

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3111 OF 2004
WITH
WRIT PETITION NO. 4202 OF 2004**

Union of India & Anr.	...Petitioners
Versus	
Mahadu Narayan Gadade	...Respondent

Mr. T. J. Pandian for Petitioners in both Petitions.
None present for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 12 APRIL 2018

ORAL JUDGMENT :

1] Heard Mr. Pandian for the petitioners in both these petitions. The respondent, though served, neither present nor represented.

2] The challenge in both these petitions is to the common judgment and order dated 10th December 2003 made by the Central Administrative Tribunal (CAT) disposing of Original Application Nos. 774 of 2002 and 229 of 2003 instituted by the respondent. Accordingly, it is only

appropriate that both these petitions are taken up together and disposed of by a common judgment and order.

3] The respondent, a peon, under the administrative control of the Central Railway instituted Original Application No. 774 of 2002 seeking for salary and other financial benefits for the period between 3rd March 1992 and 23rd April 2001, during which period, the respondent, was not allowed to resume duties on account of pendency of criminal prosecution against him. The respondent also instituted OA No. 229 of 2003 questioning the damage rent charged / recovered from the respondent, broadly, for the very same period between 1992 and 2001, in respect of Railway Porter Chawl, Quarter No. K-62/A.

4] The CAT, by the impugned judgment and order dated 10th December 2003, has disposed of both the OAs in terms of the following operative order :

"1) As far as OA No. 299/2003 is concerned the Respondents ma charge damage rent upto the date he was relieved from Kurduwadi on 29.2.1992 from 30.2.1992, the said railway quarter be regularized in the name of applicant on normal rent.

2) As the Applicant was relieved from Kurduwadi on 20.2.1992 and arrested on 3.3.1992, he shall be

given full salary for the period 29.2.1992 to 2.3.1992. As for the period from 3.3.1992 to 23.4.2001 when he was acquitted in the last of the three criminal cases he should be deemed to be under suspension till 22.4.2001 and will be eligible for subsistence allowance. He shall be entitled to get full salary w.e.f. 23.4.2001.

3) The Applicant shall not be entitled to get full salary and allowances for the period of suspension in view of the fact that the acquittal was made by giving him benefit of doubt. In this, we are supported by Full Bench judgment 1994-1996 Pg. 177 Ramkumar Yadav vs. Union of India.

4) Vide order dt. 31.1.1992 the Applicant was promoted from the grade of Rs.750-940 (RS) to Rs.775-1025 and was transferred from Kurduwadi to Solapur. As the Applicant has been acquitted of the criminal charges and has joined at Solapur on 15.1.2003, from that date he will be entitled to get the higher grade of Rs.775-1025. However, prior to that he shall be at the same level in the pay scale of Rs.750-940. He shall be given the benefit of the revision of pay scale recommended by the various pay commissions and as accepted by the Railway Board from time to time.

5) The OA is allowed partly. Costs easy."

5] Mr. Pandian submits that since the respondent, never reported for duties, the CAT, was not at all justified in granting the respondent any financial benefits for the period between 1992 and 2001. He submits that the respondent produced on record no documentary or other evidence to establish that he had in fact reported for duties but was not

permitted to resume duties. Mr. Pandian submits that the finding of fact recorded by the CAT to the contrary is perverse and not borne out from the material on record. For these reasons, Mr. Pandian submits that the impugned judgment and order made by the CAT is liable to be set aside.

6] Since, the respondent, was neither present nor represented, with the assistance of Mr. Pandian, we have perused the record as well as reasoning of the CAT in the impugned judgment and order. In our opinion, there is no jurisdictional error or perversity established so as to warrant interference with the impugned judgment and order.

7] The material on record establishes that three criminal cases were instituted against the respondent. Despite the same, the petitioners did not choose to place the respondent under suspension or hold any disciplinary proceedings against him. The respondent, has contended that whenever he tried to resume duties, he was informed that he cannot do so until, the three criminal cases against him end in his acquittal. The CAT, applied the test of

preponderance of probabilities and accepted the version of the respondent.

8] The CAT has quite rightly, relied upon the circumstance that during the period from 1992-2001, the respondent, was permitted to continue to reside in the Railway Porters Chawl in the official quarter No. K-62/A allotted to him by virtue of his service. The CAT, has also taken cognizance of the significant circumstance that during this entire period, the petitioners, did not choose to place the respondent under suspension or to initiate any disciplinary proceedings against him, possibly, with a view to impose any penalty upon him. Finally, no sooner, the respondent was acquitted in the three criminal cases, the petitioners, did permit the respondent to resume duties and commenced payment of salary and other benefits to him. If on the basis of all such material and circumstances, the CAT, has accepted the version of the respondent, we cannot say that the finding recorded by the CAT is based upon no evidence so as to style the same as some perversity.

9] In this case, it is necessary to note that the

respondent, was only holding the post of a peon and therefore, there is nothing unreasonable in the version pleaded by the respondent. The circumstances on record, do suggest that the respondent, offered to resume duties but, was told that he could resume duties only after securing acquittal in the three criminal cases launched against him. Admittedly, the respondent, stood acquitted in the three criminal cases launched against him. Soon after such acquittals, the petitioners themselves, permitted the respondent to resume duties and even, paid him salary and other benefits.

10] The CAT, has quite correctly held that since the respondent was never dismissed from service nor was any intimation sent to him with regard to his continued occupation of the quarter, there was no justification for levying any damage rent upon him. Besides, the CAT, has not awarded the respondent the benefit of full salary for the period, but the CAT, has directed the petitioners to treat the period as deemed suspension, and awarded to the respondent only subsistence allowance. The CAT, has also taken note of promotions which had been awarded to the

respondent but which promotions, the respondent could not avail on account of the criminal prosecutions and on such basis, made consequential orders as regards revised scales payable to the respondent. There is nothing unreasonable or arbitrary in the directions issued by the CAT so as to warrant interference.

11] For all the aforesaid reasons, we see no good ground to interfere with the impugned judgment and order dated 10th December 2003 made by the CAT. Accordingly, these petitions are dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA