

**ORISSA HIGH COURT: CUTTACK**

**W.P.(C) NO. 9904 OF 2018**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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**AFR**

Rajesh Behera ..... Petitioner

-Versus-

Deputy Registrar, CAT,  
Cuttack Bench, Cuttack  
and others

..... Opp. Parties

For Petitioner : M/s. P.K. Nayak, H.B. Dash,  
and A.C.R. Das, Advocates

For Opp. Parties : Mr. D.R. Swain, Advocate  
(O.Ps. 1 and 2)  
Mr. Goutam Mishra,  
Senior Advocate along with  
M/s. A. Dash, J.R. Deo,  
A. Khandal, Advocates.  
(O.Ps. 3 and 4)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI  
AND  
THE HON'BLE MR. JUSTICE SANJAY KUMAR MISHRA**

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**Date of Hearing: 21.06.2022::Date of Judgment: 28.06.2022**

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**DR. B.R. SARANGI, J.** The Petitioner, who is working as Senior Technician-Cum-Operator in the Department of Shops

(Structural & Fabrication), Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela, has filed this writ petition seeking to quash the order dated 16.04.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00152 of 2015, at Annexure-4 and to issue direction to the Opposite Parties to release all benefits by treating the period of suspension as in duty, along with all consequential benefits.

2. The factual matrix of the case in brief, is that the Petitioner joined as Technician-Cum-Operator on 04.10.2001 under the Opposite Parties No. 3 to 5. While he was working as Senior Technician-Cum-Operator, on 12.06.2010, Opposite Party No.4 issued an order of suspension of the Petitioner on the allegation of initiation of proceeding in the court of law for commission of offences under Sections 498(A)/304-B/302/34 of the Indian Penal Code (for short "IPC") read with Section 4 of the Dowry Prohibition Act (for short "D.P. Act") with an observation that the Petitioner is placed under suspension until disposal of the criminal trial pending against him in accordance with Clause 30 (ii)(h) of the

Certified Standing Orders of the company. It was further directed by Opposite Party No.4 that during the period of suspension, the Petitioner shall not enter into the work premises except with the permission of the competent Authority, nor should he leave the station without his permission and shall surrender his identity card before the superior Officer immediately.

2.1 The Petitioner faced trial in Sessions Trial Case No. 106/05 of 2010-11 arising out of Sector-7 P.S. Case No. 34/2010, corresponding to G.R. Case No. 615/2010 and the learned Additional Sessions Judge, Fast Track Court, Rourkela, after conclusion of the trial, acquitted the Petitioner of all the charges under Section 235 (i) of the Cr.P.C. vide judgment and order dated 22.08.2012.

2.2 After such acquittal order was passed, the Petitioner immediately intimated the said order of acquittal to the Opposite Party No.5 with a prayer to revoke the order of suspension and allow him to resume his normal duty. On receipt of such intimation from the Petitioner, Opposite Party No.5 vide order dated

05.09.2012, revoked the order of suspension and treated the period of suspension as such and directed the Petitioner to resume his duty immediately. As per the order dated 05.09.2012, the Petitioner resumed his normal duty like others and made a representation to the Authority on 09.10.2012 with a prayer to treat his suspension as duty and to release all the dues as per his entitlement and other consequential benefits. On receipt of such representation, Opposite Parties No. 3 to 5 did not take any action and sat over the matter. Thereafter, a reminder was issued on 11.07.2014 contending that he was acquitted of all the charges and became the victim of torture mentally and financially for no fault of him and also was deprived of getting three increments and its corresponding D.A. and other statutory and consequential benefits, but no action was taken thereof. As a consequence thereof, the Petitioner approached the Central Administrative Tribunal, Cuttack Bench, Cuttack, by filing O.A. No. 606 of 2014, which was disposed of vide order dated 06.08.2014 with a direction to Opposite Parties No. 3 to 5 to consider his representation within

sixty days. In compliance of the said order of the Tribunal passed on 06.08.2014 in O.A. No. 606 of 2014, Opposite Party No. 5, vide order dated 17.10.2014, rejected the representation of the Petitioner dated 09.10.2012 and the reminder dated 11.07.2014 on the ground that it would be detrimental to the maintenance of discipline, if service/financial benefits are granted for the period of his suspension, as a matter of course.

