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

% Judgment delivered on: 02.04.2014

\+ W.P.(C) 5158/2011

MOHINDER SINGH ..... Petitioner

versus

BSES RAJDHANI POWER LIMITED ..... Respondent

Advocates who appeared in this case:

For the petitioner: Mr N.S. Dalal, Mr Amit Rana & Mr P.C. Yadav, Advs.
For the respondents: Mr Sandeep Prabhakar, Mr Amit Kumar & Mr Vikas Mehta, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

1. The short point which arises in the writ petition is, whether or not the petitioner ought to have been paid full pay and allowances for the period of suspension which were denied to him, on account of his prosecution in a criminal case. The period of suspension involved in the present case is 30.03.1999 to 29.09.2009.

2. To be noted, the petitioner was implicated under the provisions of Prevention of Corruption Act, 1988 and Indian Penal Code, 1860 (in short IPC).

2.1 In view of a FIR being registered against the petitioner, as indicated above, the petitioner was placed under deemed suspension, on 30.03.1999.

2.2 An order for subsistence allowance was passed qua the petitioner on

19.04.1999. As a matter of fact, vide order dated 23.03.2000, the subsistence allowance qua the petitioner was enhanced.

3. Upon completion of trial, the Special-Judge vide judgment dated 29.09.2009, acquitted the petitioner.

3.1 Consequent thereto, on 08.04.2010, the petitioner was re-instated in service. By the very same order the competent authority indicated that the period of suspension qua the petitioner will be treated as period spent on duty for the purposes of pensionary benefits. The pay and allowances for the period of suspension were, however, restricted to the extent of subsistence allowance already paid to the petitioner.

3.2 The petitioner, was aggrieved by the same, as according to him, he was entitled to full pay and allowances for the period of suspension, consequent upon his acquittal in the criminal proceedings.

4. Resultantly, on 07.10.2010, the petitioner preferred a representation with the respondent. The said representation was followed by yet another representation dated 24.03.2011. By an order dated 04.04.2011, the petitioner's representation was rejected. It is in this background that the petitioner has moved the present writ petition.

5. Mr Dalal, learned counsel for the petitioner, says that once the petitioner was acquitted, he was entitled to payment of full pay and allowances for the period of suspension. It is his contention that the impugned order was flawed for the reason, it adopted a wrong test, which is, as to whether his acquittal was honourable or, based on the ground of benefit of doubt. According to Mr Dalal, that test was no longer applicable after the amendment made in Fundamental Rule 54B, whereby, the expression "honourable acquittal", stood deleted.

5.1 Mr Dalal also submitted that the order dated 08.04.2010, was also, illegal in view of the fact that principles of natural justice had been violated, in as much as, no notice was given by the competent authority before passing the said order. It is Mr Dalal's contention that the competent authority was required to examine, if it intended to withhold the balance pay and allowances, that the suspension of the petitioner was not wholly unjustified. Mr Dalal says that the order dated 08.04.2010 does not address this spect of the matter.

5.2 In support of his submissions, Mr Dalal, relied upon the following judgments: ***R.L. Gupta vs Union of India & Ors. (1985) ILR 2 Delhi 565*** and ***Mohan Lal vs Union of India & Ors. 1982 (1) SLR 573***.

6. Mr Prabhakar, learned counsel for the respondent, on the other hand, said that the acquittal of the petitioner by the trial court was on account of prosecution witnesses turning hostile. He submitted that, therefore, the acquittal of the petitioner was on technical grounds and, thus, the competent authority was entitled to restrict the payment of pay and allowances, during the suspension period, to that amount, which was already paid to the petitioner. Mr Prabhakar, in support of his submissions, relied upon the judgment of the Supreme Court in the case of ***Greater Hyderabad Municipal Corporation vs M. Prabhakar Rao 2011 IX AD (SC) 311***.

