

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21586 of 2015 (O&M)
Date of Decision: 03.05.2016

Balkar Singh

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Hooda, Advocate,
for the petitioner.

Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

Mr. Surinder Pal, Advocate,
for Ms. Promila Nain, Advocate,
for respondents No.2 to 4.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. FIR No.15 dated March 18, 1999 was registered at Police Station Vigilance Bureau, Jalandhar against the petitioner under sections 7 & 13(2) of the Prevention of Corruption Act, 1988 (for short “the Act”). The petitioner was put to trial. The Special Judge, Kapurthala vide judgment and order dated January 23, 2004 sentenced him to undergo rigorous imprisonment for five years with a fine of Rs.5000/- on January 28, 2004 under section 7 of the Act. The petitioner appealed to the High Court against his conviction and sentence by preferring CRA-S-310-SB of 2004. This Court suspended the sentence vide order dated May 25, 2004. The petitioner was dismissed from service on July 28, 2004 following conviction by applying the law in Deputy Director of Collegiate Education (Administration (Madras) v. S. Nagoor Meera, (1995) 3 SCC 377 holding

that on conviction on a criminal charge an employee has to be dismissed from service to await result of appeal/s and he can claim reinstatement in case he succeeds. The petitioner was successful when his appeal was allowed and the judgment of the Special Judge, Kapurthala was set aside vide judgment dated November 26, 2013. Consequently, the petitioner was acquitted of the charges framed against him.

2. The petitioner claimed reinstatement on acquittal. The department relied on the criminal trial and did not charge-sheet the petitioner or proceed against him departmentally by initiating and conducting an inquiry into misconduct. The acquittal has become final as no further leave to appeal was preferred by the State of Punjab.

3. On acceptance of the request of the petitioner, he was “taken back in the services” vide order dated August 04, 2014 in terms of Rule 7.3 of the PSEB (now PSPCL) MSR. Later, the order was corrected on request and the words “taken back in the services” were treated by a separate order as “reinstatement in services” vide order dated August 29, 2014. Returning to office, the petitioner submitted a representation to the authorities in the respondent-Corporation praying that the period of suspension from January 23, 2004 till reinstatement on August 04, 2014 be treated as period spent on duty to make available to himself all the benefits of pay, allowances and promotions etc. due to him in terms of the governing rules as provided in the Punjab Civil Service Rules, Vol-1, Part-1, Chapter VII duly adopted by the respondent-Corporation as its own law. The respondent-PSPCL issued an order dated January 29, 2015 treating the period of suspension till dismissal as “Leave of Kind Due” whereas the period of dismissal till

reinstatement was declared as “Non Duty Period”.

4. Aggrieved by the order, the petitioner preferred a statutory appeal before the 2nd respondent praying that the intervening period of suspension till dismissal and dismissal till reinstatement deserves to be withdrawn and the period regularized in view of its honourable acquittal in the criminal case. The petitioner pointed out that persons junior to him in service namely Ram Lal Garg and Gurbir Singh were promoted as Senior Executive Engineers in 2005 when the petitioner faced criminal trial. These officers were further promoted to the post of Superintending Engineer vide order dated March 02, 2015. He, therefore, thought he had a claim for a declaration that he should be treated as promoted with effect from the date when his admitted juniors were promoted in his absence.

5. The petitioner has challenged the impugned order dated January 29, 2015 in the present petition. It is common ground that the statutory service appeal preferred by the petitioner has not been decided so far. However, objection has not been taken by respondent PSPCL in its written statement that alternative remedy remains pending and therefore the petitioner should be relegated to avail that remedy to its logical end. In any case, this Court has entertained the petition without calling upon the respondents to decide the appeal in the first instance. The oral argument is of no consequence and is declined for this court will determine the rights of the parties, for which the view of the authorities in the first instance is not absolutely necessary or fatal to this case, the issues being purely legal in nature with no disputed facts to contend with.

