

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6689 OF 2005

1. Union of India,
Through the Secretary,
Ministry of Defence,
South Block, New Delhi
2. The General Manager,
Ordnance Factory,
Varangaon, Tq. Bhusawal,
Dist. Jalgaon ..Petitioners

Vs.

Deepak Arjun Malwadkar,
(now deceased, through
Legal Representative)
Smt. Shobha D. Malwadkar,
Age : 45 years, Occ. Nil,
r/o. Type – II 96/B Ordnance
Estate, Ordnance Factory,
Varangaon, Tq. Bhusawal,
Dist. Jalgaon,
only legal representative
of Deepak Arjun Malwadkar
(now deceased) ..Respondent

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Mr.D.G.Nagode, Standing Counsel for petitioners
Mr.S.S.Rathi, Advocate for respondent/sole

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON: JUNE 23, 2017
JUDGMENT PRONOUNCED ON: JULY 11, 2017**

JUDGMENT (PER SANGITRAO S. PATIL, J.):

The petitioners have challenged the judgment and order dated 09.03.2005 passed by the Central Administrative Tribunal, Bombay Bench, at Mumbai ("the Tribunal", for short) passed in Original Application No.787 of 2003, whereby they have been ordered to pay salary to the deceased respondent in respect of the period of his suspension, after deducting the suspension allowance, if any, paid to him.

2. The deceased respondent was an employee working with the Ordnance Factory at Varangaon, Tq. Bhusawal, Dist. Jalgaon. He came to be arrested on his wife's sustaining burn injuries on 27.04.1999. In respect of that incident, crime was registered against the deceased respondent and others for the offences punishable under Sections 307, 498-A and 506 read with 34 of the Indian Penal Code. The deceased respondent came to be

arrested on 01.05.1999. He was in Police Custody till 04.05.1999 and then in magisterial custody till 20.05.1999, on which date he was released on bail. Petitioner no.2 suspended the deceased respondent by order dated 31.05.1999 with retrospective effect from 01.05.1999. Sessions Case No.183 of 1999 was instituted against the deceased respondent and his other family members. All the accused persons, including the deceased respondent, came to be acquitted as per the judgment dated 22.07.2002. Respondent no.2 then revoked suspension of the deceased respondent as per the order dated 08.01.2003 with effect from 09.01.2003. The deceased respondent made a representation on 15.01.2003 for treating his suspension period as the period spent on duty. Petitioner no.2 issued notice to the deceased respondent to show cause as to why the period of suspension should not be treated as suspension because he was acquitted for want of sufficient evidence.

3. The deceased respondent replied that notice and stated that his wife had sustained burn injuries accidentally and that has been upheld by the Sessions Court. He, therefore, prayed that since he has been honourably acquitted, he was entitled to get his suspension regularised as the period spent on duty with full back wages and allowances as well as continuity in service. Respondent no.2 passed order on 28.02.2003, rejected the representation of the deceased respondent and ordered that the period of suspension of the deceased respondent shall be treated as justified suspension and not the period spent on duty for any purpose and the deceased respondent shall be allowed only the pay and allowances as had been paid to him during the period of suspension.

4. Being aggrieved by the order passed by respondent no.2, the petitioners filed above

numbered Original Application before the Tribunal. The Tribunal, after considering the rival claims of the parties as well as the factual and legal aspects of the matter, allowed that application. The said order is under challenge in this petition.

5. The learned Standing Counsel for the petitioners, relying on the judgment in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and ors., (1997)3 SCC 636**, submits that the acquittal of the employee based on insufficient evidence in a criminal case would not automatically entitle him to get back wages, pensionary benefits and other consequential benefits on his retirement where suspension is ordered pending criminal case. He submits that the competent authority is empowered to treat suspension period as not spent on duty and has discretion in the matter of treating the suspension period as the period spent on duty and

also in granting benefits of continuity in service as well as back wages and allowances. He submits that petitioner no.2, after considering the reply of the deceased respondent, has rightly refused the relief claimed by the deceased respondent. He submits that the deceased respondent was acquitted of the criminal charges because his wife turned hostile and there was no sufficient evidence to establish his guilt of the offences. Therefore, according to him, petitioner no.2 rightly denied the claim of the deceased respondent.

6. As against this, the learned Counsel for the deceased respondent submits that the judgment delivered by the Sessions Court in Sessions Case No.183 of 1999 makes it clear that the wife of the deceased respondent had sustained burn injuries accidentally and it is the deceased respondent who took her to the hospital and saved her life. He submits that it was a case of no evidence and not that of insufficient evidence. Since the deceased

respondent has been given a clean chit, he is entitled to get his suspension period regularised as the period spent on duty with continuity in service and back wages. According to him, the Tribunal has rightly allowed the application filed by the deceased respondent and ordered the petitioners to allow the claims made by the deceased respondent.

7. The copy of the judgment in Sessions Case No.183 of 1999 is produced on record. It shows that the wife of the deceased respondent, who is now substituted in his place in the Writ Petition after his demise, sustained burn injuries on 27.04.1999. She was examined before the Court, wherein she specifically stated that she sustained burn injuries accidentally. She deposed that the deceased respondent also sustained injuries since he tried to extinguish the fire at the time of the incident. The deceased respondent was medically examined on 01.05.1999 when blisters were found on

both of his hands. The deceased respondent himself had taken his wife to the hospital for treatment after the incident. This circumstance coupled with the positive statement of the wife of the deceased respondent weighed the learned Judge who inferred that the wife of the deceased respondent had sustained injuries accidentally. He, therefore, acquitted the deceased respondent. If all these facts and circumstances of the case are considered, it would be clear that the deceased respondent was not involved in any crime. Thus, it was a case of no evidence against the deceased respondent. Consequently, the inference drawn by petitioner no.2 that the deceased respondent was acquitted for want of sufficient evidence is without any basis. It was clear-cut acquittal of the deceased respondent of the charges levelled against him.

