

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 10, 2022

+ W.P.(C) 3361/2021

JAHAN SINGH .....Petitioner

Through: Ms. Purnima Maheshwari &  
Mr. D.K. Singh, Advs.

Versus

TRIBAL COOPERATIVE MARKETING DEVELOPMENT  
FEDERATION OF INDIA LTD TRIFED

AND ANR .....Respondents

Through: Mr. Rajesh Gogna, CGSC with  
Ms. Nidhi Banga, Sr. Panel Counsel  
for the respondent.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. The present petition has been filed with the following prayers:

*“In the aforesaid facts and circumstances, this Hon'ble Court may be graciously pleased to grant the following relief(s):-*

*a) to issue appropriate writ and or directions in the nature of certiorari/ mandamus thereby set aside and quash the Petitioner's dismissal from service*  
*Order No.TFD/HO/VIG/90/03/Vol.II/1610/140 dated 19.03.2013 as well as the Memorandum No.TFD/HONIG/90/03/Vol.II/1590/1889 dated 26.02.2013 issued by the Respondents;*

*b) to issue appropriate writ and or directions in the nature of mandamus thereby direct the Respondents to re-instate/ re employ the Petitioner with all consequential benefits and forthwith pay the amount due & payable to the Petitioner as per rules;*

*c) to issue appropriate writ and or directions in the nature of mandamus thereby direct the Respondents to grant and pay with retrospective effect all past & present service continuity benefits, arrears of salary and allowances as per rules calculated on the basis of applicable pay scales w.e.f. 17.10.2003 and as per 6 & 7 Pay commission and promotion status w.e.f 1.01.2006 and 2016, respectively i.e. as Senior Accountant on basic pay Rs.58600/- p.m. (revised basic pay of Rs.66,000/- p.m.) plus DA 17%, H.R.A 16% and allowances as per Rules of TRIFED, Govt. of India;*

*d) to issue appropriate writ and or directions in the nature of mandamus thereby direct the Respondents to pay the aforesaid amounts and all dues along with interest @ 9% p.a. from the date due till the date of payment;*

*e) Pass any other order or direction as deemed appropriate in the facts and circumstances of the case in the interest of justice.”*

2. The present petition has been filed assailing the order dated March 19, 2013 of the respondent, whereby the petitioner was dismissed from service under Rule 19(i) of the CCS (CCA) Rules, 1965 ('Rules of 1965', hereinafter) based upon his conviction under Section 7 and Section 15 of the Prevention of Corruption Act, 1988 ('Act of 1988', hereinafter) *vide* judgments dated November 22, 2012 and December 3, 2012 of the Special Court, Delhi. The petitioner had challenged the conviction orders before this Court, resulting in his

acquittal and exoneration from all charges.

3. The petitioner herein was appointed as Accounts Clerk by the respondent *vide* letter dated October 22, 1990. He was promoted to the post of Accountant Grade-II and further promoted to the post of Accountant Grade I.

4. Ms. Purnima Maheshwari, learned Counsel for the petitioner, stated that the petitioner was falsely implicated in a criminal case under Section 7 and Section 15 of the Act of 1988 registered by the Central Bureau of Investigation ('CBI', for short), and the respondent *vide* letter dated October 20, 2003 suspended the petitioner w.e.f. October 17, 2003 and paid only subsistence allowance during the period from October 17, 2003 till February 2013. The petitioner was convicted in the criminal case by the Special Court, Delhi *vide* conviction and sentencing orders dated November 22, 2012 and December 3, 2012 respectively. Thereafter, a Memorandum dated February 26, 2013 was issued by the respondent, proposing the penalty of dismissal from service to the petitioner, and calling upon him to submit his reply to the same. He submitted the reply/representation on March 11, 2013 informing the respondent that he had assailed the conviction order in appeal, bearing Criminal Appeal No. 106/2013 which was pending before this Court. *Vide* order dated January 22, 2013 this Court suspended the sentence and granted bail to the petitioner while requisitioning the Trial Court record. Therefore, the petitioner requested the respondent to keep the proposed punishment in abeyance. Ms. Maheshwari also stated that though there was no separate charge memo or inquiry / departmental proceedings conducted

against the petitioner, the respondent *suo moto* proceeded against him by passing the final order dated March 19, 2013 and imposing the penalty of dismissal of the petitioner.