6. In the written statement filed on behalf of the respondents,

Regulation 7.3 of the Main Service Regulations, 1972 Volume-I, Part-I has been relied upon [just as they are relied upon by the petitioner himself] which according to PSPCL disentitle the petitioner from the relief claimed for the reason that his acquittal has not been honourable but by giving a benefit of doubt. Therefore, the petitioner cannot be said to have been fully exonerated for the purpose of allowing full pay and allowances under regulation 7.3 (2). Regulation 7.3 (2) reads as follows:-

“7.3 (2) “ Where the authority mentioned in sub regulation (1) is of opinion that the Board employee has been exonerated or, in the case of suspension, that it was wholly unjustified, the Board employee shall be given the 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.”

7. PSPCL have annexed the order passed in service appeal preferred by the petitioner against the order dated January 29, 2015. The operative reason given for dismissal of appeal is that the employee has been acquitted by giving benefit of doubt and therefore approval for submission of agenda cannot be given. This order has been passed on October 26, 2015 and qualifies as a “specific order” treating the period of suspension empowered by Regulation 7.3 (1).

8. As I read Regulation 7.3 (2) deals with 'exoneration' but not 'acquittal' on a criminal charge. Exoneration in service jurisprudence refers to departmental proceedings just as conviction and acquittal lie in the exclusive domain of the criminal court established by law. It appears to this Court that the defence of PSPCL citing Regulation 7.3 (2) is rather misplaced as it does not deal with criminal trials or their result. Besides, a

thorough reading of the judgment in the criminal appeal passed by this Court shows that the prosecution story was that complainant one Gian Singh was looking after the Dera where occurrence took place. 11 KV electric wires passed over the Dera. The Dera moved an application for shifting the electric wires as they were posing danger to the occupants of the Dera. The complainant deposited Rs.500/- in the office of the Sub Divisional Officer, PSEB in November 1998. The petitioner was then working as a Sub Divisional Officer. The complainant met him in March 1999 and the former told him to deposit Rs.50,000/- as per the estimate prepared by the PSEB. The appellant demanded Rs.25,000/- as illegal gratification so that the estimated amount could be reduced as a favour. The deal was settled at Rs.20,000/-. The complainant approached the office of the Vigilance Bureau, Jalandhar and on his statement the FIR was registered. The money changed hands on the spot and the phenolphthalein powder test was positive. This Court weighed the evidence against the petitioner. The shadow witness did not support the prosecution case. PW-2 Rachhpal Chand Sharma was declared hostile but he supported the prosecution and it is so recorded. He was cross-examined by the PP on recovery of tainted currency notes from the shirt pocket of Balkar Singh (petitioner). The Court found that the complainant and official witnesses have supported the prosecution case but the plea taken by the appellant under section 313 Cr.P.C. appeared to the Court to be plausible defence. Defence witness Harjaswinder Singh deposed in February 1998 that the petitioner had found that the Dera was pilfering electricity and penalty to the tune of Rs.9700/- and odd was imposed on the Dera. The penalty was deposited by Sant

Sampuran Singh on February 09, 1998. The witness deposed that the sanctioned load of the Dera was less than the actual load which determined theft of electricity. For this theft the petitioner imposed penalty to the tune of Rs.4295/- on the Dera and the amount was deposited. There was documentary evidence available in Exs.DW-1/A and DW-1/B to support the deposition. There are other factual details which this Court noticed including that the estimate in question was to be cleared by the Executive Engineer so far as the appellant was concerned he merely had to forward the file from Junior Engineer to Executive Engineer and in case, the file was received back with some objections from the office of the Executive Engineer then the petitioner Balkar Singh was to again forward it to the Junior Engineer who would again send the file to the appellant after removal of objections. Therefore, all that the appellant [petitioner] had to do was to forward the same to the Executive Engineer for approvals. The Court observed that since an estimate was to be prepared by the Junior Engineer, appellant could not have reduced the estimate. The Court concluded as follows:-

“In the present case, appellant had imposed penalty on the Dera on two occasions and it is possible that due to this reason, appellant might have been falsely involved in this case by the complainant as he might have been annoyed with the appellant.

