

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Writ Petition No.3546 of 2015

and

M.P.No.1 of 2015

1)The Union of India,
Rep. by its Secretary,
Department of Posts,
New Delhi-110 001.

2)The Director of Postal Services,
[Mails and Speed Post],
Office of the Chief Post Master General,
Tamil Nadu Circle, Chennai-2. Petitioners

vs.

1)K.Natarajan
2)The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent herein culminating with its order dated 24.01.2014 passed in O.A.No.281/2012 and quash the same.

For Petitioners : Mr.B.Rabu Manohar, SCGPC

For R1 : Mr.S.Manoharan

ORDER

(Order of the Court was delivered by Mr.Justice S.MANIKUMAR)

The Secretary, Union of India, Department of Posts, New Delhi, and the Director of Postal Services, [Mails and Speed Post], Chennai, have sought for a Writ of Certiorari, to quash the order, dated 24.01.2014, passed in O.A.No.281/2012, by which, the Central Administrative Tribunal, Madras Bench, Madras, has set aside the order, dated 10.03.2011, of the

Director of Postal Services, [Mails and Speed Post], Chennai, 2nd petitioner herein, rejecting the appeal of the 1st respondent, filed against the order of SSRM, Chennai Airmail Sorting Division, dated 14.09.2006, treating the suspension period from 15.09.1988 to 10.07.2001, as duty, for the limited purpose of pension alone.

2. Facts of the case are that the 1st respondent was working as a Sorting Assistant in Airmail Sorting Division, Chennai, from 25.02.1982. While so, he was arrested by the police on 15.09.1988, on a charge that he was closely associated with one Shri Manivannan and others, in a Bank dacoity case at Madurai. The 1st respondent was in possession of a packet, containing 20 rounds of live ammunition and AK-47 weapon, and the same were recovered from him. Based on the abovesaid charge, the 1st respondent was placed under suspension from 15.09.1988, by the Senior Superintendent RMS, Airmail Sorting Division, Chennai, the disciplinary authority. A criminal case was filed in C.C.No.87/89, on the file of the Additional District and Sessions Court, Madurai and subsequently, the 1st respondent was enlarged on bail.

3. The petitioners have submitted that as per the rules, the suspension was reviewed periodically. As per FR 53(4), during the period of suspension, the 1st respondent was paid with subsistence allowance equal to half of the pay drawn prior to the date of suspension and while reviewing the suspension, the competent authority also enhanced the subsistence allowance to 75% from 50% of pay drawn from 01.03.1990, by considering the aspects of the case.

4. The petitioners have further submitted that the 1st respondent sent a representation, dated 26.05.2000, to the Principal Chief Postmaster General, Tamilnadu Circle, for revoking the prolonged suspension and thereafter filed O.A.No.877 of 2000, before the Central Administrative Tribunal, Chennai, to quash the order of suspension. The Tribunal, vide order, dated 09.08.2000, directed the petitioners to consider the representation of the 1st respondent, dated 26.05.2000, on merits and in accordance with law, within a period of four weeks. Thereafter, vide memo No.STC/17-64/2000, dated 21.09.2000, the Principal Chief Postmaster General, Chennai, rejected the representation of the 1st respondent. The 1st respondent challenged the said order in O.A.No.1188 of 2000, before the Central Administrative Tribunal, Chennai, with a consequential prayer to reinstate him in service. Vide order, dated 11.04.2001, the Tribunal has observed that there is no justification, in continuing the suspension, merely because the criminal proceedings are pending against the 1st respondent. So saying, the Tribunal directed revocation of suspension and consequently, held that payment of backwages during the period

of suspension would be decided by the competent authority, after the disposal of the criminal case registered against the 1st respondent. Accordingly, the 1st respondent was reinstated in service vide memo No.PF/K.Natarajan, dated 10.07.2001 of SSRM, AMSD, Chennai. According to the petitioners, the Tribunal did not give any direction to treat the period of suspension as duty or otherwise.

5.It is further contended that by judgment, dated 28.10.2004, made in C.C.No.87/89, the Additional District and Sessions Judge, Madurai, held that the witnesses in support of the charges against the 1st respondent were not examined and that the connection of the 1st respondent with reference to exhibits were not explained. It was also held that the charge against the 1st respondent was not proved by the prosecution beyond doubt and thus ordered that the 1st respondent to be acquitted. According to the petitioners, the acquittal of the 1st respondent was only based on technical ground rather than on merits.

