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

+ **W.P.(C) 9055/2018**

SAHIB SINGH

..... Petitioner

Through: Ms.Saahila Lamba with Mr.T.S.Dagar,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. J.K. Singh, Standing Counsel for
Railways with Mr.Varun Bhadola and
Mr.Saurabh Sharma, Advocates.

CORAM:

JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
23.08.2019

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Dr. S. Muralidhar, J.:

1. The Petitioner who retired from the Railway Protection Force on 30th April 2017 seeks a direction to the Respondents to treat the period of suspension of the Petitioner from 20th September, 1984 to 24th August, 1994 as period spent on duty; calculate the retiral benefits of the Petitioner including the last drawn salary on that basis and release his Death Cum Retirement Gratuity ('DCRG') in the sum of Rs.5,94,000/- stated to have been withheld by the Respondents.

2. The background facts are that the Petitioner was appointed as Rakshak (later re-designated as Constable) in the Railway Protection Force (RPF) on 28th July, 1977.

3. In 1984 the Petitioner, along with six other employees, was arrested under the Railway Property (Unlawful Possession) Act, 1966 [‘RP (UP) Act’] and the Petitioner was placed under suspension on 20th September 1984. He was issued a major penalty charge-sheet and after completing proceedings as per the Discipline and Appeal (‘D&A’) Rules and Regulations, he was removed from service by the Disciplinary Authority (‘DA’) by an order dated 12th April, 1990.

4. Aggrieved by the above order of removal, the Petitioner filed an appeal before the Appellate Authority (AA), which was rejected by an order dated 4th September, 1990. The revision petition filed before the Revisional Authority (RA) was also rejected by an order dated 1st April, 1991.

5. The Petitioner states that against the orders of the DA, AA and the RA, the Petitioner filed a mercy petition with the Director General (DG)/RPF i.e. the top most authority of the RPF. By an order dated 5th March, 1992 the DG, RPF modified the punishment of removal from service awarded to the Petitioner to that of reduction of pay to the minimum scale for period of 2 years with cumulative effect. Further, it was directed that the Petitioner would continue to remain under suspension till the disposal of the case under Section 3 of the RP (UP) Act pending in the Court.

6. On 22nd August, 1994 an order was issued revoking the suspension of the Petitioner, pursuant to which the Petitioner resumed charge on 25th August, 1994. Subsequently, by a judgment dated 2nd June, 2010 the Petitioner was acquitted of the charges. A copy of the said judgment has been enclosed as

Annexure 'A/1' to the petition.

7. The case of the Respondents is that this acquittal was on 'benefit of doubt' and that therefore, the Respondents were justified in reducing the pension. It must be mentioned here that the Petitioner states that although the salary slip of the Petitioner for the month of May 2017 shows the last drawn pay as Rs.46,200/-, the Pension Payment Order ('PPO') issued to the Petitioner shows last pay of Petitioner as Rs.38,100/- instead of Rs.46,200/-.

8. The Petitioner states that a perusal of the note-sheets show that an objection was raised by the Office Superintendent that the period during which the Petitioner remained under suspension i.e. 20th September, 1984 to 24th August, 1994 was wrongly treated as qualifying service and that the pension of the Petitioner has to be determined on the basis that the period of suspension of Petitioner has to be treated as non-qualifying service and that the benefits i.e. increment, MACP and ACP have been wrongly given to the Petitioner. It is stated that the above noting was prepared by the Office Superintendent ('OS') and was examined by the Senior DSC, who opined that in view of the acquittal of the Petitioner by the Criminal Court the benefit granted to the Petitioner in respect of the period of suspension was correct.

9. According to the Petitioner, the matter was once again precipitated by the OS. The Senior DSC is stated to have opined that in view of the acquittal of the Petitioner by the trial court, the suspension period of the Petitioner needs to be regularised. It is contended by the Petitioner that inspite of the above

request, the Chief Office Superintendent wrongly decided to treat the entire period of suspension of the Petitioner from 20th September, 1984 to 24th August, 1994 as such and proposed that the retiral benefits of the Petitioner should be calculated on that basis.