Thus, in the present case, although, complainant and official witness have supported the prosecution case but in view of the statement of DW1 and cross-examination of PW8, prosecution case is rendered doubtful. Further complainant has also admitted in his cross-examination that the appellant had told him that the needful was to be done by the Executive Engineer.

It is a settled proposition of law that the prosecution

is required to prove its case beyond the shadow of reasonable doubt. Whenever there is doubt in the prosecution case, the benefit of the same has to be extended to the accused.

In the present case, the prosecution has failed to prove its case beyond the shadow of reasonable doubt, hence, the appellant is liable to be acquitted of the charges framed against him by giving him benefit of doubt.

Accordingly, this appeal is allowed. The impugned judgement/order dated 23.1.2004/28.1.2004 are set aside. Appellant is acquitted of the charge framed against him by giving him benefit of doubt.”

9. The effect of acquittal on a criminal charge deserves to be examined since that is the only defence set up by PSPCL that clean chit was not handed down by Court. The criminal courts in sentencing or acquitting persons accused of cognizable offences often resort to giving the benefit of doubt while recording orders of acquittal, discharge etc. In criminal law, an acquittal is an acquittal. All acquittals are honourable. In passing judgment on the issue of benefit of doubt, and if it was necessary on the evidence, the subsequent Court in judicial review of administrative action has to read the judgment carefully with the evidence before impacting a Government servant on the service law side and visiting him with adverse consequences. As I read the judgment it indicates that the criminal charge did not hold water. The defence mechanism in section 313 Cr.P.C. is not an empty formality. If the defence plea taken by Balkar Singh appears to be plausible to the Court and the Court relied on it while weighing the entire evidence and the role of the accused in the chain of command between Junior Engineer, Sub Divisional Engineer and Executive Engineer, with the Executive Engineer taking the final call and the last shot coupled with the

fact that the estimate was to be prepared by the Junior Engineer then the Court concluded that the appellant could not have reduced the estimate and, therefore, the prosecution story was not beyond a shadow of reasonable doubt. Doubt alone must not extenuate in favour of the appellant to secure an acquittal. It was the complainant's case in the prosecution story when he admitted in cross-examination that the appellant had told him that actions had to be taken by the Executive Engineer and not by him. If final actions were not to be taken by the appellant, the present petitioner, there hardly appears any reason to accept bribe. The Court held that the prosecution failed to prove its case beyond the shadow of reasonable doubt. By all means the appellant was liable to be acquitted.

10. It is well to remember the famous passage in the argument of Sir Geoffrey Lawrence, then King's Counsel, remembered in legal memory as a fine judge appointed on the King's Bench Division, to be later elevated as Lord Justice of Appeal in 1944 and who later was destined to Preside over the Tribunal set up to try war crimes at the Nuremberg Trials in 1946-1947 and who remarkably was a relative stranger to the criminal court but was engaged as defence counsel in his first murder trial to defend Dr John Bodkin Adams, a notorious serial killer of his age and accused of murder of a patient in "one of the greatest murder trials of all times" in his concluding address to the jury explained with startling simplicity and clarity how reasonable doubt operates in a criminal case::

"Justice is of paramount consideration here, and the only way in which this can be done is for you to judge the matter on what you have heard in this court and in this court only. What you read in the papers, what you hear in the train, what you hear in the cafés and restaurants, what

your friends and relations come and tell you; rumour, gossip, all the rest of it, may be so wrong. The possibility of guilt is not enough, suspicion is not enough, probability is not enough, likelihood is not. A criminal matter is not a question of balancing probabilities and deciding in favour of a probability. If the accusation is not proved beyond reasonable doubt against the man accused in the dock, then by law he is entitled to be acquitted, because that is the way our rules work. It is no concession to give him the benefit of the doubt. He is entitled by law to a verdict of not guilty."

