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

% **Date of Decision: 14.01.2019**

+ **W.P.(C) 3197/2018 & CM APPL. 12704-12705/2018**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

Through: Mr. Arun Birbal and Mr. Ajay Birbal,
Advocates.

versus

RAM KUMAR SHARMA & ANR

..... Respondents

Through: Mr. Manish Kaushik and Mr. Mishal
Johari, Advocates for R-1.
Mr. R. Mishra, Mr. Mukesh Kumar
Tiwari and Mr. Abhishek Rana,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The Delhi Development Authority has preferred the present writ petition to assail the order dated 17.01.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in OA No.4376/2015.

2. The said Original Application preferred by the respondents has been allowed by the Tribunal with a direction to the petitioner to pay to the

respondent arrears of full pay and allowances, less the subsistence allowance already paid to him, for the period of suspension.

3. The background in which the said direction came to be issued may be noted.

4. The respondent was working as a Beldar with the petitioner-DDA when he was involved in a trap case laid by the CBI on 15.01.2008. He was placed under deemed suspension w.e.f. 15.01.2008, since he had been in custody for more than 48 hours. The order was passed to this effect on 12.03.2008. He was released from custody on 04.03.2008. On 20.12.2013, the respondent was acquitted of the charges by the learned Special Judge.

5. We may observe that the respondent was arrayed as accused No.2. Accused No.1 who was the Junior Engineer (Enforcement Branch) was, however, convicted by the said judgment and accordingly sentenced.

6. The respondent was reinstated on 13.02.2014. The respondent sought regularization of the suspension period. His request was rejected on 28.08.2015. Consequently, he approached the Tribunal. The petitioner had placed reliance on Regulation 22 of Delhi Development Authority (Conduct, Discipline and Appeal), Regulation 1999 ('Regulation'). The said Regulation reads, as follows:-

"1. When the employee under suspension is reinstated the competent authority may grant him the following pay and allowances for the period of suspension.

(a) If the employee is exonerated and not awarded any of the penalties mentioned in Regulation 23, the full pay and

allowances which he would have been entitled to if he had not been suspended, less the subsistence allowance already paid to him, and

(b) If otherwise, such proportion of pay and allowances as the competent authority may prescribe.

2. In a case falling under sub-clause(a) the period of absence from duty will be treated as period spent on duty unless the competent authority so directs.”

7. The Tribunal took the view that since the respondent had been acquitted in the criminal case, and he had not been proceeded against in the departmental proceedings, there was no question of his being subjected to any penalty in terms of Regulation 23—which sets out the major and minor penalties to which an employee may be subjected to from his conduct. On that basis, the Tribunal took the view that the petitioner has no option in the matter but to reinstate the respondent with full back wages and allowances for the suspension period.

8. The submission of Mr. Birbal, learned counsel for DDA is that the view taken by the Tribunal on interpretation of Regulation 22 is erroneous and contrary to two decisions of the Division Benches of this Court. He submits that Clause (a) of Regulation 22(1) only deals with cases where the employee is exonerated in departmental proceedings since, it is only in departmental proceedings, that the employee may be subjected to one of the penalties in Regulation 23. However, cases in which the employee may have been suspended on account of pendency of a criminal case, and where he is reinstated upon his acquittal, are covered by Clause (b) of sub-

regulation (1) of Regulation 22. He submits that the use of the expression “*If otherwise*” in Clause (b) of Regulation 22(1) is wide enough to cover all other contingencies, other than the contingency covered by Clause (a). Mr. Birbal places reliance on the decisions rendered by this Court in ***S.P. Thukral vs. DDA***, LPA No.2066/2005, decided on 06.10.2008, and the decision of the Division Bench of this Court in ***Hans Raj vs. DDA & Anr***, LPA No.699/2004, decided on 11.08.2006 in this regard.