6.It is also contended that the 1st respondent once again, sent a representation to SSRM, Airmail Sorting Division, on 21.03.2006, with a request to issue an order, for treating the period of suspension, as duty for all purposes and for restoration of full pay and allowances. As the case of the 1st respondent involved legal issues, it was referred to the Law Ministry, vide UO Note, dated 02.02.2006. However, the Law Ministry, vide letter, dated 16.02.2006, stated that a confirmation from the State Government should be obtained as to whether they were planning to file an appeal in a higher court of law.

7.The petitioners have further submitted that thereafter, the case of the 1st respondent was referred to the police authorities, vide office IR.No.B/PF/K.Natarajan/2003, dated 13.06.2006. In the meantime, the 1st respondent filed O.A.No.427 of 2006, before the Central Administrative Tribunal, Chennai, for a direction to the petitioners, to dispose of his representation dated 21.03.2006. Vide order, dated 13.06.2006, the Tribunal directed that the representation of the 1st respondent, dated 21.03.2006, should be disposed of within 3 months. Once again, the case of the 1st respondent was referred to the Law Ministry. A UO Note, dated 13.08.2006, was addressed to the Law Ministry, Chennai, seeking an opinion to avoid the possibility of contempt of court. An opinion was also sought for, as to whether the competent authority is within its limits, to restrict the subsistence allowance to the extent already paid and for treating the period of suspension as duty for the purpose of pension alone. As per the opinion of the Law Ministry, vide U.O.No.1671/06/Adv/Chennai, dated 11.09.2006, it was ordered to count the period of suspension of the 1st respondent from 15.09.1988 to 10.07.2001, as duty for the

purpose of calculating the pensionary benefits alone.

8.It is further contended that in pursuance of the orders of the Tribunal in O.A.No.427/2006, dated 19.02.2006, orders were passed vide memo No.PK/K.Natarajan dated 14.09.2006, treating the period of suspension of the 1st respondent from 15.09.1988 to 10.07.2001, as duty for the purpose of calculating pension alone. It was further ordered that the pay of the 1st respondent would be restricted to the subsistence allowance to the extent already paid. Aggrieved by the abovesaid order, the 1st respondent preferred an appeal to the Director of Postal Services, (Mail Business), Chennai, appellate authority, on 08.12.2006. The appellate authority rejected the appeal. Thereafter, the 1st respondent sought for voluntary retirement and he was permitted to retire from service voluntarily on 04.07.2011 F.N.

9.Aggrieved by the order of the appellate authority, the 1st respondent filed O.A.No.281 of 2012, praying to quash the memo, dated 10.03.2011, of the appellate authority and also prayed to regularise the suspension period from 15.09.1988 to 10.07.2001 as duty with backwages and all other consequential benefits. Vide order, dated 24.01.2014, the Central Administrative Tribunal, Chennai, quashed the memo No.WLF/15-29/2010 dated 10.03.2011. Aggrieved by the said order, the petitioners have filed this writ petition, for issuance of a Writ of Certiorari.

10.Assailing the correctness of the impugned order, Mr.B.Rabu Manohar, learned Senior Central Government Panel Counsel for the petitioners have contended that the Tribunal has failed to note that the acquittal of the 1st respondent was not on merits and hence, proportionate pay and allowances alone could be paid to him. He further submitted that the Tribunal has erred in holding that merely because no departmental action was taken against the 1st respondent, he was deemed to have been reinstated in service in terms of sub para 5(a)(2) of the CCS (CCA) Rules 1965 and that the 1st respondent was entitled to all the benefits, as if he was on duty during the period from 15.09.1988 to 10.07.2001.

Heard the learned counsel for the parties and perused the materials available on record.

11.Material on record discloses that the 1st respondent while working as a Sorting Assistant, was placed under suspension, as per rule 10(2) of the CCS (CCA) Rules, 1965, since he was detained in custody on 15.09.1988, for a period exceeding 48 hours, by order, dated 22.09.1988 of the Senior Superintendent RMS, Sorting Division, Madras.