2.3 Against such rejection of representation, the Petitioner filed O.A. No. 260/00152 of 2015 before the Central Administrative Tribunal, Cuttack Bench, Cuttack. Pursuant to notice issued by the Tribunal, Opposite Parties No. 3 to 5 filed their Counter Affidavit stating therein that the Petitioner was not available for duty, as his presence at the work spot was considered detrimental to the interest of the organization and the Opposite Party-Company could not avail his service during the said period as the Petitioner remained suspended and, as such, he is not entitled to any back wages for the period of suspension.

2.4 In response to the same, the Petitioner also filed Rejoinder Affidavit contending inter alia that there is nothing on record to show that the Petitioner's behaviour and conduct has tarnished the reputation of the Company. Merely because he was involved in a criminal case, he was placed under suspension and, as such, the suspension is attributable to the Opposite Party-Company on failure to initiate any Domestic Inquiry as regards any alleged misconduct. Thereby, mere suspension throughout till reinstatement without any proceeding is unjustified and amounts to violation of principle of natural justice. It was further indicated that Opposite Parties No. 3 to 5 cannot be saddled with the liability for payment of full wages for the period of suspension, on the other hand, a direction was made to the Petitioner that during the period of suspension the Petitioner should not enter the work premises except with the permission of the competent Authority, nor should leave the station without his permission.

2.5 The Tribunal, on the basis of the pleadings available, dismissed the Original Application, vide order

dated 16.04.2018, on the ground that after acquittal from the criminal case, the Petitioner is only entitled to reinstatement in service and not entitled to get the consequential benefits. Challenging such order of the Tribunal, the Petitioner has filed the present Writ Petition.

3. Mr. P.K. Nayak, learned counsel appearing for the Petitioner contended that the Tribunal has committed gross error apparent on the face of the record by dismissing the Original Application and refusing to grant full back wages, merely because the Petitioner was involved in a criminal case, though he was acquitted ultimately in the trial. It is further contended that before the Tribunal though the Petitioner had relied upon the judgment of the apex Court in ***Brahma Chandra Gupta v. Union of India***, AIR 1984 SC 380, but the same was not taken note of nor reflected in the order itself by the Tribunal. Therefore, in view of the ratio decided in the said case, the Petitioner is entitled to get the differential back wages as he was paid subsistence allowance during the suspension period.

3.1 It is further contended that judgment of the apex Court in ***Union of India v. Jaipal Singh***, AIR 2004 SC 1005, on which reliance was placed by Opposite Parties No. 3 to 5, has no application, as fact of the said case is not identical to the present case. In the said case, the Petitioner was dismissed on conviction in a criminal case and he was out of service. But in the present case, the Petitioner was suspended and the Authority directed not to enter into the work premises except with the permission of the competent Authority, nor should leave the station without his permission. Therefore, factually the case of the Petitioner vis-à-vis ***Jaipal Singh*** (supra) is distinguishable. The reliance placed thereon by the Tribunal cannot sustain in the eye of law.

3.2 It is further contended that the Petitioner's name has been included in a criminal case, but during trial, he was placed under suspension without initiating any disciplinary proceeding against him and during suspension period, he was paid the subsistence allowance, but acquittal being made by the Trial Court, he was immediately reinstated in service. Therefore, for

the period he remained away from the work place because of the order passed by the Authority, he should not have been deprived of the benefits of differential back wages admissible to him. Thereby, the Tribunal has committed gross error apparent on the face of the record in appreciating the factual matrix of the case in hand vis-à-vis the judgments relied upon by the Petitioner, the judgment in **Jaipal Singh** (supra) as well as the judgment in **Krishnakant Raghunath Bibhavnekar v. State of Maharashtra**, AIR 1997 SC 1434.

3.3 It is further contended that Clause-30 of the Standing Orders deals with the procedure for dealing with cases of misconduct. As per Clause-30 (ii) (e), since the Petitioner was not found guilty of misconduct alleged or any other misconduct, he should be reinstated in his post and should be paid the difference between the subsistence allowance already paid and emoluments which he would have received if he had not been suspended, the period of suspension being treated as duty. Thereby, the Petitioner is entitled to get the

differential wages, for the period, he was placed under suspension.

3.4 To substantiate his contention, reliance has been placed to the Three-Judge Bench decision of the apex Court in ***Brahma Chandra Gupta*** (supra), ***Jaipur Vidyut Vitran Nigam Ltd and Others v. Nathu Ram***, AIR 2010 SC 19, wherein the judgment of the apex Court in the case of ***Jaipal Singh*** (supra) was distinguished.