5. The appeal was decided by this Court *vide* order dated May 4, 2020 resulting in the acquittal and exoneration of the petitioner from all charges. The State / CBI has not preferred any appeal before the Supreme Court and the stipulated time of appeal of 90 days has expired. It is her contention that therefore, the Judgment of May 4, 2020 has attained finality.

6. She also stated that the petitioner, after his acquittal, submitted various representations dated July 24, 2020, August 23, 2020, September 16, 2020, October 12, 2020, December 23, 2020 and a legal notice dated January 12, 2021, requesting his reinstatement along with full arrears of salary and other service benefits. However, the respondent did not comply with the request and *vide* reply dated January 13, 2021 stated that the petitioner is at liberty to challenge the order of dismissal before the competent Court.

7. Ms. Maheshwari also submitted that the petitioner is entitled to the benefits of the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission and also promotion to the higher rank of Senior Accountant in the revised pay-scales of ₹66,000/- per month along with usual allowances as per rules, which similarly placed employees of the respondent are presently receiving.

8. She also stated that the petitioner has exhausted the alternative remedy available to him by approaching the Central Administrative Tribunal, New Delhi *vide* OA. No. 454/2021, which was dismissed on the ground that the respondent is not amenable to the jurisdiction of the

Central Administrative Tribunal as it is not notified under Section 14 (2) of the Administrative Tribunals Act, 1985.

9. She contended that the respondent, *vide* the impugned order has condemned the petitioner unheard. The allegations against the petitioner have not been established by way of a regular departmental inquiry and the petitioner was denied reasonable opportunity to defend himself. No inquiry was held according to procedure established by the competent authority prior to imposing the penalty of dismissal from service. According to her, this is violative of Article 311 of the Constitution of India. That apart, no cogent reasons were assigned for rejection of the petitioner's reinstatement, causing serious miscarriage of justice. Further, the respondent has arbitrarily and vexatiously denied past and present service benefits and payment of salary and allowances as per rules, even though the petitioner has an unblemished record with the respondent. According to Ms. Maheshwari, this act of the respondent is marred with irregularity and *mala fide*, and is also in violation of Article 14 and Article 16 of the Constitution of India. It is also contended that the acquittal of the petitioner is on merits and not on technical grounds.

10. A counter-affidavit has been filed on behalf of the respondent wherein it is stated that the CBI arrested the petitioner for having attempted to obtain illegal gratification on October 17, 2003. He was placed under suspension w.e.f. March 17, 2003 *vide* order dated March 20, 2003, in terms of Rule 10 (2) of the Rules of 1965. The suspension of the petitioner was extended from time to time as per the prescribed procedure.

11. Mr. Rajesh Gogna, learned CGSC appearing on behalf of the respondent has submitted that the Special Court, CBI, Central District, Delhi, *vide* order dated November 22, 2012 convicted the petitioner under Section 7 and Section 15 of the Act of 1988, on the ground that the petitioner tried to extract a bribe for processing the release of an amount outstanding to a vendor. As per the order passed by the Special Judge, CBI, the petitioner was sentenced to undergo one year of rigorous imprisonment and a fine of ₹ 5000 under Section 7 of the Act of 1988 and also one year of rigorous imprisonment and a fine of ₹ 5000 under Section 15 of the Act of 1988.

12. It is also submitted that the respondent, after going through the Judgment dated November 22, 2012, came to the conclusion that the charges established against the petitioner involved moral turpitude and showed a lack of integrity and honesty, which made him unsuitable for retention in the services of the respondent. Thereafter a show-cause notice was issued, to which the petitioner replied. After considering all the relevant facts including the reply to the show-cause notice, it was decided to dismiss the petitioner from the services of the respondent.

13. Subsequently, it was informed by the petitioner that his conviction was set aside and that he was acquitted by this Court *vide* Judgment dated May 4, 2020. The petitioner demanded salary and allowances for the period when he remained suspended / dismissed, *vide* legal notice dated January 12, 2021. He also claimed annual increment, gratuity, earned leaves, bonus and group insurance from the respondent and demanded that he be reinstated in service. In reply to the legal notice, the respondent informed the petitioner that there has

been no communication from the CBI that the Judgment dated May 4, 2020 has been accepted as final by them and that they are not intending to challenge the same before the Supreme Court. The petitioner was further requested to provide any such communication from the CBI. It is Mr. Gogna's contention that this petition is not maintainable in the absence of any communication stating that the CBI has no intention of challenging the said Judgment before the Supreme Court. He would contest the statement of Ms. Maheshwari that the period of limitation for filing an appeal before the Supreme Court has already lapsed. Due to the pandemic, the provisions of the Limitation Act, 1963 have not been made strictly applicable and therefore, the expiration of the limitation period is not a ground for arriving at the conclusion that no challenge is going to be made against the Judgment of May 4, 2020.

