

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

WPO 1785 of 2005

Pradip Kumar Biswas

Vs.

Union of India & Ors

For the petitioner : Mr. Mahadeb Sarkar, Advocate
Mr. Bikash Chowdhury, Advocate

For the respondent : Mr. D. K. Kundu, Advocate
Mr. A. Basu, Advocate

Reserved on : 19.12.2022

Judgment on : 20.04.2023

Ravi Krishan Kapur, J.:

1. The question raised in this petition is whether an order of acquittal by the Criminal Court automatically entitles the petitioner to exoneration and consequential reliefs in the form of back wages for the period of suspension including basic increments withheld as penalty by the Disciplinary Authority.
2. Briefly, the petitioner was serving as an Assistant with the Life Insurance Corporation Limited being the respondent no. 6 when on November 3, 2000, a criminal case (Case No. K2-392 of 2000) was instituted against the petitioner under sections 420/120B/467/468/471 of the Indian Penal Code, 1860 for, *inter-*

alia, having forged documents submitted to the British Consulate in order to obtain visas for himself and his family members. Thereafter, the petitioner was served with an order of suspension by respondent no.4 on November 14, 2000 and a letter dated March 30, 2002 issued by respondent no.4 whereby penalty in the form of reduction in basic pay by three stages was imposed on the petitioner as per Regulation 39(1)(d) of the LICI (Staff) Regulations 1960.

3. In response, the petitioner had made a representation to respondent no. 2 alleging that by an order dated January 20, 2004 he had been “honourably acquitted” by the Court of the Metropolitan Magistrate, 9thCourt, Calcutta and as such his suspension period ought to be treated as period on duty and consequential benefits be restored.
4. By a letter dated April 26, 2004 the petitioner also sought for release of the basic increments. In response, the respondent authorities by a letter dated December 29, 2004 informed the petitioner that the order of acquittal having been passed on technical grounds, the petitioner’s case fell within the ambit of Regulation 38(b) of the LICI (Staff) Regulations 1960. Accordingly, the back wages which had been paid for the period of suspension were directed to be refunded with immediate effect. On August 19, 2004, the respondent no.3 sought for the status of the refund from respondent no.5. Hence, this writ petition challenging the communications dated December 2004, 19 August, 2004 and 30 March, 2002 respectively.

5. The petitioner contends that since he has been honourably acquitted by the Criminal Court, he is entitled to back wages for the period of suspension and release of basic increments withheld as penalty. The petitioner also submits that the Disciplinary Authority could not have gone beyond the order of the Magistrate to make observations as to the nature of the acquittal.
6. On behalf of the respondents, it is contended that the order of the Criminal Court cannot be said to have been passed on merits since the order was passed on the ground that the Investigating Officer being the complainant as well as the only witness was unable to adduce any corroborative evidence before the Court. The respondents also contend that the petitioner has not impugned the disciplinary proceedings on any other ground. In the absence of any such contentions, the order of such authority and its affirmation by the Appellate Authority ought not to be interfered with. In this connection, the respondents rely on the decisions of *Union of India v. Methu Meda (2022) 1 SCC 1* and *Commissioner of Police, New Delhi v. Mehar Singh (2013) 7 SCC 685*.
7. It appears from the records that the petitioner was charged with a serious offence of forging documents for the purpose of obtaining visas. The seizure list including the printed statement of the petitioner's salary slip reflects a figure far beyond the scale of pay applicable to the petitioner. The seizure list also showed that the records of Provident Fund Authorities had been tampered with. Moreover, the signatures of senior officials of the respondent no.6

had been forged on several documents relating to the visa applications. The petitioner had also fraudulently mentioned a higher designation in the letter head which demonstrates unauthorized use of the company logo of respondent no.6.

8. Regulations 38 of the LICI (Staff) Regulations 1960 provides as follows:

“Treatment of the Period of Suspension:

38. When the suspension of an employee is held to be unjustified or not wholly justified, or when an employee who has been dismissed, removed or suspended is reinstated, the disciplinary, appellate, or reviewing authority, as the case may be whose decision shall be final, [under these rules] may grant to him for the period of his absence from duty-*

(a) if he is honourably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;

(b) if otherwise, such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

*[In a case falling under clause (b), the period of absence shall not be treated as a period spent on duty but the disciplinary, appellate or the reviewing authority may, at its discretion, grant leave for the period to the extent admissible to the employee under the rules; any period of absence which has not been treated as period spent on duty or on leave shall not count as service for any purpose under these Rules but will not constitute break in service.]***

No order passed under this Rule shall have the effect of compelling any employee to refund the subsistence allowance payable under Rule 37.”