4. Per contra, Mr. Goutam Mishra, learned Senior Counsel appearing along with Mr. A. Dash, learned Counsel for Opposite Parties No. 3 to 5 vehemently contended that since the Petitioner had not discharged his duty during the suspension period and he was granted the benefit of subsistence allowance, even after acquittal from trial he is not entitled to get the differential back wages as claimed by him and thus contended that the Tribunal is well justified in passing the order impugned relying upon the judgments of the apex Court in ***Jaipal Singh*** and ***Krishnakant Raghunath Bibhavnekar*** (supra), where the direction was given that

the order of the SAIL is in consonance with the judicial pronouncements and no fault is found in not extending the financial benefits during the period of suspension and though after acquittal the Petitioner is entitled to continuity in service, but cannot be paid salary for the period he was out of services arising out of his own action as per initiation of dowry death case and the department has no role to play and the Petitioner himself had invited the wrath, and accordingly dismissed the Original Application.

4.1 It is further contended that reliance placed on Clause-30 (ii)(e) of the Standing Orders for grant of financial benefits to the Petitioner is in relation to a disciplinary proceeding initiated against the person concerned and that has got nothing to do in a case of involvement in criminal case. Reliance has been placed on Clause-30 (ii)(h), which clearly indicates that subject to provisions contained in Clauses (d) and (e), the Company reserves the right to suspend an employee accused in a court of law for any criminal offence involving moral turpitude until the disposal of the trial. Since the

Petitioner is allegedly involved in commission of offence under Section 304-B of the IPC, which comes under the moral turpitude, thereby the Company is well justified by passing the order of suspension being an accused in a court of law for the criminal offence alleged against him. Consequentially, he is not entitled to get any financial benefits as claimed by him.

4.2 It is further contended that so far as suspension period, during criminal allegation against the employee, is concerned, whether he will be paid full back wages or not, the Standing Orders of SAIL, Rourkela Steel Plant is silent. In absence of any such condition stipulated in the Standing Orders, the Petitioner is not entitled to get any benefits as claimed by him. Thereby, the Tribunal is well justified by dismissing the Original Application so far as grant of financial benefits pertaining to differential back wages is concerned.

4.3 To substantiate his contention, reliance is placed on a Single Bench judgment of this Court where one of us (Dr. Justice B.R. Sarangi was a member) in the

case of **Narottam Pattanaik v. Chairman-cum-Managing Director, Orissa State Road Transport Corporation and others**, 2015 SCC OnLine Ori 143, wherein a direction was given that the Petitioner is entitled to back wages for the period from 18.01.2000 to 01.10.2000 and thereby the impugned order, so far as it denied back wages from 05.05.2000 to 01.10.2000, was modified to the extent that the Petitioner is entitled to back wages from 18.01.2000, the date he was acquitted till he was reinstated in service, i.e. 01.10.2000 as if he is continuing in service. Applying the said principle to the present context, it is contended that the Petitioner having acquitted by the Trial Court on 22.08.2012, immediately thereafter the order of suspension was revoked and he was allowed to resume his duty on 05.09.2012. Therefore, if at all any benefit is to be paid, it should be for the period from 22.08.2012 to 05.09.2012, to which the Opposite Parties may not have any objection to pay the same.

5. This Court heard Mr. P.K. Nayak, learned Counsel appearing for the Petitioner, and Mr. Goutam

Mishra, learned Senior Counsel along with Mr. A.Dash, learned Counsel appearing for the Opposite Parties No. 3 to 5 by hybrid mode and perused the records. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this writ petition is being disposed of finally at the stage of admission.

6. There is no dispute with regard to the factual matrix delineated above. Only question to be considered by this Court at this point of time is that if an employee, due to his involvement in a criminal case, is placed under suspension, on being acquitted of the charges by the Trial Court, whether he is entitled to get differential back wages for the period of suspension.

7. Both Mr. Nayak, learned Counsel appearing for the Petitioner and Mr. Mishra, learned Senior Counsel appearing for the Opposite Parties No.3 to 5, have admitted that the Standing Orders certified by the Government of India, Ministry of Labour & Employment, Office of the Chief Labour Commissioner (Central) dated

31.12.1963 applies to the present Petitioner. Reliance has been placed by the parties on Clause-30 (ii) (e) and (h), which reads as follows:-

*“30 (ii) (e). If, after enquiry, an employee is adjudged guilty of the misconduct alleged against him or some other misconduct brought out in the course of the enquiry and punishment is awarded, the employee shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. If a penalty other than dismissal or removal is imposed on him, the punishing Authority shall by order decide as to how the period of suspension shall be treated. If however, he is found not guilty of the alleged misconduct or any other misconduct, he shall be reinstated in his post and shall be paid the difference between the subsistence allowance already paid and emoluments which he would have received if he had not been suspended, the period of suspension being treated as duty.”*