10. The Petitioner submits that the period of his suspension from 20th September, 1984 to 24th August, 1994 should be counted as period spent on duty. He contends that his pension, including his last drawn salary must be calculated on the aforesaid basis and his DCRG in the sum of Rs.5,94,000/- should be released to him.

11. In the counter-affidavit filed on behalf of the Respondents, it is not disputed that the DG, RPF by an order dated 5th March, 1992 modified the punishment from removal of service to reduction in pay to the minimum of the scale for a period of 2 years with cumulative effect. However, it is contended that since the Petitioner was acquitted by the judgment dated 2nd June 2010 of the trial Court giving him the benefit of doubt, the Competent Authority by an order dated 17th August, 2017 regularized the Petitioner's suspension/removal period as suspension (non qualifying service).

12. The Petitioner retired with effect from 30th June, 2017 from the RPF. The punishment of removal from service was modified to 'reduction in pay for minimum scale for a period of 2 years with cumulative effect.' The Respondents sought to justify the invocation of the principle of acquittal on account of 'benefit of doubt' and the reduction of the pension on that basis.

13. At the outset, the Railway Servants (Discipline and Appeal) Rules, 1968 [‘RS (D&A)Rules’] in this regard are to be noticed. The relevant portion reads thus:

“Suspension and benefit of doubt -When an employee has been removed from service on being convicted by a competent court of law and he then goes in appeal to the higher court who later on acquits him on benefit of doubt, the competent authority may decide the period to be treated as suspension only, if the rules of the department so provide. Such an acquittal is not honourable acquittal and such an absence when he was in the clouded area cannot be treated as for the circumstances beyond his control.”

14. The question that arises is whether in the present case the Respondents were justified in reducing the retiral benefits of the Petitioner only because he was acquitted in the criminal case on ‘benefit of doubt.’

15. This Court has gone through the judgment of Trial Court carefully. There were seven accused persons of which the present Petitioner was one. The allegation was that they were found to be in possession of the Railway property that was reasonably suspected of having been stolen or unlawfully obtained. One of the accused, Gurnam Singh, expired during the course of the trial and the proceedings against him abated. The remaining six accused persons, including the present Petitioner, faced trial. The property involved consisted of six bales of handloom cloth.

16. Since the case commenced on a complaint by a public servant, recording of pre-summoning evidence was dispensed with and the matter was listed for evidence in the pre-charge stage, which continued till 2007. Based on the

pre-charge evidence, a charge of the offence punishable under Section 3 of the RP (UP) Act was framed against all of the accused, each of whom pleaded not guilty and claimed trial.

17. The witnesses who were examined in the pre-charge stage were again examined and the prosecution examined some more witnesses as well. One witness was examined by the defence, whereas the prosecution examined 20 witnesses in all. The evidence of all these witnesses was discussed by the Trial Court. It was concluded by the Trial Court that merely because the case was based only on the testimonies of the police officials, no infirmity could be attributed to the case.

18. It was further noticed that some of the witnesses were in fact RPF officials, who would not be said to be 'police officials.' On analysing the evidence, it was found that the property consisting of three bales of cloth was found in the possession of two of the accused (not including the present Petitioner). Nothing could be extracted during the cross-examination which could help them. They had also not disputed their presence on the spot and they had no plea of alibi as well. Thus, it was held that the case of the said two accused was proved beyond reasonable doubt.

19. As far as the remaining accused persons, including present Petitioner, were concerned, it was found that the prosecution sought to prove the case against them based on the disclosures made by two other accused and their confessional statements. The law in relation to this piece of evidence was then analysed threadbare. It was noted that three bales of the property were

recovered from Gurnam Singh upon the statements of the other two accused which clearly showed their involvement. It was held that the remaining accused could not be convicted on the basis of such statements. In paras 84 and 85 the following conclusions were arrived at:

“84. In view of the above discussion, I am of the considered view that the prosecution/complainant has been able to prove its case beyond reasonable doubt against accused Satyawar Singh and Phool Singh, as they were found in possession of railway property reasonably suspected of having been stolen or unlawfully obtained. Accordingly, these accused persons are found guilty and are convicted under section 3 of the Act.