9. In ***S.P. Thukral*** (supra), the Division Bench considered Regulation 22 aforesaid and observed as follows:

“10. So far Regulation 22 of the Delhi Development Authority Conduct, Disciplinary and Appeal Regulations, 1999 is concerned, reliance is placed by both the counsel for the parties on this Regulation, which vests a power on the competent authority and also lays down the guideline as to how the period of suspension should be treated upon exoneration in a departmental proceeding or otherwise. **Clause (a) of Regulation 22(1) relates to treatment of the period of suspension when a person is exonerated in a departmental proceeding and is not awarded any of the penalties mentioned in Regulation 23. In such cases full pay and allowances which the employee would have been entitled to if he had not been suspended, less the subsistence allowance, has to be paid. Clause (b) thereof deals with a case of acquittal in a criminal case. It uses the expression ‘if otherwise’ referring to a case of suspension during pendency of a criminal case. In that event, an order is to be passed for payment of pay and allowances for the period of suspension as the competent authority may prescribe. In**

sub-regulation 2 of Regulation 22, it is clearly mentioned that in cases falling under sub-clause (b), the suspension period would not be treated as period spent on duty unless the competent authority so directs. In the exercise of the aforesaid powers, the competent authority, namely, the Vice Chairman of the respondent Authority after recording his provisional findings issued a show cause notice to the appellant and after receipt of the reply held that the period of suspension cannot be treated as period spent on duty as the acquittal was on benefit of doubt.”(emphasis supplied)

10. In ***Hans Raj*** (supra), the Division Bench observed as follows:

“12. On the conspectus of the above rules it appears that question of payment of back wages upon reinstatement following the acquittal of an employee in criminal proceedings is entirely left to the discretion of employer. The facts of the case in Brahma Chandra Gupta (supra) requires to be noticed since the appellant herein has placed considerable reliance upon the said judgment in support of his plea that full back wages ought to have been granted to him upon reinstatement. There the conviction of the appellant in a criminal case led to his dismissal. However, on his subsequent acquittal, he was reinstated in service. The concerned authority divided the period of suspension of the employee in that case in two parts. The first being from May 14, 1962 till October 31, 1964 on which date the appellant was acquitted. The second being from October 31, 1964 to September 1965 when he was reinstated. As regards the latter period, it appears that full wages were granted to the employee. The question then remained with regard to the payment of

back wages for the period May 14, 1962 to October 31, 1964. As regards this period, the authority was of the opinion that since the appellant had not been fully exonerated, the appellant should be given 3/4th of the salary for the period of his suspension. The appellant, then filed a suit for recovery of the 1/4th salary that was denied to him. This suit got decreed by a Trial Court which led to the Union of India carrying the matter in appeal. What weighed to the Hon'ble Supreme Court in accepting plea of the appellant for full back wages was that the employee had already retired upon superannuation and had never been subjected to any departmental enquiry. It found that in those circumstances, the approach of the Trial Court was unassailable. Accordingly the employee's appeal was allowed and the employee was asked to pay full back wages along with the interest @ 9% p.a.”(emphasis supplied)

11. Mr. Birbal submits that on account of the fallacious interpretation and application of Regulation 22 by the Tribunal, the Tribunal has not even undertaken the examination of the issue, as to whether the acquittal of the respondent was a clean acquittal, or whether the same was premised on the grant of benefit of doubt to him. Mr. Birbal has, therefore, referred to the judgment rendered by learned Special Bench in CC No.30/2012 titled **Central Bureau of Investigation vs. Shashi Bhanu & Anr.**, dated 16.12.2013. He points out that the complaint of the complainant in that case was against accused No.1 Shashi Bhanu-the Junior Engineer concerned, since the demand of bribe had been made by him. When the complainant

reached the place where the amount had to be delivered to accused No.1, he was not there. The meeting place was a private property broker's office. The complainant was made to talk to accused No.1 on the telephone, who instructed to deliver the amount to the person in the property broker's office. The respondent also arrived in the said office of the property broker, and he also instructed the complainant to deliver the amount to the person in the office. His conversation was tape recorded and was heard by the trap witnesses. Mr. Birbal submits that the learned Special Judge has not discussed the said evidence against the respondent who was accused No.2, in detail and there is no justification coming out from the said decision as to on what basis the tape recorded conversation against the accused No.2 has been discarded. He submits that, probably, since the accused No.2 (respondent herein) was only a Beldar and the bribe amount was being collected for accused No.1, the learned Special Judge has taken a lenient view against the respondent and let him get away with it. However, his involvement is made out in the case and, in this regard, he refers to the observation made by the learned Special Judge when he observes that in the circumstances of the case, there may be grave suspicion about the conduct and role played by Ram Kr. Sharma i.e. the respondent herein. However, suspicion, howsoever strong it may be, cannot substitute proof. Thus, the acquittal of the respondent is not clean.