12.The 1st respondent was paid subsistence allowance. Since his representation to revoke the suspension was not responded, he had filed O.A.No.877/2000 and vide order dated 09.08.2000, the Tribunal has directed disposal of the representation of the 1st respondent, seeking revocation of suspension. Pursuant thereto, the petitioners have rejected the request of the 1st respondent, seeking revocation of suspension, by order dated 21.09.2000, against which, the 1st respondent filed O.A.No.1188/2000 and the Tribunal, setting aside the order dated 21.09.2000, directed reinstatement of the 1st respondent and in so far as the payment of backwages, is concerned, the Tribunal left it to the discretion of the competent authority, subject to the outcome of the criminal case. While so, the criminal case filed against the 1st respondent ended in acquittal. Thereafter, the 1st respondent made a representation dated 21.03.2006, for treating the period of suspension as duty for all purposes and restoration of full pay and allowances. Since the same was not disposed of, the 1st respondent filed O.A.No.427/2006, to dispose of the representation dated 21.03.2006. The Tribunal directed the petitioners to dispose of the said representation. Accordingly, the representation was disposed of, stating that the period of suspension would be counted only for the purpose of calculating pensionary benefits, as the 1st respondent was acquitted due to technical flaw, instead honorable acquittal. Against the said rejection, the 1st respondent went on appeal and the same was dismissed. While so, the 1st respondent opted for voluntary retirement. Accordingly, he was permitted to retire from service voluntarily with effect from 04.07.2011. Challenging the order dated 10.03.2011, the 1st respondent has filed O.A.No.281/2012, with a consequential prayer, to direct the petitioners herein, to regularise the suspension period from 15.09.1988 to 10.07.2001, as duty with backwages and all other consequential benefits. By order dated 24.01.2014, the said original application was allowed. Aggrieved by the same, the petitioners have filed the present writ petition to quash the said order.

13.The only question to be decided in this writ petition is, whether the 1st respondent is entitled to full pay and allowances from the date of suspension till the date of reinstatement as ordered by the Tribunal.

14.Sub para 5 under the heading Reinstatement in Swamy's compilation of CCS(CCA) Rules, 1965 extracted by the Tribunal is as follows:-

'5.Revoking of suspension during the pendency of proceedings--

When suspension is revoked pending finalization of disciplinary or Court proceedings, orders, if any, passed regulating pay and allowances for the period of suspension and treatment of the

period, are subject to automatic review and revision of the conclusion of the proceedings according to the category under which the case may fall.

Summing up the above, the position in regard to payment of pay and allowances and treatment of the period of absence from duty is as follows:-

(a) Full pay and allowance when admissible:

(1) Reinstatement as a result of full exoneration in departmental proceedings when the government servant is not held to be responsible for any delay in the termination of the proceedings instituted against him.

(2) Reinstatement where a Government servant is acquitted on merits of the case in court proceedings and no further departmental enquiry is held.

(3) Reinstatement when suspension is held to be wholly unjustified and when the Government servant is not held to be responsible for any delay in the termination of the proceedings instituted against him.

(4) When minor penalty is awarded.

(5) If the detention under any law providing for preventive detention is held by the competent authority to be unjustified.

(6) In cases of erroneous detention or detention without basis and thereafter released without any prosecution.

(7) In cases of arrest for debt, if it is ultimately proved that the liability arose from circumstances beyond the Government servant's control.

(8) Death of Government servant while under suspension

(b) Proportionate (note being the whole) pay and allowances when to be paid

(1) Even in cases of full exoneration in departmental proceedings when it is held that the termination of the proceedings instituted against a Government servant had been delayed due to reasons directly attributable to him, for such period of suspension and/or dismissal etc., as may be directed by the reinstating authority.

(2) In departmental proceedings other than the full exoneration including cases where the earlier order is set aside solely on the ground of non-compliance with the requirements of Article 311.

(3) In Court cases where the order is set aside solely on the ground of non-compliance with the requirement of Art. 311 or when exoneration is not on

merits.

(4) Even in cases where the suspension is held to be wholly unjustified when it is held that the termination of the proceedings instituted against a government servant had been delayed due to reasons directly attributable to him for such period of suspension as may be directed by the reinstating authority.

(5) In cases of detention any law providing for preventive detention, when it is held that the detention is unjustified and in cases of arrest for debt, where it is ultimately proved that the liability arose from circumstances beyond control of the Government servant for such period as may be directed by the reinstating authority.

(6) In cases where the suspension is not held to be wholly unjustified.

Important : In all these cases, it should be noted that the proportionate pay and allowances payable should be determined only after giving an opportunity/notice to the government servant to make his representation against the proposal and after considering the representation, if any submitted by him. Further the amount so determined should not be less than what was paid as subsistence allowance."