11. India follows the common law and the address of Sir Geoffrey Lawrence in his concluding address to the Jury is relevant in the context of the criminal law of sentencing. Closer home this is even the view of this since at least 1967 in Jagmohan Lal v. State of Punjab, AIR 1967 Punjab & Haryana 422 speaking through Jagan Nath Kaushal, J in his brief tenure as a Judge of this Court before he resigned office and a celebrated criminal lawyer of his time, holding as follows:-

"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."

In Bhag Singh v. Punjab & Sind Bank Ltd. & Ors., 2006 (1)

S.C.T. 175 : (2005) 6 SLR 464 the Division Bench held:-

“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.”

12. Viewed in the aforesaid perspective the service rules of PSPCL in play deserve to be appreciated and I find from the pleaded argument of Mr. Hooda articulately reasoned in the petition to be the correct position in law when he asserts in paras.23 to 25: “23. That from above it is quite axiomatic that under Rule 7.1, a Government employee becomes disentitled to pay and allowances on his dismissal or removal from service. Rule 7.2 deals with the payment of subsistence allowance to an employee placed under suspension. Rule 7.3 (i) empowers the competent authority to decide in respect to the period of a Government employee who remained dismissed or removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a Government employee who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon reinstatement, he shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (iii) of Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purposes in a case covered under Sub Rule (ii). A bare reading

of the provision as contained in Rule 7.3 would make it clear that a Government employee who has been dismissed, removed, compulsorily retired or suspended, is reinstated upon having been fully exonerated, then he shall be given full pay and allowances to which he would have been entitled to had he not been dismissed, removed, compulsorily retired or suspended as the case may be. In other words, the above quoted rule clearly specifies that a dismissed employee when reinstated upon exoneration is entitled to be granted full pay and allowances to which he would have been otherwise entitled to had he not been dismissed from service. Whereas, Rule 7.5 specifically prescribes that in the event of a Government employee acquitted of the blame and it is proved that the official's liability arose from circumstances beyond control or the detention being held by the competent authority to be unjustified, he would be entitled to full salary... "That now, it becomes abundantly clear that Rule 7.3 of the Rules is the general rule, while in case a person is acquitted, it is specific Rule 7.5 of the Rules that would be attracted. The law is well settled that specific Rule will always take precedence over the general rule and consequently, it must follow that under Rule 7.5 of the Rules, referred to above, the petitioner was entitled to the full back wages. In other words, in terms of Rule 7.5 of the Rules, on petitioner's being acquitted, he would be entitled to full salary and allowances for the period of suspension and dismissal... "That in other words, Rule 7.3 (i) empowers the competent authority to decide in respect to the period of a Government employee who remained dismissed or removed or compulsorily retired or under suspension. Sub Rule (ii) of Rule 7.3, however, specifically prescribes that in the event of a Government employee

who had been dismissed, removed or compulsorily retired and has been fully exonerated, upon reinstatement, he shall be paid full pay and allowances to which he would have been entitled to, had he not been dismissed, removed or compulsorily retired or suspended. Sub Rule (iii) or Rule 7.3 further provides for treating the entire period of suspension preceding dismissal, removal or compulsory retirement as a period spent on duty for all purpose.”

13. To further his case towards relief claimed Mr. Hooda relies on Brahma Chandra Gupta v. Union of India; 1984 (2) SCC 433 which can usefully be referred to in its paragraph relevant to the present context, to quote:

“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 fully 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 3/4th 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% interest p.a. from the date of suit till realisation with costs throughout.”

14. Petitioner's counsel then forwards his case relying on Govt. of Punjab notification dated 05.08.1998 issued in terms of clause (a) of the

second proviso to Article 311 (2) of the Constitution of India stating that once a government servant is convicted on a criminal charge the disciplinary authority is not to wait for the outcome of the appeal or revision as the case may be. If, however, the government servant- the accused or convicted person is acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to, had he continued in service. The aforesaid notification has been adopted by respondent Board vide memo no.157556/157746, dated 26.06.2001 for its meticulous compliance.

