

\$~11.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6152/2015

% *Judgment dated 2nd July, 2015*

UNION OF INDIA Petitioner

Through : Mr. Rakesh Mittal, Advocate

versus

JAGDAMBA SINGH Respondent

Through : Mr. T. D. Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. NOS.11179/2015.

1. This is an application filed by petitioner seeking condonation of five days' delay in filing the present petition.
2. Heard. For the reasons stated in the application and in the interest of justice, present application is allowed. Delay in filing the present petition is condoned. Let writ petition be taken on record.
3. Applications stand disposed of.

W.P.(C) 6152/2015.

4. Present petition has been filed by petitioner/Union of India under Articles 226/227 of the Constitution of India seeking to quash/set aside the order dated 15.12.2014 passed by Central Administrative Tribunal in OA No.603/2014.
5. As per the petition, the respondent herein was working as a Khallasi with the petitioners herein. On 28.5.2011, FIR No.68/2011 was registered against him under Sections 376/506 of the Indian Penal Code at Police Station Sonia Vihar, Delhi and criminal proceedings were initiated against

him. The allegations against the respondent herein were that he had raped one, Smt. Neelam, who was his tenant. The respondent was placed under suspension by an order dated 7.6.2011. The respondent continued to remain under suspension during the period of proceedings. By a judgment dated 15.1.2013 the respondent was acquitted on the ground that the prosecution could not prove that the respondent committed the offence. The operative portion of the impugned judgment passed by the trial court, by which the respondent herein was acquitted, reads as under:

“12. In view of above reasons and discussion, it is held that prosecution could not prove its case against accused Jagdamba Singh beyond reasonable suspicion and shadow of doubt that he committed rape of the prosecutrix or he threatened her to kill her or her son. Therefore, it is held that accused committed offences punishable u/s 376/506 IPC. Consequently, by giving him benefit of doubt, accused acquitted for the offences punishable u/s 376/506 IPC.”

6. On being acquitted by the trial court, the respondent made a representation to the petitioners herein on 5.2.2013 seeking revocation of his suspension. The petitioners revoked the suspension of the respondent w.e.f. 6.2.2013. Thereafter four representations were made by the respondent to the petitioners on 1.4.2013, 3.4.2013, 17.4.2013 and 4.10.2013 seeking full salary and allowances for the period he remained under suspension. The respondent also requested for grant of increments, which may have become due during that period.
7. By an order dated 24.6.2013, the petitioners held the period of suspension of the respondent herein from 28.5.2011 to 5.2.2013 as '*dies non*'. By another order dated 6.11.2013, the petitioners informed the respondent that he would not be entitled for the benefit of pay and allowances during the period of suspension as his acquittal in the criminal case was only

based on benefit of doubt. Both the aforesaid orders were challenged by the respondent herein by filing OA No.603/2014 before the Central Administrative Tribunal (herein after referred to as 'the Tribunal'). While allowing the said OA of the respondent on 15.12.2014, the Tribunal directed the petitioners herein to treat the period of suspension of the respondent as duty for all purposes including pay and allowances. The Tribunal also held that the respondent herein would be entitled to increments from due dates during the period of suspension. Aggrieved by the impugned order 15.12.2014, the present writ petition has been filed by the petitioners.

8. Mr.Mittal, learned counsel for the petitioners, submits that the respondent is not entitled to any pay or allowances during the period of suspension. In support of this contention reliance is placed by Mr.Mittal on a Circular bearing no.38-E/O (E. D & A), dated 7.10.1970. Mr.Mittal further submits that as per this Circular, a person, who has been acquitted by a Court of law other than in those cases wherein the person has been acquitted giving him benefit of doubt, would be entitled to full pay and allowances. It is, thus, contended that since the trial court acquitted the respondent herein giving him benefit of doubt, based on the circular dated 7.10.1970, the respondent cannot be granted back wages and other allowances as allowed by the Tribunal.
9. Learned counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal. Counsel further submits that the petitioners have not been able to show that the impugned order passed by the Tribunal is either arbitrator or illegal. It is contended that the petitioners, while rejecting the representations of the petitioner for grant of full pay and wages during his period of suspension, have not relied upon the circular dated 7.10.1970, sought to be relied upon during the

present proceedings. It is further contended that this ground, which is sought to be urged by the petitioners herein before the High Court was not raised before the Tribunal, which is also evident from the fact that there is no reference to the Circular dated 7.10.1970 in the order passed by the Tribunal. It is also submitted that the Circular is not applicable to the respondent as in the case of respondent there is a clear acquittal as the prosecutrix, who was the tenant of the respondent herein, did not support the case of the prosecution. It is also contended that the respondent was falsely implicated by the tenant on account of a landlord-tenant dispute and, thus, the respondent cannot be made to suffer. It is also contended that the Tribunal has taken into consideration the relevant facts and correctly applied the law while passing the impugned order.

