pay and the allowances required to be paid to an employee under suspension. For the purposes of this case, sub Clause 3 of Clause 12 of the Regulations, namely, Pay and Allowances Regulations, 1972 and Executive Instructions is relevant. The relevant paragraph of Clause 3 is extracted below:-

“(3) (a) When an employee, who had been dismissed, removed, compulsorily retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order:-

(i) regarding the pay and allowance to be paid to the employee for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation, as the case may be, and

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

(b) Where the authority mentioned in clause (a) above is of the opinion that the employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the employee shall be given the full pay and allowance to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.

(c) In other cases, the employee shall be given such proportion of such pay and allowances as such competent authority may specify in this behalf; ”.

12. Rival submissions have been considered. Pleadings on record as well as the Rules placed before the Court have been carefully considered. It is not in dispute is that pursuant to the petitioner being placed under suspension post the institution of criminal cases or proceedings against the writ petitioner, no departmental proceedings have been initiated. The petitioner continued to remain under suspension and was finally permitted to superannuate. The criminal proceedings which were instituted ultimately culminated into an acquittal acquitting the writ petitioner from all the charges made on the ground that the prosecution failed to prove the case beyond all reasonable doubt. It is also not in dispute that there was no further appeal filed by the CBI to the acquittal given to the writ petitioner. The said fact is also reflected in the

appellate order dated 21.01.2022, where the appellate authority has recorded that the CBI has not filed an appeal against the judgment of the Special CBI Court.

13. A careful perusal of the Pay and Allowances Regulation, 1972 does not reveal anywhere that the authorities have any power to inflict any punishment on any employee or curtail any salary or allowances without following a due process of law.

14. That being the position, pursuant to the acquittal of the petitioner by the criminal Court, it has to be accepted that the petitioner was given complete acquittal by the trial court. Whether such an acquittal is an 'Honourable acquittal' or 'complete acquittal' is an issue which is also not discussed by the disciplinary authority or by the appellate authority. The only reference that is found in the impugned orders are with regard to Rule 12 (b), Sub Clause 3 of the Regulations of 1972. A careful perusal of this Rule 12 (b), Sub Clause 3 reveals that where the suspension of the employee is found to be wholly unjustified, he shall be given full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be. Rule 12 (b) (c) provides that in any other cases, the employee shall be given such proportion of such pay and allowances as the competent authority may specify. The rule does not elaborate as to what cases will be considered under the term-'under such cases'. The impugned order of the competent authority also does not reflect the basis of their satisfaction that the petitioner is not to be entitled full pay and wages, but to be granted only 95% of its pay and wages. It is no longer *res integra* that suspension is not a form of punishment and therefore, the same cannot be treated to be used against any employee as a form of punishment. There is no

dispute that the petitioner has rendered his services and is therefore entitled to the pay and allowances as permissible under the Rules. The only source of power available under the Rules for the authority to arrive at the satisfaction that the employee is not entitled to full pay and allowances, are the 'reasons' to be expressed by the competent authority. A careful perusal of the orders passed by the competent authority as well as by the appellate authority reflects that notwithstanding that the authorities have accepted the orders of the Trial Court and notwithstanding the fact that no disciplinary proceedings have been initiated or that the petitioner have been awarded any penalty under any departmental proceedings, the authorities went on to arrive at a finding that the allegations against the petitioners were of grave nature although the petitioner had been completely acquitted by the Trial Court. Once an employee is acquitted by the trial Court, unless there are some departmental proceedings initiated against the petitioner in respect of those allegations and in which any penalty is awarded as the said employee, those were allegations which were made against the petitioner and which culminated into a criminal proceedings in which the petitioner was ultimately completely acquitted, cannot be the basis for arriving at an order for withholding of any part of the pay or allowances without there being a reference to the source of power available to the authority concerned.

15. While there is no quarrel with the proposition of law submitted by the learned counsel for the respondent that there is no hard and fast rule for grant of pay and allowances or back wages in respect of an employee found to be exonerated from criminal proceedings or from departmental proceedings, the fact remains that there must be a basis, and a reasonable basis on which the authorities must come to a conclusion that the petitioner is not entitled to the

pay and allowances which he would otherwise have been entitled to. In the facts of the present case on a perusal of the impugned orders, no such basis or reasons are discernible from the order. The authorities have merely referred to the gravity of the charges levelled against the petitioner at the time when the petitioner was placed under deemed suspension. These charges, subsequent to a complete acquittal by a trial Court, carried no further meaning and cannot be used as a basis to draw adverse inference on the services or on the conduct of the petitioner.

16. Under such circumstances, this Court is of the considered view that the impugned order dated 09.06.2016 passed by the disciplinary authority as well as by the order dated 21.01.2022 passed by the appellate authority curtailing 5% of pay and allowances of the writ petitioner cannot be allowed to be sustained and in the absence of any departmental proceedings initiated by the respondent authority, such curtailing of pay and allowances is found to be bad in law and the same is therefore set aside. The authorities are further directed to regularize the period of suspension of the writ petitioner to be considered to be a period 'on duty' from 07.06.2016 to 31.03.2018 and therefore, the said period of suspension should be treated to be 'on duty' and the petitioner be entitled to full pay and allowances as he would have ordinarily been entitled to had he not been placed under the suspension.

17. Writ petition, in terms of the above, is allowed. Impugned order dated 21.01.2022 along with the order passed by the disciplinary authority to the extent indicated, is therefore, set aside and quashed.

18. No Order as to Cost.

19. The ONGC is directed to release the pay and allowances to the petitioner in

terms of the directions above within a period of 30 (thirty) days from the date of receipt of certified copy of this order.

JUDGE

Comparing Assistant