

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1917 OF 2021

Ravindra Prasad Munneshwar Prasad
Aged about 43 years, Occ. Service,
DBW HS-II O.F. Chanda, R/o Gurunagar,
Bhadrawati, District Chandrapur 442902

... Petitioner

-vs-

1. Union of India, through Secretary,
Ministry of Defence, D (Fy-II),
Sena Bhawan, New Delhi 11 0001
2. The D.G.O.F/Chairman, Ordnance
Factory Board, 10/A, Shaheed K. Bose
Road, Kolkata 700 001
3. The Sr. General Manager,
Ordnance Factory, Chanda,
Tah. Bhadrawati, Dist. Chandrapur-442902

... Respondents

Ms Kirti Satpute, Advocate for petitioner.
Ms Neerja Choube, Advocate for respondent Nos.1 to 3.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Date on which arguments were heard : February 24, 2022

Date on which Judgment is pronounced : March 31, 2022

(As per Chapter XI Rule 1 of the Bombay High Court Appellate Side Rules, 1960)

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioner was appointed as Danger Building Worker (Semi skilled)-DBW (SS) in the Ordnance Factory, Chandrapur in 2003. He was

thereafter promoted and while he was holding the post of DBW (HS)-II an offence under Section 419 read with Section 34 of the Indian Penal Code was registered against him. When the offence was registered the petitioner was placed under suspension by the order dated 12/11/2009. After Crime No.308/2009 was investigated, the petitioner was tried as accused No.7 by the learned Junior Magistrate (First Class), Bhadrawati in Regular Criminal Case No.93/2010. The learned Magistrate by his judgment dated 16/07/2014 was pleased to acquit the petitioner along with some other accused in the said trial. After his acquittal in the criminal case, the petitioner on 12/08/2014 issued a communication to the General Manager of the Ordnance Factory informing him of the fact of his acquittal and requested that his suspension be revoked. On 08/10/2014 the Competent Authority in exercise of power under Rule 10(5) (C) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, CCA Rules, 1965) revoked the order of suspension. The petitioner then made a request for treating the period of suspension from 12/11/2009 to 15/10/2014 as period spent on duty. The General Manager on 16/10/2015 issued a show cause notice to the petitioner that as he had been acquitted in the trial by granting him the benefit of doubt, his acquittal could not be said to be honourable. It was therefore proposed to treat his suspension from 12/11/2009 to 15/10/2014 as justified suspension and the period was to be treated as “not on duty” for all purposes. The petitioner was thus granted an

opportunity to make a representation on the proposal. The petitioner on 26/10/2015 replied to the notice and stated that he had been honourably acquitted and therefore the period of suspension was liable to be treated as period on duty. On 13/04/2016 the Competent Authority regularised the period from 12/11/2009 to 15/10/2014 as “not spent on duty” for all intents and purposes.

2. The petitioner being aggrieved by the aforesaid order filed Original Application No.2167/2016 before the Central Administrative Tribunal. The Tribunal after considering the case of the petitioner as well as the stand of the respondents referred to Fundamental Rule 54-B(3) and found that the suspension of the petitioner was not wholly unjustified. The acquittal in criminal case was after granting the petitioner the benefit of doubt and hence by the judgment dated 20/08/2019 the Tribunal dismissed the Original Application. Being aggrieved the petitioner has challenged the aforesaid judgment of the Tribunal in this writ petition.

3. Ms Kirti Satpute, learned counsel for the petitioner submitted that the petitioner had been honourably acquitted in the criminal trial. In view of the judgment of acquittal the suspension of the petitioner from service was not at all justified and therefore the period from 12/11/2009 to 15/10/2014 ought to be treated as period spent on duty. Referring to the judgment of the

