

**ARMED FORCES TRIBUNAL, CHANDIGARH
REGIONAL BENCH AT CHANDIMANDIR**

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OA 1358 of 2012

Darbara Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Rajeev Anand, Advocate
For the Respondent(s) :	Mr. Ram Chander, Sr. PC.

**Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen (Retd) HS Panag, Administrative Member.**

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**JUDGMENT
3.12.2013**

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The petitioner, an Ex Gunner of the Army Air Defence Corps of the Indian Army, enrolled in the Indian Army on 13.1.1988, has filed the present petition under Sections 14 and 15 of the Armed Forces Tribunal Act for quashing the order dated 10.05.2011 whereby has claimed for back wages for the period 15.2.1996 to 31.1.2008 has been denied. Although he has been notionally reinstated into the service for the aforesaid period. He has further claimed other benefits like issuance of Discharge Book, Part-II Order of Family and other consequential reliefs.

In the year 1991, the petitioner got married to one Surinder Kaur who unfortunately on 21.1.1992 committed suicide. The petitioner was implicated for the abetment of suicide under Section 306 IPC by means of FIR No. 10 dated 22.1.1992, Police Station Mukerian. He was arrested by Civil Police and remained in jail from 31.1.1992 upto 18.3.1992 and was tried by the Criminal Court of competent jurisdiction and was convicted by the Additional Sessions Judge, Hoshiarpur vide judgment dated 12.9.1995 and was sentenced

to undergo Rigorous Imprisonment of four years and fine of Rs. 2000/. Being aggrieved, the matter was carried in appeal before the Punjab and Haryana High Court, registered as Criminal Appeal No. 554-SB of 1995, wherein an order suspending the sentence till the disposal of the appeal was granted. The appeal has been finally allowed vide judgment dated 21.8.2008. acquitting the petitioner from the said charge under Section 306 IPC.

In the meantime, the petitioner was discharged from army service with effect from 15.2.1996 under the provisions of Army Rule 13(3) Item III (v) and Section 20 of the Army Act.

After acquittal by the High Court, the petitioner alleges that he filed representation dated 26.9.2008 claiming reinstatement and back wages etc. addressed to Army Authorities. The said representation has been decided in pursuance to the directions issued by the High Court in CWP No. 10558 of 2009 and the petitioner has been informed vide letter dated 15.2.2010 that his appeal has been accepted and the discharge order is cancelled and the petitioner has been notionally reinstated into service from 15.2.1996 and notionally discharged on 31.1.2008. The further case of the petitioner is that the respondents have granted pensionary benefits by giving the benefit of 20 years 19 days of service as Sepoy in Group 'Y'. The respondents subsequently in reply to the notice given under Section 80 CPC informed that since the petitioner was notionally reinstated and discharged notionally from service, therefore, he is not entitled for the back wages for the period 15.2.1996 to 31.1.2008. Feeling aggrieved, the present petition for back wages etc. has been preferred.

In reply to the notice of the of the petition, the respondents have come up with the case that the petitioner is not entitled for wages for the period 15.2.1996 to 31.1.2008 as he was treated in service notionally for this period and has been discharged notionally on 31.1.2008 due to superannuation. The defence is that since petitioner has not actually worked for this period, is not entitled for salary on the principle 'No Work, No Pay'.

Heard the learned counsel for the parties and perused the record. On the arguments of the counsel for the parties, the only question which falls for determination is as to whether on the facts and circumstances of this case, the petitioner is entitled for salary for the aforesaid period?

Considered the respective submissions of the learned counsel for the parties and perused the record. The facts are not much in dispute. The counsel for the petitioner referred certain judgments in support of his case and they are as follows :-

- (i) Reliance has been placed on Deputy Director of Collegiate Edu.(Admn), Madras Vs S. Nagoor Meera, AIR 1995 SC 1364 wherein the Apex Court has made the following observations:-

“What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent had been found guilty of correction by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice.”

- (ii) Then reliance was placed on Sulekh Chand and Salek Chand Vs Commissioner of Police, 1995(1) JT 23 wherein it has been laid down that once the acquittal is recorded, the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated.
- (iii) A strong reliance was placed on Brahma Chandra Gupta Vs Union of India, AIR 1984 SC 380, the decision given by three Hon'ble Judges holding that when appellant was involved in criminal prosecution and has been acquitted in appeal is entitled for reinstatement in service after acquittal and also of full salary on reinstatement. In this case, no departmental enquiry was instituted against the appellant who was prosecuted and has been ultimately acquitted. It was held that on being acquitted and reinstatement, the appellant is entitled full amount of salary which should have been paid to the appellant on his reinstatement for the entire period. The relevant portion from the judgment is reproduced below:-

“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.”