12. He further submits that the Tribunal could not have sat in appeal in the matter of exercise of discretion under Regulation 22, and in the matter of conclusion drawn by the Competent Authority with regard to the nature of acquittal of the respondent.

13. On the other hand, learned counsel for the respondent submits that after the respondent's acquittal, no disciplinary proceedings were initiated against him. That being the position, the question of the respondent being subjected to any penalty under Regulation 23 did not arise. He submits that Clause (1) of Regulation 22 was attracted in the facts and circumstances of the case. He further submits that had he been proceeded against by initiation of departmental proceedings post his acquittal, it is likely that he would have been discharged and, in that eventuality, he would be entitled to all the pay and allowances for the suspension period. Merely because the disciplinary proceedings have not been initiated, that cannot be a reason to deny the said dues to the respondent. He submits that the acquittal of the respondent is clean, since no evidence was led against him in the trial.

14. Having heard learned counsels, we are of the view that the impugned decision cannot be sustained.

15. In the light of the two decisions of the Division Benches of this Court, taken note hereinabove, in the case of **S.P. Thukral** (supra) and **Hans Raj** (supra), it is evident that the Tribunal was misdirected in law in observing that in all cases where the employee is reinstated in service after acquittal/discharge, the petitioner is bound to pay to the employee all the pay and allowances after adjusting the subsistence allowance paid, if any. The Tribunal appears to have omitted to take into consideration the pronouncements of this Court in the aforesaid two decisions, which clearly show that Clause (a) of Regulation 22(1) was not applicable in the present case, since the suspension of the respondent was revoked post his acquittal in the criminal trial. Clause (b) of Regulation 22(1) was attracted, and not

Clause (a) in the facts of the present case. Thus, the obligation to pay the arrears of pay and allowance did not automatically follow the reinstatement of the respondent upon his acquittal in the criminal trial. The said issue had to be decided by the petitioner in terms of the decisions rendered in **S.P. Thukral** (supra) and **Hans Raj** (supra).

16. The submission of learned counsel for the respondent that after his acquittal in the criminal trial, no departmental proceedings were initiated against him, and therefore, he is entitled to full back wages and allowances, is misplaced. In fact, by not proceeding against the respondent in departmental proceedings, after his acquittal in the criminal trial, a decision was taken in his favour since, if departmental proceedings were initiated against him, it is likely that he may have been found guilty and subjected to a major/minor penalty. It is well settled that the standard of proof required in criminal trials is based on proof beyond reasonable doubt, whereas, the standard of proof in departmental proceedings is based on preponderance of probabilities. Therefore, it cannot be assumed that if departmental proceedings were initiated against the respondent, he would have been found not guilty. The decision taken by the petitioner not to initiate departmental proceedings does not lead to an automatic obligation on the petitioner towards payment of arrears of back wages and allowances.

17. We have examined the decision rendered by the learned Special Judge in the aforesaid criminal case. A perusal of the judgment leaves no manner of doubt that the acquittal of the respondent was premised on grant of benefit of doubt to him. Since the petitioner has chosen to reinstate the respondent and has not proceeded in departmental proceedings against him,

we refrain from making any observations with regard to the involvement of the respondent in the said criminal case. We may only observe that the submissions of Mr. Birbal taken note of hereinabove are weighty.

18. However, we cannot accept the petitioner's submissions that in all such cases, the Tribunal cannot interfere with the decision that the petitioner may take. In each case, the matter would require consideration in the light of the facts of that case, particularly, since the examination of judicial decision exonerating the employee would be best undertaken by a Judicial Forum.

19. Consequently, we allowed the petition and the impugned order is accordingly, set aside. Pending applications also stand disposed of.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 14, 2019

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