*“30 (ii) (h). Subject to the provisions contained in clauses (d) and (e) above, the Company reserves the right to suspend an employee accused in a Court of Law for any criminal offence involving moral turpitude until the disposal of the trial.”*

There is no iota of doubt that Clause-30 of the Standing Orders deals with the procedure for dealing with cases of misconduct. That relates to a Departmental Proceeding initiated by the Steel Authority of India Ltd. Therefore, Clause-30 (ii)(e) relates to a situation which has been crept in a Departmental Proceeding and it is held that if the Delinquent Officer is not found guilty of the alleged misconduct or any other misconduct, he shall be

reinstated in his post and shall be paid the difference between the subsistence allowance already paid and the emoluments which he would have received, if he had not been suspended, the period of suspension being treated as duty.

8. Under Clause-30 (ii) (h) of the Standing Orders, as mentioned above, the power of suspension of an employee has been reserved with the Company, when such employee is an accused in a court of law for any criminal offence involving moral turpitude until disposal of the trial. Therefore, the power is vested with the employer to place an employee under suspension, if involved in a criminal case involving moral turpitude until disposal of the trial. If the contention of Mr. G. Mishra, learned Senior Counsel appearing for the Opposite Parties No. 3 to 5 is taken into consideration, as the Petitioner was involved in an offence under Section 304-B IPC, which involves the moral turpitude, then the Employer has got the power to place him under suspension and, as such, the Employer had exercised such power and placed the Petitioner under suspension. But the consequence of

acquittal in a criminal case has not been indicated in the Standing Orders itself. More so, even after involvement in criminal case, no action has been taken by the Employer by initiating a Disciplinary Proceeding. Rather direction was given that during the period of suspension, the Petitioner shall not enter the work premises except, with the permission of the competent Authority, nor should he leave the station without permission. Thereby, the order of suspension, because of involvement in criminal case being a conditional one, the Petitioner was waiting in the headquarters by availing the suspension allowance admissible to him, during the period of suspension. Ultimately, the Petitioner was acquitted in the criminal trial itself. Without initiating any Disciplinary Proceeding and ultimately, the Petitioner having been acquitted of the criminal charges in trial, mere involvement in a criminal case, placing him under suspension and denial of differential back wages, may not have any justification when he has been allowed to continue in service.

9. Taking into consideration Clause-30 (ii)(e) of the Standing Orders, which is applicable to an employee

involved in a Disciplinary Proceeding and applying the said principle to the present case, if the Petitioner was allegedly involved in a criminal case and ultimately being acquitted in trial, was reinstated immediately and paid subsistence allowance, he is entitled to get the difference between the subsistence allowance already paid and the emolument which he would have been received, had he not been suspended, the period of suspension being treated as duty. Reason being, by passing a preventive order of suspension, the Employer has deprived the Petitioner to discharge his duty putting a condition that he should not enter the work premises without the permission of the competent Authority and putting a further condition that he should not leave the station without prior permission of competent Authority. In that view of the matter, the Petitioner could not have moved anywhere, save and expect staying at headquarters, without prior permission of the Authority. Therefore, mere involvement in criminal case cannot deprive the Petitioner to get the differential salary admissible to him as he has

already received the subsistence allowance for the period he was placed under suspension.

10. On a query being made by this Court, Mr. G. Mishra, learned Senior Counsel appearing for the Opposite Parties No. 3 to 5, stated that there is a gray area as the Standing Orders is silent with regard to the extension of benefits of differential salary and thus the Tribunal is well justified in passing the order impugned. But there is no rationality behind such submission made by learned Senior Counsel appearing for the Opposite Parties No. 3 to 5. Even if Standing Orders are silent about the issue and there is a gray area, but applying the principles of Standing Orders and in view of the law laid down by the apex Court, the benefit of differential salary is admissible to the Petitioner.