- (iv) Our attention was invited to State of Kerala & Ors Vs E.K.Bhaskaran Pillai, 2007(6) SCC 524. In this case, the Supreme Court has considered the issue with regard to grant of monetary benefits of promotional post to the incumbent when he has not worked on the said post. After noticing its various earlier pronouncements cited on behalf of both the sides, it has been laid down that question of grant of monetary benefits with retrospective promotion depends upon case to case. There are various facets which have to be considered. It is useful to reproduce the relevant portion:-

“We have considered the decision cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case, it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject

to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle 'no work no pay' cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

- (v) Lastly on the judgment of Delhi High Court in Sat Pal Vs The Chief of the Army Staff, 2002(1) S.C.T. 1013 wherein High Court while issuing the writ directed that the petitioner be reinstated in service with continuity to service and full back wages. However, we do not find that the attention of the Court was invited to the specific question as to whether the principle of 'no work no pay' is applicable or not. The High Court while allowing the petition provided that the petitioner would be entitled to full back wages. The above precedent is important, as the learned counsel for the petitioner submits as it relates to army personnel who was involved in a criminal case for committing murder of his sister-in-law.

The learned counsel for the respondents on the other hand submits that there are cases where the principle of 'no work no pay' has been applied for in refusing to grant the pay for the period the person has not served.

The aforesaid pronouncements of the Apex Court are clear on the point that if a person succeeds in appeal and conviction order is set aside and is acquitted honourably, he should be given all the benefits

had he not been convicted or dismissed from the service. It will be useful to notice that the judgment of the Apex Court given in the case of Brahma Chandra Gupta (Supra) is a judgment given by a bench of three Judges wherein they have approved the approach of the trial court granting full amount of salary to the appellant therein on his reinstatement for the entire period. The other judgments would show that grant of back wages will depend upon the facts and circumstances of each case. When the administration has wrongly denied the dues to such a person he should be given the full benefits including monetary benefits subject to being there any change in law and other factors. In the light of the principles of law as laid down by the Apex Court, we may examine the present case on the touchstone of Army Act and the Regulations framed thereunder.

None of the counsel for the parties preferred to refer either the Army Act 1950 or the Army Instructions touching the controversy on hand. We could lay our hands on the judgment of Principal Bench of Armed Forces Tribunal in TA No. 233 of 2010 – Ranjit Singh Vs Union of India and Ors. decided on 25.3.2010. In this case, the Tribunal has considered the Army Instructions, Regulations and the provisions of

Army Act. For the sake of convenience, Army Instruction No. 129 of 65 which is relevant is being reproduced as under:-

“129. Pay and allowances admissible to JCOs/other ranks/non-combatants (enrolled) for the period between dismissal/removal/discharge and subsequent reinstatement.

Reference Rules 51(g) and 52(b) – Pay and Allowances Regulations(OR) 1955.

2. The forfeiture of pay and allowances under Rule 51 (g) Pay and Allowances Regulations(OR) 1955 of a JCO/OP/NC(E) on his dismissal/removal/discharge consequent on his conviction by a criminal court may be remitted by the authority competent to cancel his dismissal/removal/discharge when he is reinstated in service upon his acquittal on appeal or revision in the following manner :-

(a) If in the opinion of the authority ordering reinstatement, the person reinstated has been honourably acquitted/fully exonerated he may make a specific order for

(i) Remitting the forfeiture of pay and allowances in respect of the period from the date of dismissal/ removal/discharge to the date of acquittal and from the date of acquittal to the date fixed for joining duty and

(ii) Treating the period as duty will also count for the purpose of classification, increments and GS Pay.

(b) In other cases

(i) The forfeiture of pay and allowances for the period from the date of dismissal/removal/ discharge to the date of acquittal may be remitted by the authority ordering the reinstatement to an extent considered equitable but not less than 50% of pay and allowances admissible at the time of soldier's dismissal/removal/discharge. The period will not be treated as duty unless the

reinstating authority directs that it shall be so treated for any specific purpose.

(ii) The forfeiture of pay and allowances for the period from the date of acquittal to the date fixed for joining duty may be remitted in full and the period will be treated as duty.