85. However, the prosecution has not been able to prove beyond reasonable doubt that the accused persons Hukum Chand and Sahib Singh had been in possession of railway property reasonably suspected of having been stolen or unlawfully obtained. These accused persons are given the benefit of doubt and are acquitted of the charges.”

20. A careful perusal of the judgment shows that although the trial Court has used the expression ‘benefit of doubt’ while acquitting the present Petitioner and Hukum Chand, the acquittal was actually on merits after a full-fledged trial. It was not an acquittal on technical grounds. The purport of the RS(D&A) Rules was only to deal with the situation where an employee placed on suspension on account of a pending criminal case gets subsequently acquitted in the trial on technical grounds.

21. The expression ‘benefit of doubt’, is generally used in a larger number of criminal cases usually involving circumstantial evidence. That expression by itself does not convey that the acquittal was not on merits but only on

technical grounds. It is generally used when the evidence led by the prosecution does not conclusively prove the guilt of the accused. In ***Inspector General of Police v. S. Samuthiram (2013) 1 SCC (Cri) 566*** the Supreme Court explained as under:

“24.....The expression "honourable acquittal" "acquitted of blame", "fully exonerated" are unknown to the court of criminal procedure or Penal code, which are coined by judicial pronouncement. It is difficult to define precisely what is meant by expression "honourably acquitted". When there is acquittal after full consideration of prosecution evidence that the prosecution had miserably failed to prove the charge levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

22. It is not possible for the Court to agree with the submission of the Respondents that in the present case the acquittal of the Petitioner in the criminal case was on technical grounds. Although, the trial Court has used the expression ‘benefit of doubt’ while acquitting the Petitioner, the fact remains that the Petitioner was acquitted on merits. In other words, it was a clean acquittal after a full-fledged trial and not an acquittal on technical grounds.

23. In ***Devender Kumar Yadav v. Govt. of NCT of Delhi 2012 (190) DLT 140*** it was held by this Court as under:

"12.....Such acquittals, where the material witnesses are produced during trial, but, they do not support the case of prosecution, to our mind cannot be said to be technical acquittals. We cannot accept the contention that only a case, where the accused is acquitted despite material witnesses supporting the case of prosecution on merits, would be a case of acquitted other than technical acquittal. We cannot presume that

a witness, who does not support the case of the prosecution is necessarily doing so in collusion with the accused, in order to save him from the punishment, despite his actually having committed the offence, with the commission of which he is charged.

It may be true in some cases but may not necessarily be so in each case. What has to be seen in such cases is whether the material witnesses were examined or not. If they are examined but do not support the prosecution and consequently it is held that the charge against the accused does not stand proved, that would not be a case of technical acquittal. We would like to note here that no independent enquiry was held by the respondents to verify the truthfulness or otherwise of the allegations which were made against the petitioner in the FIRs that were registered against him.

The Screening Committee which considered the case of the petitioner had no material before it which could give rise to an inference that the petitioner had actually committed the offence for which he had been prosecuted. As noted earlier, there is a presumption of innocence attached to an accused in a criminal case and the onus is on the prosecution to prove the charges levelled against him. Acquittal of the accused, after trial, only strengthens and reinforces the statutory presumption which is otherwise available to him. We, therefore, hold that the view taken by the Screening Committee was not based on some legally admissible, material and therefore cannot be sustained in law....."

24. In that view of the matter, the Court is of the considered opinion that the Respondents ought not to have reduced the retiral benefits of the Petitioner by treating the period of suspension as 'not spent on duty'. That would be unfair to the Petitioner apart from being unwarranted under the extant rules, since the ten years during which the Petitioner remained under suspension

was on account of having to face a trial which ultimately ended in his acquittal.

25. For all of the aforementioned reasons, a direction is issued to the Respondents to treat the period of suspension of the Petitioner from 20th September, 1984 to 24th August, 1994 as period spent on duty. The Respondents are directed to calculate the retiral benefits of the Petitioner, including his last drawn salary on the said basis and also to release the DCRG in the sum of Rs.5,94,000/- to the Petitioner within a period of eight weeks.

26. The writ petition is allowed in the above terms but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 23, 2019

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