11. Much reliance has been placed by Mr. G. Mishra, learned Senior Counsel appearing for the Opposite Parties No. 3 to 5 on the judgment of this Court in the case of **Narottam Pattanaik** (supra). The factual matrix of that case is different from that of the present

one, meaning thereby in the said case the Petitioner was continuing as a conductor under Orissa State Road Transport Corporation and on the allegation of misappropriation of Rs. 3859.30, the then Traffic Manager, Puri of the Corporation lodged an F.I.R., basing upon which G.R. Case was instituted and the Petitioner therein faced the trial. Consequentially, he was convicted under Sections 467/471/409, IPC. Assailing such judgment and order of conviction and sentence, the Petitioner preferred Criminal Appeal. The said Appeal was dismissed confirming the judgment and order of the court below. Against such judgment of the Appellate Court, the Petitioner preferred revision and this Court set aside the judgment of conviction and order of sentence imposed by both the Trial Court as well as the Appellate Court. As a consequence thereof, the Petitioner made a grievance for reinstatement in service and on his reinstatement, he again claimed for continuity in service for the purpose of financial benefits and also back wages for the period he was placed under suspension and out of employment because of conviction made by the competent criminal

Court. Thereby, this Court formulated a question whether the Petitioner is entitled to get full back wages for the period he was out of employment for the reasons that he has been convicted by the appropriate criminal Court and also continuity in service as claimed by him. This Court came to a conclusion that the Petitioner should be considered as if he is continuing in service, but he is entitled to the back wages for the period from 18.1.2000 to 1.10.2000. Accordingly modified the order, so far as it denies back wages from 5.5.2000 to 1.10.2000 to the extent that the Petitioner is entitled to back wages from 18.1.2000, the date he was acquitted, till he was reinstated in service i.e. 1.10.2000, as if he is continuing in service. Therefore, Mr. G.Mishra, learned Senior Counsel appearing for the Opposite Parties No.3 to 5, candidly admitted that from the date of acquittal till reinstatement, i.e. for the period from 22.08.2012 to 05.09.2012, they may not have any objection to pay the dues admissible to the Petitioner.

12. But fact remains, the case of **Narottam Pattanaik** (supra) is distinguishable from the present

case, as the Petitioner was allegedly involved in a criminal case, for which he was placed under suspension and subsequently he was acquitted in trial. During the period of trial, he was placed under suspension and the reason for not discharging the duty is obviously because of the condition stipulated in the order of suspension itself. In that view of the matter, the ratio decided in the case of **Narottam Pattanaik** (supra) has no application to the present case.

13. Mr. P.K. Nayak, learned counsel for the Petitioner, contended that though the judgment of **Brahma Chandra Gupta** (supra) was placed before the Tribunal, the same was neither taken note of nor indicated in the order itself. As such, that itself is a Three-Judge Bench decision of the apex Court, where the apex Court at paragraph-6 held as follows:-

*“6. xxx xxx xxx. 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 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 3/4th 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. In **Jaipur Vidyut Vitran** (supra), the judgment of **Jaipal Singh** (supra) has been distinguished. Relying on Regulation-41 (2) of Service Regulations, direction was given to the Authorities to consider that the pay and allowance to be paid to such re-instated employees and accordingly directed that the Respondents are entitled to get suspension allowance and back wages from the date of termination to date of acquittal and re-instatement.

15. The Tribunal relied on the ratio decided in the case of **Krishnakant Raghunath Bibhavnekar** (supra), where the apex Court observed that reinstatement with all consequential benefits should not be granted as a matter of course. There the apex Court held that when the suspension period of the employee charged for committing criminal breach of trust was treated to be a

suspension pending the trial and even after acquittal, he was reinstated in service, he would not be entitled to the consequential benefits.

16. The Tribunal has committed an error apparent on the face of the record by refusing to grant the differential wages admissible to the Petitioner from the date of suspension till the date of reinstatement after acquittal, though the Petitioner was granted with the relief of continuity in service. Thereby, in view of the ratio decided by the apex Court in ***Brahma Chandra Gupta*** (supra), the Petitioner is entitled to get the differential wages for the period from the date of suspension till the date of reinstatement on acquittal in criminal trial.

17. Accordingly, the order of the Tribunal is modified to the extent that the Petitioner is entitled to get the differential wages during the period of suspension after acquittal in criminal trial, as he has been granted the benefit of continuity in service. The differential wages for the period from the date of suspension till reinstatement should be paid to the Petitioner as

expeditiously as possible, preferably within a period of three months from the date of communication of this judgment.

18. In the result, the order dated 16.04.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 260/00152 of 2015 is modified to the extent as indicated above and the writ petition is accordingly allowed to that extent only. No order as to costs.

**S.K. MISHRA, J.** I agree.

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**DR. B.R. SARANGI,**  
**JUDGE**

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**S.K. MISHRA,**  
**JUDGE**

*Orissa High Court, Cuttack*  
*The 28<sup>th</sup> June, 2022, Arun/GDS*