15. Though the petitioners have contended that the Tribunal has erred in holding that merely because departmental action was not taken against the 1st respondent, he was deemed to have been reinstated in terms of sub para 5(a)(2) of the CCS (CCA) Rules 1965, which states that "Reinstatement where a Government servant is acquitted on merits of the case in court proceedings and no further departmental enquiry is held", this Court is not inclined to accept the same. The learned Additional District and Sessions Judge, Madurai, by judgment dated 28.10.2004 made in C.C.No.87/89, has categorically held that the witnesses in support of the charges against the 1st respondent were not examined and that the connection of the 1st respondent with reference to exhibits were not explained and further held that no one was examined by the prosecution to prove the charge against the 1st respondent, beyond doubt and thus ordered that the 1st respondent be acquitted. As regards 'acquittal' and 'honorable acquittal', a Full Bench of this Court in Manikandan and Others Vs. The Chairman, Tamil Nadu Uniformed Services recruitment Board, Chennai and Others, reported in 2008(2) CTC 97, has observed as follows:-

"22. The Code of Criminal Procedure, 1973, refers to "acquittal" under Sections 232, 235, 248, 255 and 300. The word "discharge" is used in the Code in Sections 227, 239 and 245. Section 227 enables a Court of Session to discharge an accused if upon

consideration of the record of the case and the documents submitted, he considers that there is no sufficient ground for proceeding against the accused. Section 232 enables a Court of Sessions to order the acquittal of a person, if after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence to show that the accused committed the offence. Thus, discharge under Section 227 can be ordered before recording the evidence and the acquittal under Section 232 can be ordered after the evidence for the prosecution is recorded.

23. Similarly, Section 239 enables a Magistrate to discharge the accused, if after considering the police report and the documents sent along with it under Section 173, he considers the charge against the accused to be groundless. In cases instituted otherwise than on police report also, the Magistrate is entitled to discharge an accused, if after taking all the evidence as is referred to in Section 244, he considers that no case against the accused has been made out.

24. While the acquittal or discharge referred to in the above provisions, relate to a stage prior to the conclusion of the entire trial, the acquittal contemplated U/s. 248 and 255, by a Magistrate in a warrant case or summons case, is after trial.

25. Thus it is seen that the entire scheme of the Code of Criminal Procedure, 1973, speaks only of acquittal and not of an "honourable acquittal" or "acquittal on benefit of doubt". These concepts appear to have been developed by courts over the years. But there seems to be a reason for this.

26. Section 300(1) of the Code prescribes that a person tried for an offence by a competent court and convicted or acquitted of such offence, shall not be liable to be tried for the same offence or on the same facts for any other offence which could have been charged against him in the same trial. However, the Explanation to Section 300 of the Code makes it clear that the dismissal of a complaint or the discharge of an accused is not an acquittal for the purpose of Section 300. Therefore, the bar under Section 300(1) for a 2nd trial for the same offence or for a 2nd trial on the same facts for any other offence, may not

be applicable in certain cases, where an accused is discharged.

27. The reason as to why the Code does not make a distinction between an acquittal on benefit of doubt and an honourable acquittal, is to ensure that no person shall be tried for a second time for the same offence for which he is tried and convicted or acquitted once. What is provided under Section 300(1) of the Code, is only a reassurance of the constitutional right guaranteed under Article 20(2). The principle behind this prescription under section 300 of the Code is to avoid double jeopardy to a person. If the Code recognises such a distinction, it may make inroads into this concept of double jeopardy.

16. Acquittal in the criminal case shall have no bearing or relevance to the departmental proceedings, as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt, whereas, in a departmental proceedings, the department has to prove the charge only based on preponderance of probabilities. Admittedly, during the pendency of the criminal case or after the acquittal of the 1st respondent in the criminal case, no departmental action had been taken against him.

17. As rightly held by the Tribunal, when a Government servant is acquitted in a court proceedings and no further departmental enquiry is held, upon reinstatement he is entitled for full pay and allowances.

18. In view of the above, we do not find any infirmity in the impugned order warranting interference. Accordingly, the writ petition is dismissed. No costs. Consequently, M.P.No.1 of 2015 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1) The Secretary,
Union of India,
Department of Posts,
New Delhi-110 001.

2)The Director of Postal Services,
[Mails and Speed Post],
Office of the Chief Post Master General,
Tamil Nadu Circle, Chennai-2.

3)The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

+1 cc to Mr.B.Rabu Manohar Advocate sr.24878

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