

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**LPA No.1893 of 2016 (O&M)
Decided on : 28.03.2022**

State of Punjab and others

... Appellants

Versus

Balkar Singh

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms. Promila Nain, Advocate for the appellants.

None for the respondent.

G.S. Sandhawalia, J. (Oral)

Present letters patent appeal is directed against the order of the learned Single Judge dated 03.05.2016 passed in CWP No.21586 of 2015 'Balkar Singh Vs. State of Punjab and others'.

The learned Single Judge has quashed the order dated 29.01.2015 (Annexure P-6) and directed that a fresh order be passed in accordance with law by treating the disputed periods as periods deemed to be spent on duty for all intents and purposes including right to consideration for promotion from the date juniors were promoted to higher rank. The same was done on account of the fact that the writ petitioner was facing a criminal trial and the same ended in an acquittal.

Counsel for the appellants has vehemently submitted that the writ petitioner was being prosecuted under the Prevention of Corruption Act, 1988 and had been sentenced for 5 years on 28.01.2004. It is submitted that on account of acquittal by this Court in CRA-S-310-SB-2004 decided on 26.11.2013, wherein he had been granted the benefit of doubt by this Court, the learned Single Judge had issued necessary directions. It is, thus, submitted that it was on account of the own conduct as such of the

employee as such that he was being criminally prosecuted and, therefore, the learned Single Judge has erred initiating necessary directions.

A perusal of the judgment in question would go on to show that writ petitioner was dismissed on 28.07.2004 on account of his conviction on 28.01.2004. He earned the acquittal in appeal before this Court on 26.11.2013, whereby it was noticed that being annoyed with the appellant apparently on account of the fact that the appellant had imposed penalty on the Dera on account of pilferage of power supply committed by it, since it was paying tariff for domestic use and supply was being used for commercial purposes prosecution had been initiated. It was also noticed that the employee did not have the authority for passing the estimate, which was to be done by the Executive Engineer and the estimate after having been prepared had been sent to the authority and the same was received back with some objections from the office of Executive Engineer. The estimate, thus, could not be reduced by the appellant who was working with the Junior Engineer. Resultantly, it was noticed that the prosecution was required to prove its case beyond the shadow of reasonable doubt and the benefit of the same has to go to the accused. The relevant portion of the said judgment reads as under:-

“Thus, in the present case, the estimate in question was to be cleared by the Executive Engineer. So far as the appellant is concerned, he merely had to forward the file

from Junior Engineer to Executive Engineer and in case, the file was received back with some objections from the office of the Executive Engineer, then the appellant was to again forward it to the Junior Engineer, who would again send the file to the appellant after removal of objections and, thereafter, the appellant was to only forward the same to the Executive Engineer. Since the estimate was to be prepared by the Junior Engineer, appellant could not have reduced the estimate.

In the present case, appellant had imposed penalty on the Dera on two occasions and it is possible that due to this reason, appellant might have been falsely involved in this case by the complainant as he might have been annoyed with the appellant.

Thus, in the present case, although, complainant and official witness have supported the prosecution case but in view of the statement of DW1 and cross-examination of PW8, prosecution case is rendered doubtful. Further complainant has also admitted in his cross-examination that the appellant had told him that the needful was to be done by the Executive Engineer.

It is a settled proposition of law that the prosecution is required to prove its case beyond the shadow of reasonable doubt. Whenever there is doubt in the prosecution case, the benefit of the same has to be extended to the accused.

In the present case, the prosecution has failed to prove its case beyond the shadow of reasonable doubt, hence, the appellant is liable to be acquitted of the charges framed against him by giving him benefit of doubt.

Accordingly, this appeal is allowed. The impugned judgement/order dated 23.1.2004/28.1.2004 are set aside. Appellant is acquitted of the charge framed against him by giving him benefit of doubt.”

The concerned rules of the Corporation were taken into consideration and it was noticed that it deals with exoneration on the departmental side but not acquittal and, thus, did not deal with criminal trials or their results. Keeping in view the findings of the Criminal Court, it was noticed that the defence under Section 313 Cr.P.C. had been taken to the extent as noticed above and that the authority dealt with the exoneration not given by it under rule as such which provided that Government employee dismissed, removed or compulsorily retired or had been fully exonerated, upon reinstatement, shall be paid full pay and allowances. It was also noticed that he was tried by the criminal Court in relation to allegations having direct relationship with the Corporation and having been absolved of the allegations and charge framed, he would be entitled for all the benefits. The impugned order dated 29.01.2015 (Annexure P-6) was accordingly quashed by noticing that it was not speaking order not referring to any rule whereby the benefit had been denied and, therefore, necessary directions were issued.

Counsel for the Corporation submits that benefit of doubt had been granted to the writ petitioner and, therefore, consequential benefits should not have been granted to him. The same is without any justification. It is not disputed that the dismissal order was on the basis of the conviction as such and it was not that

any departmental proceedings were initiated as such against the writ petitioner. Once the dismissal order had been set aside by this Court, the learned Single Judge by noticing in detail the fact that it was on account of the writ petitioner as such doing his duty and imposing penalty upon the complainant for unauthorized usage of the electricity and the fact that the case was under consideration before the higher authorities, the writ petitioner had been involved by the complainant. The employee as such was dismissed on account of the fact that the events were revolving around his service responsibilities and was not dismissed for some other event for which the writ petitioner was personally responsible and it was not his fault that he could not attend the duty for that period.

In such circumstances, we are of the considered opinion that the view which had been taken by the learned Single Judge does not suffer from any infirmity or illegality, which would warrant interference by this Court.

In similar circumstances, the Division Bench of this Court in '**Tota singh VS. Punjab State Electricity Board and others**', 2007 (3) SCT 793, has held that under the provisions of the Punjab State Electricity Board Main Services Regulations, 1972 once the suspension is revoked, the necessary benefits will accordingly flow to the employee, if the charge-sheet on the departmental side has been dropped.

A Coordinate Bench in '**Shiv Kumar Goel Vs. State of Haryana and another**', 2007 (1) SCT 739 while dealing with the similar issue has held that on account of criminal trial under the Prevention of Corruption Act, 1988, the services of the employee had been retrenched. After acquittal on filing of an application for reinstatement in service, the departmental proceedings were initiated against him. It eventually led to passing of the order that his period of suspension was to be treated as non-duty period for all intents and purposes and that he would not be entitled to any extra pay, emoluments etc. The same was challenged in the writ petition, wherein it was held that no inquiry could be held on the same facts and allegations, which were the basis of the criminal trial while relying upon the judgment of the Apex Court passed in '**G.M Tank Vs. State of Gujarat**', (2006) 5 SCC 446. Resultantly, the petitioner was held to all consequential benefits and he was to be paid salary for whole of the period he remained under suspension by treating the same as a period spent on duty for all intents and purposes. The said judgment would be squarely applicable to the facts and circumstances of the present case.

In '**Jaipur Vidyut Vitran Nigam Ltd. & others Vs. Nathu Ram**', 2010 (1) SCT 227, similar view was taken by the Apex Court that once the termination was passed as a result of the conviction in the criminal case and where no disciplinary

proceedings had been initiated, the benefit as granted by the learned Single Judge for the period to be treated as duty period and salary fixed in the revised pay scales, as upheld by the Division Bench, was approved.

Resultantly, this Court is of the considered opinion that there is no merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

March 28, 2022
Naveen

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No