9. In the criminal case before the Metropolitan Magistrate, 9th Court, Calcutta, the petitioner was acquitted for lack of material evidence and crucial witnesses not being examined. The relevant portion of the order records as follows:

“It is apparent that the investigating officer of this case is also the complainant. Principles of natural justice entails that any case ought to be investigated by a person other than the de facto complainant. The complainant is taken to be an interested person and the investigation will be prejudiced if it is investigated by him.

In the instant case only the PW-1 is the I.O. has been examined. There is no corroborating evidence. Prosecution has not exhibited any documents which are allegedly forged though they were seized by them as per seizure list. Moreover there is no material exhibit.

Considering all the above this Court can safely come to a finding that the prosecution has miserably failed in its endeavour to prove the guilt of any of the above-named accused persons. Under any of the Sections of I.P.C. under which charges has been framed against them. So both the accused persons are entitled to be acquitted as per provisions of Section 248(1) Cr.P.C. Accordingly, all the points for determination are disposed off in favour of the accused persons.

Hence ordered that both the accused persons Pradip Kumar Biswas and Jyotirmoy Basu are found not guilty of committing offence under which they have been charged. So they are acquitted as per provisions of section 248/(1) CPC. They be set at liberty forthwith and be discharged from respective bail bonds”

10. The nature and scope of a criminal proceeding is different from that of a departmental disciplinary proceeding. Thus, an order of acquittal does not automatically conclude the departmental proceeding. Merely because an accused has been acquitted, the

power of the concerned authority to continue with the departmental inquiry is not taken away nor is its discretion in any way fettered. The order of acquittal may be taken into account but it will not have the overwhelming effect of eclipsing the charges in the disciplinary proceeding. The standard of proof in both the cases is different and the proceedings operate in different fields with different objectives. [*Corporation of the City of Nagpur, Civil Line Nagpur vs. Ramchandra (1981) 2 SCC 714.*], *Mehar Singh vs. Commissioner of Police, New Delhi, (2013) 7 SCC 685*, *State of Andhra Pradesh vs. S. Sree Rama Rao (1964) 3 SCR 25*, *Airports Authority of India vs. Pradip Kumar Banerjee (2007) SCC OnLine Cal 455*, *S. Vadivelu vs. The Secretary to Government (2008) SCC OnLine Mad 633*, *Khawaju Khan vs. State of Rajasthan (2007) SCC OnLine Raj 443*].

11. In *Anjan Biswas vs. Central Bank of India 2016 SCCOnline Cal 46*, it was held as follows:

“17. *It is necessary, in such context, to ascertain the meaning of the expression “honourable acquittal” in service jurisprudence. In Mehar Singh vs. Commissioner of Police, New Delhi, (2013) 7 SCC 685, the Supreme Court observed that expressions as “honourable acquittal”, “acquitted of blame”, and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code and they had been coined by judicial pronouncements. The court noticed the majority view in the Constitution Bench judgment in R.P. Kapur vs. Union of India (1964) 5 SCR 431 “that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable” and attempted a definition of “honourable acquittal” in these simple words: “when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled*

against the accused, it can possibly be said that the accused was honourably acquitted.”

12. In this case, the Investigating Officer was the only witness in the criminal proceeding. No material evidence had been placed before the Court. The documents, though seized were not adduced. Hence, the Magistrate was left with no other choice but to pass an order of acquittal. The petitioner had not been exonerated on merits. The case was conducted in a perfunctory manner and no document had been brought on record in support of the charges. There has been no consideration of the prosecution case. In such circumstances, the acquittal cannot be said to be an honourable acquittal.
13. In this background, there is no infirmity in the view taken by the Disciplinary Authority that the petitioner's case ought not be equated with a full exoneration. There is also no challenge to the order of the Disciplinary Authority affirmed by the Appellate Authority on merits or otherwise. Hence, the invocation of Rule 38(b) of the LICI (staff) Regulation Act 1960 is permissible. Accordingly, the petitioner cannot claim back wages for the period of suspension and the basic pay withheld as penalty.
14. In view of the aforesaid, there are no reasons to interfere with the impugned orders and the consequential steps taken pursuant thereto. W.P.O. No. 1785 of 2005 stands dismissed. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)