8. The case of **Krishnakant Raghunath Bibhavnekar** (supra) is based on Rule 72 of the

Maharashtra Civil Services (Joining Time, Foreign Services, and Payment during Suspension, Dismissal and Removal) Rules, 1991, which is not applicable to the deceased respondent. Therefore, this judgment would not be of any help to the petitioners to controvert the claim of the deceased respondent.

9. The learned Counsel for the petitioners further relied on the decision in the case of **Madhukar Namdeo Patil Vs. Chairman, Sudhagad Education Society and others, 2000(4) Mh.L.J.206** based on Rule 33 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, wherein it is held that sub-rule (5) of Rule 33 stipulates that the employee in such a case shall be considered as under suspension for any period during which he is under preventive detention or where he is detained in police or judicial custody for a period exceeding 48 hours or is undergoing imprisonment. The period of

suspension under the provisions of sub-rule (5) of Rule 33 must necessarily come to an end once the period of judicial or police custody is terminated. The suspension under this sub-rule is not indefinite suspension during the pendency of a criminal prosecution.

10. The learned Counsel for the petitioners then relied on the judgment in the case of **Union of India Vs. Rajiv Kumar, 2003 DGLS (SC) 525** wherein the respondent employee was governed by the Central Civil Services (Acquisition, Control, Appeal) Rules, 1965 ("the Rules of 1965", for short). Since the respondent was governed by the Rules of 1965, the provisions of Rule 10 were under consideration of the Hon'ble Apex Court and it was held that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under sub-rule (5)(c) as provided under

sub-rule (5)(a). It is further held that the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c).

11. In the present case, petitioner no.2, as per the order dated 31.05.1999, had placed the deceased respondent under deemed suspension with effect from 01.05.1999, though he was on bail during the period from 27.05.1999 till 31.05.1999. The judgments in the cases of **Madhukar Namdeo Patil** (supra) and **Union of India Vs. Rajiv Kumar** (supra), based on the Rules which are not applicable to the service conditions of the deceased respondent, are of no help to the petitioners to advance their case.

12. The learned Counsel for the deceased respondent has strongly relied upon the decision in the case of **Brahma Chandra Gupta Vs. Union of India, AIR 1984 SC 380** wherein, the appellant-employee was working as Upper Division Clerk in the Defence Accounts Department, who was

prosecuted for the offence punishable under Section 19(F) of the Indian Arms Act and Section 5 of the Indian Explosive Substances Act. Pending investigation, he was convicted by the learned Magistrate for the offence punishable under Section 19(F) of the Indian Arms Act and sentenced to suffer imprisonment for one and half year as per the judgment of the trial Court. He came to be dismissed from service. The appellant preferred an appeal against the conviction and sentence which was allowed and he was acquitted. The appellant was reinstated in service. The authority concerned divided the period of suspension of the appellant into two parts; the first being the period intervening his conviction by the Trial Court and acquittal by the Appellate Court and the second being from his acquittal till the date of his reinstatement in service. With regard to the later part, the authority concerned directed payment of full salary after giving credit for the suspension allowance that was drawn by him. However with

regard to the earlier part the authority concerned held that the appellant could not be said to be fully exonerated and therefore, direction was given to pay $3/4^{\text{th}}$ of his salary for that period of suspension. As such, he was refused $1/4^{\text{th}}$ of his salary for that period. The appellant filed a suit for recovery of that part of salary, which was decreed by the trial Court, dismissed by the District Court and that dismissal of the suit was confirmed by the High Court. The Hon'ble Apex Court held that keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry and that he was prosecuted and 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 $3/4^{\text{th}}$ of the salary is ordered to be paid, the approach of the trial Court was correct and unassailable and the decree

passed by the trial Court came to be restored.

13. The learned Counsel for the deceased respondent has pointed to the Office Memo issued by the Government of India on 19.09.1975 and particularly Clause (8) wherein, direction have been given as to what action should be taken when the appeal/revision against the conviction succeeds. It is open for the competent authority either to file an appeal against acquittal or to initiate departmental enquiry if sufficient grounds are there to initiate the same. If no such steps are taken, the action as stated in paragraph (3) has to be taken. Paragraph (3) reads as under :-

"3. In cases where neither of the courses mentioned in Paragraph 3 is followed, a formal order should be issued setting aside the previous order imposing the penalty (Standard Form for such order is annexed - Form at the end of this chapter). In cases where the penalty imposed was dismissal, removal or compulsory retirement from service, full pay allowances will be paid from the date of acquittal to the date of rejoining

duty and the period counted as duty for all purposes whereas for the period from the date of suspension/removal/dismissal to the date of acquittal, pay and allowance will be allowed as directed by the Competent Authority under FR 54(2) or FR 54(3) and the period treated as duty or non-duty under FR 54(4) OR FR 54(5), as the case may be."

14. The case of the deceased respondent is governed by the Office Memo and particularly, the above paragraph. This clause does not give any discretion to the competent authority in the matter of considering regularisation of the period of suspension of an employee by treating it as suspension only or the period spent on duty and also in respect of the payment of back wages with continuity in service.

15. In the above circumstances, since the deceased respondent was given a clean chit in the criminal case instituted against him, he would be entitled to get his suspension period regularised as the period spent on duty as well as back wages

with continuity in service. The Tribunal has rightly considered the facts of the case as well as the law applicable thereto and has rightly allowed the Original Application filed by the deceased respondent. We do not find any reason to interfere with the judgment and order passed by the Tribunal.

16. Hence, the order :-

- (i) The Writ Petition is dismissed.
- (ii) Rule is discharged.
- (iii) No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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