15. It is common ground that the petitioner was tried by the criminal court in relation to allegations having direct relationship with his employment in PSPCL. Having been absolved of the allegations and charge framed, the petitioner would be invested with the right to claim full pay and allowances for the period he was forced to remain out of service facing a criminal trial.

16. Time has come to read the impugned order dated January 29, 2015 and what is its juridical worth. It has been passed in continuation of the order dated August 04, 2014 (Annex P-3) which accepted the petitioner back in service being the order dated August 29, 2014 (Annex P-4) which substituted the words “taken back in services” by “reinstatement to service” reference to which two orders are necessary in reading them since the impugned order has been passed in continuation of those orders. The impugned order in translation reads:-

“PUNJAB STATE POWER CORPORATION LIMITED
OFFICE ORDER No.62/D-5888/S-2/T-3, DATED:

29.01.2015

In continuance of the order of this office bearing Order No.489, dated 04.08.2014 and no.571, dated 29.08.2014.

After consideration of the suspension period and dismissal period of the official – Eng. Balkar Singh A.E.E. (CODE No.4066), the competent authority passed an order of treating suspension period of the aforesaid employee i.e., from 23.01.2004 to 28.07.2004 as “Leave of the Kind Due” (LOKD) and period from dismissal i.e., 29.07.2004 till re-instatement as “Non Duty Period”.

As per above now, Punjab State Power Corporation Limited passed an order of treating suspension period of Eng. Balkar Singh A.E.E. (CODE No.4066) i.e, from 23.01.2004 to 28.07.2004 as “Leave of Kind Due” (LOKD) and period from dismissal i.e., 29.07.2004 till re-instatement as “Non Duty Period”.

This is issued with the sanction/permission of competent authority.

*Sd/-
Joint Secretary/Tech-3,
PSPCL, Patiala”*

17. A cursory reading of the impugned order shows that it neither refers to rule nor regulation of PSPCL nor is based on benefit of doubt. In fact it contains no reasons whatsoever. If it contains no reasons it is a legally bad order and the defence taken in the written statement with respect to giving the benefit of doubt is a gloss put in defence of the petition but is not the operating reason to deny the service law claim. The order could have been quashed on the short ground that it is non-speaking and the matter remitted for passing a fresh order in accordance with law but since the subject matter is covered by PSPCL regulations and binding judicial precedent then it will not be proper or expedient in the interest of justice to obtain a fresh order for purposes of judicial scrutiny. It was not legally

permissible to the PSPCL to treat the period from January 23, 2004 to July 28, 2004 as leave of the kind due and the period from dismissal till reinstatement, i.e., from July 28, 2004 to September 04, 2014 as non duty period. Regulation 7.3 of the Punjab Civil Service Rules, Volume 1, Part 1, Chapter VII do not support such a conclusion. Besides, the prosecution was launched by the department on a complaint relating to employment and if the trial failed the petitioner is innocent by all means and he has been deprived of his labour by actions originating with the employer. PSPCL could have examined the conduct of the petitioner in a domestic proceeding by serving a charge-sheet which valuable procedure was not adopted. Hence the PSPCL has nothing to fall back on except to clutch at the straw of benefit of doubt. The legal position of which has been discussed in the earlier part of the judgment.

18. For the foregoing reasons, this petition is allowed and the impugned order dated January 29, 2015 is quashed so also all adverse action giving rise to the cause of action. The respondents are directed to pass a fresh order in accordance with law in the light of this judgment by treating the disputed periods as periods deemed to be spent on duty for all intents and purposes including right to consideration for promotion from the date juniors were promoted to higher ranks while the petitioner was facing trial and which trial has ended in acquittal deemed in law to be honourable for the world at large.

(RAJIV NARAIN RAINA)
JUDGE

03.05.2016
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