3. The orders passed under (a) and (b) of para 2 above shall be subject to the following conditions :-

- (a) In no case remission will be allowed for a period exceeding three years preceding the date fixed for joining duty.
 - (b) No payment shall be made unless the soldier furnishes a certificate that he was not engaged in any other employment, business, profession or vocation during the period between dismissal and the date fixed for joining duty. If any amount has been earned by him during such period, the pay and allowances remitted by the competent authority shall be reduced to that extent.
 - (c) **If a person during the period of dismissal reaches the age of superannuation by service/age/tenure limit the remission of pay and allowances should be restricted to the date of superannuation.**
 - (d) No pay and allowances should be admissible to an individual for any period of imprisonment undergone during the period between the date of discharge/removal/dismissal and reinstatement without the specific sanction of the Central Government.
4. All the outstanding cases will be disposed of accordingly.

5. Pay and Allowances Regulations (OR), 1955 will be amended in due course.

Case No. 6830/AG/PS3(b)/7742/D (AG-1)

M of F(I) u.o. No. 192/S-PD of 1965

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After referring the aforesaid quoted provisions and taking into consideration the provisions of Rule 51 and 52, the Principal Bench reached to the following conclusion:-

“These are the guidelines which have been provided in cases where a person is acquitted by the criminal court or by court-martial. The detailed charter has been given under these rules giving guidance that in what manner the pay and allowances will be applicable on acquittal for a period during which the incumbent was in imprisonment. These guidelines shall have the bearing on the subject.”

The Principal Bench in another case i.e. O.A. No. 317 of 2011-Ex.Rfn. Mohinder Singh Vs Union of India & Ors. decided on 12.9.2012 has held that if in the opinion of the authority reinstating, person reinstated has been honourably acquitted/fully exonerated he may make a specific order of remitting the forfeiture of pay and allowances in respect of the period from the date of dismissal, discharge, removal to the date of acquittal and from the date of acquittal to the date of joining the duty, and treating the period as duty, which will also be counted for the purposes of classification, increments and G.S. pay. Then, under Clause(B) in other cases, the

pay and allowances for the period from the date of dismissal, removal, discharge, to the date of acquittal may be remitted by the authority ordering reinstatement, to an extent considered equitable, but not less than 50% of the pay and allowances admissible at the time of individual's dismissal, removal or discharge. The period will not be treated as duty, unless reinstating authority directs, that it shall be so treated for any specific purpose.

Coming to the facts of the present case, it is no longer in dispute that without holding any departmental enquiry etc., the petitioner was discharged from the army being involved in criminal case under Section 306 IPC. He was convicted and sentenced by the Trial Judge but has been acquitted in appeal by the High Court. Copy of the judgment of the High Court is on the record as Annexure A-4. Its perusal would show that the High Court found that there is no material to constitute offence under Section 306 IPC against the petitioner. The prosecution case was based on dying declaration given by the deceased Surinder Kaur to the Investigation Officer. It has been held that the said dying declaration is insufficient to hold up and convict the petitioner under Section 306 IPC. The petitioner was not subjected to any departmental proceedings or enquiry before passing of the discharge order or after acquittal by the High Court. In this actual background, in view of the principles of law laid down by the Apex Court referred to herein above and Army Instructions No. 129/65, clause 2(a), the petitioner is entitled for the salary from the date of discharge to the date of acquittal and from the date of acquittal to the date of superannuation i.e. for the period 15.2.1996 to 31.1.2008.

The attention of the authorities was not brought to the rules and regulations bearing on the subject, at the time when orders dated 15.2.2010 and 10.5.2011 were made. The impugned order has been passed de-horse regulations bearing on the subject. By way of clarification, it may be added that the order dated 15.2.2010 is silent with regard to payment of salary etc. and provides only this much that the petitioner has been notionally reinstated in service. The respondents in their reply dated 10.5.2011 to the notice u/s 80 C.P.C. for the first time took a clear cut stand that since the petitioner was notionally reinstated and discharged notionally from service, therefore, is not entitled for the benefits. This stand of the respondents, as discussed herein above is not legally tenable and wrong and is liable to be rejected.

In nut-shell, it is held that the petitioner is entitled for the salary for the period of his discharge to the date of his superannuation i.e. 15.2.1996 to 31.1.2008.

In the result, the petition succeeds and is allowed and the orders dated 10.5.2011 and also the order dated 15.2.2010 withholding the payment of the salary for the period in dispute are set aside. The respondents are directed to release the salary for the aforesaid period preferably within a period of four months. No order as to costs.

(Justice Prakash Krishna)

(Lt Gen (Retd) HS Panag)

3.12.2013

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Whether the judgment for reference to be put up on website – Yes/No