learned Judicial Magistrate (First Class) dated 16/07/2014 it was submitted that the trial insofar as the present petitioner and some accused was separated from that of other accused. The evidence on record led by the prosecution was found to be insufficient and therefore the petitioner came to be acquitted. The respondents were not justified in relying upon the opinion expressed by the learned District Government Pleader dated 21/05/2015 that the petitioner had been acquitted by granting him benefit of doubt. Reference was then made to the provisions of Fundamental Rule 54-B as well as Rule 5 of the Disciplinary Rules to urge that on the petitioner's acquittal he was entitled to reinstatement along with full pay and allowances. The respondents did not choose to initiate any disciplinary proceedings against the petitioner and hence there was no reason to deprive him of salary and allowances for the period between 12/11/2009 to 15/10/2014. In support of her submissions learned counsel placed reliance on the decisions in *Mohinder Singh vs. BSES Rajdhani Power Limited (2014) 2 CLR 321* and *Commissioner of Police, Delhi vs. H. C. Laxmi Chand ILR (2012) 1 DELHI 46*. It was thus submitted that the Tribunal erred in dismissing the Original Application and refusing to grant the relief as prayed for. It was thus submitted that the writ petition was liable to be allowed.

4. Ms Neerja Choube, learned counsel for the respondents opposed the aforesaid submissions and supported the order passed by the Tribunal.

She submitted that the acquittal of the petitioner was on a technical ground and it was not an honourable acquittal. This was clear from a complete reading of the judgment passed by the learned Judicial Magistrate (First Class). Even though the respondents did not hold any disciplinary enquiry that would be no reason to hold that the period from 12/11/2009 to 15/10/2014 was period spent on duty. The suspension of the petitioner during that period was wholly justified considering the nature of allegation in the criminal trial. Since it could not be said that the suspension of the petitioner was wholly unjustified, the Tribunal did not commit any error in dismissing the Original Application. In support of the aforesaid submissions, the learned counsel placed reliance on the decision in *Dinesh Kumar Kain vs. Assistant General Manager 131 (2006) DLT 550* and the judgment of the Andhra Pradesh High Court in *Kudikyala Kankaiah S/o Bakkaiah vs The Superintending Engineer* decided 07/08/2017. It was thus submitted that the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties and we have perused the documents placed on record. Having given due consideration to the rival submissions, we are of the view that the judgment of the Tribunal does not call for any interference and the petitioner is not entitled for the relief as prayed for by him.

6. The facts indicate that in view of registration of Crime No.308/2009 under Sections 419 and 34 of the Indian Penal Code at Police Station Bhadrawati in which the petitioner was arrayed as an accused, he was placed under suspension on 12/11/2009 under Rule 10(1)(b) of the CCA Rules, 1965. On completion of investigation in the aforesaid crime, trial was conducted before the learned Judicial Magistrate (First Class) Bhadrawati vide Regular Criminal Case No.93/2010. Besides the petitioner there were six other accused therein. The case of the prosecution therein was that accused Nos.2, 4 and 6 were candidates for the examination conducted for the post of Fireman Grade-II. However, in their place accused Nos.1, 3 and 5 appeared on their behalf in that examination. It was the further case of the prosecution that the petitioner as accused No.7 had contacted the original candidates, accused Nos.2, 4 and 6 and thereafter permitted accused Nos.1, 3 and 5 to appear in that examination on their behalf. Before the trial Court accused Nos.1, 3 and 5 remained absent. Their trial was then separated and accused Nos.2,4,6 and 7 were proceeded against. It was noted that the Investigating Officer remained absent and that the eye-witnesses had not supported the case of the prosecution. The learned Judicial Magistrate then observed in paragraph 8 of his judgment that considering the nature of evidence on record the charge against the accused could not be proved beyond reasonable doubt. On that premise the said accused were acquitted.

7. According to the learned counsel for the petitioner, the petitioner was honourably acquitted in the criminal trial and thus there was no basis for suspending the petitioner from service from 12/11/2009 to 15/10/2014. In other words, it was submitted that on account of such honourable acquittal the petitioner's suspension was "wholly unjustified". Before considering this aspect it would be useful to refer to following observations in paragraph 13 of the recent decision of the Honourable Supreme Court in ***Union of India and others vs. Methu Meda (2022) 1 SCC 1*** :

" 13. The expression "honourable acquittal" has been considered in State vs S. Samuthiram (2013) 1 SCC 598 after considering the judgments in RIB vs. Bhopal Singh Panchal (1994) 1 SCC 541, R. P. Kapur vs. Union of India AIR 1964 SC 787 and State of Assam vs. Raghava Rajgopalachari 1967 SCC Online SC 1, this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court."