7. I have heard the learned counsels for the parties and perused the record. On consideration of the submissions made before me, and the principles enumerated in the judgments cited above, what emerges briefly, is as follows:

(i) Once a court acquits an accused, there can be no classification of acquittal based on the reasonings supplied for acquittal. In other words, an

acquittal on merits is no different from one in which prosecution failed to establish its case beyond reasonable doubt. The so called technical acquittals, will also constitute acquittals in law. The procedural and substantive law makes no such distinction qua acquittals. Acquittal based on merits or those which are based on failure of the prosecution to establish its case beyond reasonable doubt, weigh equally. This aspect clearly emerges on a reading of the judgment of this court in the case of ***R.L. Gupta vs Union of India & Ors***. As a matter of fact, in that judgment, this court has, with benefit extracted the opinion of the Central Vigilance Commission (CVC), which articulates, that where exoneration of a government servant takes place on the ground that charges are not established at all or, were not established beyond doubt; since both result in exoneration, no difference in law, obtains in the nature of the two acquittals. The CVC, appears to be of the opinion that, the authority concerned should not draw a distinction in the resultant position, as there are, according to it, no degrees in the matter of exoneration.

(ii) Upon the deletion of the expression "honorable acquittal" in Fundamental Rule 54-B, the difference, if any, in the acquittal has, in a sense, got extinguished.

(iii) Despite, acquittal by a criminal court, the competent authority is vested with the jurisdiction to form an opinion as to whether or not the suspension of the concerned employee was not wholly unjustified. In other words under sub-rule (3) of Fundamental Rule 54-B if, the competent authority were to order reinstatement, it would have to pay full pay and allowances to the concerned employee unless it were to form an opinion that the employee's suspension was "***not wholly unjustified***". The formation of

such an opinion is within the exclusive remit of the competent authority.

8. In the instant case, the order of the competent authority, which is dated 08.04.2010, singularly pivots its decision on the ground that the petitioner had not been acquitted honourably but, was given benefit of doubt as, the prosecution has failed in presenting proper evidence. The relevant extract of the order is set out below for the sake of convenience:

> "...And whereas, the undersigned being the Competent Authority has thoroughly looked into the details of the case and also the judgement of the Hon'ble Court and feel that Sh. Mohinder Singh has ***not*** been acquitted with ***honor*** but given the benefit of having ***prosecution failed in presenting the proper evidence***..."

9. In my view, the competent authority, applied the wrong test, in as much as it based its decision only on the nature of acquittal. As noticed above, while it is within the jurisdiction of the competent authority to come to the conclusion one way or the other in terms of sub-rule (3) of Rule 54-B of the Fundamental Rules as to whether or not the suspension was wholly unjustified; it could not have rested its decision solely on the nature of the guilt. The competent authority, is required to look at all attendant circumstances prior to formation of an opinion in that behalf. This is for the reason that during the period of suspension the petitioner has not rendered any service. The contribution, if any, of an employee in the delayed conclusion of the trial, and the consequent elongation of the period of suspension, is one of the factors, amongst others, which requires close examination.

10. The judgement of the Supreme Court in the case of ***UOI & Ors. vs K.V. Jankiraman & Ors. (1991) 4 SCC 109,*** clearly articulates this point.

The relevant portion of the judgment is extracted hereinbelow:

> "26. .....However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employees or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. ...."
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> (emphasis is mine)

10.1 Notably, the said extract has been cited with approval in ***Greater Hyderabad Municipal Corporation vs M. Prabhakar Rao***.

11. Having regard to the above, I am of the view that in passing the order dated 08.04.2010 the competent authority has erred in law and, therefore, the order would have to be set aside with a direction to reconsider the case. It is ordered accordingly. Needless to say, the competent authority will now only examine as to whether the petitioner should get full pay and allowances for the suspension period, and not, revisit its order which, inter alia, directs reinstatement of the petitioner and regularisation of the said period, for the purposes of pensionary benefits.

12. The competent authority before passing the order would issue notice

to the petitioner calling upon him as to whether he would want to have a say in the matter. After hearing the petitioner, the competent authority will be free to pass an order; albeit in accordance with law. Since the acquittal of the petitioner took place as far back as in 2009, the competent authority would expedite the hearing in the matter and pass an appropriate order in the matter.

13. The writ petition is thus allowed, in the aforesaid terms. The necessary consequences of this would be that order dated 04.04.2011 will also fall by the wayside. The said order, is also, accordingly, quashed.

RAJIV SHAKDHER, J

APRIL 02, 2014
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