10. We have heard learned counsel for the parties and carefully examined the order passed by the Tribunal. At the outset, we may notice that the Circular dated 7.10.1970, sought to be relied upon in the present proceedings, has not been taken note of in the detailed order passed by the Central Administrative Tribunal. Thus, we are of the view that the Circular dated 7.10.1970 was not brought to the notice of the Tribunal. We also find from the two orders passed by the petitioners herein rejecting the request of the respondent dated 24.6.2013 and 6.11.2013 do not rely on the circular, which is sought to be relied upon today, by the counsel for the petitioners.
11. We have also examined the judgment passed by the learned trial court in the criminal case, a copy of which has been placed on record by the petitioners. The judgment shows that in order to prove its case the prosecution had examined the prosecutrix and her husband but both the material witnesses did not support the case of the prosecution. The trial court has also observed that since there was no incriminating evidence

against the accused (respondent herein) therefore his statement recorded under Section 313 of the Code of Criminal Procedure was also dispensed with. The trial court has further noticed that the prosecutrix, PW-1, had stated that she had been residing on rent at 4th Pushta, Sonia Vihar, for the last two months. Her landlord, accused was residing on the ground floor of the said house. Her husband was not at home. At about 4 p.m. accused arrived at her room and demanded rent. She showed her inability to pay the rent and the accused started abusing and raised hue and cry. Public persons gathered and she told them that accused was demanding rent. Her husband also arrived at the house. The accused did not commit rape on her. In the hospital she was given first aid as she sustained injuries on her wrist and her thumb impression was obtained on some papers. She was declared hostile. In the cross-examination conducted by learned Additional Public Prosecutor for the State, she again failed to support the prosecution case.

12. In the above backdrop, the learned trial court has acquitted the respondent herein. The petitioners by an order dated 24.6.2013 treated the period of service of respondent as 'dies non'.
13. While passing the impugned order the Tribunal has relied upon *Union of India v. Jayaram*, reported at AIR 1960 Madras 325, wherein the Division Bench has held that the terms "honourable acquittal" or "fully exonerated" are unknown in the Code of Criminal Procedure or in criminal jurisprudence. Relevant portion of the judgment reads as under:

"There is no conception like "honourable acquittal" in Criminal P.C. 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.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of the departmental enquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled to the general law, to the full pay during the period of the suspension. To such a case Article 193 (b) does not apply.”

14. The Tribunal has further relied upon in the case of ***Jagmohan Lal v. State of Punjab Through Secretary to Punjab Government Irrigation and Others***, reported at AIR (54) 1967 Punjab and Haryana 422 (Punj.) Relevant portion of the judgment reads as under:

“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.”

15. The Tribunal has also relied upon ***Ramsinhji Viraji Rathod, Parmanand Society v. The State of Gujarat and Another***, reported at 1971 SLR 473. Relevant portion of the judgment reads as under:

“7. Clause (b) of Article 193 of the Civil Service Regulations, which was under consideration before the Madras High Court was substantially similar to our Rule 152, with this difference, that instead of the words “fully exonerated” the words were “honourably acquitted. With respect we are in agreement with the reasons of Rajamannar, C.J. and in our opinion, it is not open to the authorities concerned to bring in the concept of honourable acquittal or full exoneration so far as the judgment of the Criminal Court is concerned. In a criminal trial the accused is only called upon to meet the charge leveled against him and he may meet the charge - (a) by showing that the prosecution case against him is not true or (b) that it is not proved beyond reasonable doubt; or (c) by establishing positively that his defence version is the correct version and the prosecution version is not correct. In any case of these three cases, if the Court comes to the conclusion that the prosecution has failed to establish its case beyond reasonable doubt or that the prosecution case is not true or that the defence version is correct and is to be preferred as against the prosecution version, the Criminal Court is bound to acquit the accused. The accused is not called upon in every case to establish his complete innocence and it is sufficient for the purposes of criminal trial that he satisfies the Court that the prosecution has not established its case beyond reasonable doubt. Since he is not called upon to prove a positive case, the concept of honourable acquittal or full exoneration can have no place in a criminal trial and it is because of this reasoning that we agree with the observations of Rajamannar, C.J. in Jayaram’s case, AIR 1960 Mad 325.”

16. Further in the case of *Bhag Singh v. Punjab and Sind Bank*, reported at 2006 (1) SCT 125, the Tribunal has taken note of the observations made by a Division Bench of Punjab and Haryana High Court. Relevant portion of the judgment reads as under:

“In both the cases, inspite of the clear observations that there was no evidence against the petitioner, the trial court observed that the accused are given benefit of doubt and acquitted of the charges framed against them. Relying on the aforesaid observation, the respondents have denied the benefit of full pay and allowances to

the petitioner. In our opinion, the mere use of the expression "benefit of doubt" or "not proved beyond reasonable doubt" by the trial Court or the appellate court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of "Honourable Acquittal", "fully exonerated" or "acquitted of blame" are all unknown to the Criminal Procedure Code, 1973. Therefore, the term "benefit of doubt" cannot detract from the impact of the acquittal."

17. In the case of *Andhra Bank v. W.T. Seshachalam*, reported at 2004 (2) SLJ (SC) 254, it has been held that when criminal proceedings are launched after investigation by an outside agency and the employee is acquitted of the criminal charge, he would be entitled to full pay and allowances as subsistence allowance for the period of suspension.
18. Further in the case of *Commissioner of Police and Others v. Om Prakash and Others*, reported at 2004 (3) SLJ 272, it was held that if one is acquitted by the Court, the entire period of suspension is to be treated as duty for all purposes.
19. In our view there is no infirmity in the order passed by the Tribunal. The Tribunal has correctly applied the law to the facts of the present case.
20. Having carefully examined the judgment passed by learned Central Administrative Tribunal, we find no grounds to entertain the present petition, the same is without any merit and is dismissed accordingly.

CM APPL. NO.11180/2015.

21. Application stands dismissed in view of the order passed in the petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 02, 2015 msr