In ***Deputy Inspector General of Police vs. S. Samuthiram (2013) 1 SCC 598*** the Honourable Supreme Court observed that the expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code and said expressions

were coined by judicial pronouncements.

8. On perusing the judgment of the learned Judicial Magistrate (First Class) in the aforesaid context, it becomes clear that it was found that the eye-witnesses examined had not supported the case of the prosecution and the Investigating Officer had not been examined to prove the inconsistencies in the statements of the witnesses. On that premise the learned Magistrate observed that the charge against the petitioner was not proved beyond reasonable doubt. These observations when considered in the light of the law laid down in *Methu Meda* (supra) lead no manner of doubt that such acquittal was after giving the petitioner the benefit of doubt and the acquittal could not be treated as to be a honourable acquittal.

9. After the petitioner's acquittal the Competent Authority considered the request of the petitioner to treat the period of suspension as period spent on duty. In that context a show cause notice dated 16/10/2015 was issued to the petitioner. After considering the reply of the petitioner, the Competent Authority on 13/04/2016 held that the petitioner's suspension from 12/11/2009 to 15/10/2014 was justified and said period ought to be treated as "not spent on duty" for all purposes. Fundamental Rule 54-B(3) insofar as it is relevant for the present purpose reads as under :

54-B(3) : Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the

Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

10. It is thus seen that only if the Competent Authority is of the opinion that the suspension in question was wholly unjustified that the Government servant would be entitled to full pay and allowances to which the Government servant would have been entitled had he not been suspended. Considering the nature of allegations made against the petitioner that led to registration of Crime No.308/2009, we find that the suspension of the petitioner on 12/11/2009 was infact justified. The petitioner while working as Danger Building Worker (Semi skilled) II was alleged to have permitted accused Nos.1,3 and 5 to appear for the examination for the post of Fireman Grade-II in place of the actual candidates who were accused Nos.2,4 and 6. The accusations as made were on account of the conduct of the petitioner himself during the course of employment with the respondent No.3-Ordnance Factory. Though it is true that the petitioner was ultimately acquitted in the criminal trial, the nature of allegation that led to his suspension on 12/11/2009 would be relevant for considering whether his suspension was justified or not. It would have been a different matter if the petitioner's conduct that led to his suspension was based on an act that did not have any connection with discharge of his duties. That is not the case here. The Competent Authority therefore was justified in placing the

petitioner under suspension on registration of such offence against him.

In this regard we may refer to the decision of the Honourable Supreme Court in ***Krishnakant Raghunath Bibhavnekar vs. State of Maharashtra and ors.*** 1997 3 SCC 636. The cause of suspension and initiation of punitive action based on the petitioner's conduct leading to his prosecution were found to be sufficient to hold such suspension to be justified therein. The following observations in paragraph 4 are relevant and the same are reproduced as under :

"4. ... If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits. In our considered view this grant of consequential benefits with all back wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into the misconduct unless, the selfsame conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty (and on payment of subsistence allowance etc.). Rules 72(3), 72(5) and 72(7) of the Rules give discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date the Rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even

after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. ...”

11. The Tribunal while considering the Original Application preferred by the petitioner has rightly held that the acquittal of the petitioner was after grant of benefit of doubt. Since the involvement of the petitioner was in a serious criminal offence and he was acquitted by giving him the benefit of doubt, it was held that the petitioner was not entitled for regularisation of the period of suspension by treating him to be “on duty”. All relevant aspects of the matter have been considered by the Tribunal and we do not find any reason to take a different view from the one taken by it.

The decision in ***Dineshkumar Kain*** (supra) supports the conclusion that we have recorded. It cannot be said that while passing the impugned order dated 13/04/2016 holding the petitioner not entitled to pay and allowances for the period of suspension, the Competent Authority acted arbitrarily. The decisions relied upon by the learned counsel for the petitioner in these facts are clearly distinguishable and hence the ratio therein cannot be applied to the facts of the present case.

For aforesaid reasons there is no merit in the challenge as raised. The writ petition is thus dismissed. Rule stands discharged. No order as to costs.

(G. A. Sanap,J.)

(A. S. Chandurkar, J.)