14. He also submitted that it is settled law that the competent authority can still decide whether the services of the petitioner should be reinstated or dispensed of in view of his conduct of demanding bribe from a vendor.

15. Mr. Gogna has admitted that no separate chargesheet / investigation was conducted while dismissing the services of the petitioner, as the mandate of Rule 19(i) of the Rules of 1965 contemplate that conviction on a criminal charge is sufficient enough to discharge the services of an employee through dismissal. The order dated March 19, 2013 is a speaking order duly passed by the competent authority, after analysing the judgment of conviction and also the conduct of the petitioner. He also stated that there is no reason for the respondent to recall the order dated March 19, 2013, as the

petitioner had not challenged the same.

16. With regard to the issue of entitlement of the petitioner to salary and benefits of the 6<sup>th</sup> and 7<sup>th</sup> Pay Commission, he submitted that there is no obligation on part of the respondent to pay salary for the period when the petitioner was dismissed upon conviction by the Court of competent jurisdiction and his appeal was pending before this Court.

17. Mr. Gogna would also submit that as per provisions of the Rules of 1965, even if the CBI confirms that it has accepted the Judgment of May 4, 2020 as final, the respondent still has the option to consider as to whether the petitioner is entitled to be reinstated. The respondent shall exercise its option only when a clear communication is received from the CBI in that regard.

18. He has denied the contention of Ms. Maheshwari that the respondent has not disclosed any reasons for refusing the petitioner to rejoin his services. In paragraph 2 of the reply notice dated January 31, 2021, it was specifically stated that the respondent was waiting for a communication from the CBI intimating that it is not willing to challenge the Judgment dated May 4, 2020 passed by this Court.

19. He would also contend that the acquittal of the petitioner is not an honourable acquittal. The same was not on merits and the petitioner was merely accorded the benefit of doubt. In such a case, there is no obligation on part of the respondent to necessarily reinstate the services of the petitioner.

20. Having heard the learned counsel for the parties and perused the record, the question which arises for consideration is that, whether

in view of the Judgment of this Court dated May 4, 2020 whereby the conviction of the petitioner for offences under the Act of 1988 has been set aside, the petitioner is entitled to reinstatement. By the order of conviction dated November 22, 2012 and the order of sentencing dated December 13, 2012 passed by the Special Judge, CBI, the petitioner was convicted under Section 7 and Section 15 of the Act of 1988. He was sentenced to undergo rigorous imprisonment for one year under Section 7 of the Act of 1988 and another one year under Section 15 of the Act of 1988, along with a fine of ₹5,000/- each under both the provisions, default whereof would warrant simple imprisonment for one month each.

21. On appeal, this Court has set aside the conviction by holding in paragraphs 42 and 43 as under: -

*“42. The prosecution case meets its Waterloo on the above aspect in the contradiction appearing in its case put up in the charge sheet as compared to the evidence recorded in the trial. Whereas in the complaint (Ex.PW13/A), the charge sheet and the sanction order, it was the specific case of the CBI that the whole talk about dividing the amount of Rs.4 lacs in two installments took place on 16.10.2003 and not on 17.10.2003. However, during the trial, as per the complainant’s testimony, the entire conversation of splitting of amount in two installments took place on 17.10.2003 and not on 16.10.2003.*

*43. Further, as per prosecution case, the prime witnesses i.e., the complainant and Dr. Shaukatullah were stated to be present on 16.10.2003 and 17.10.2003 in the hotel room when the appellant is stated to have visited and demanded the bribe amount. A combined reading of their testimonies would show that Dr. Shaukatullah has not stated the material particulars of the conversation as deposed by the complainant. So far as demand made on 16.10.2003 is concerned, he has neither given any details nor stated any amount. For the demand*

*stated to be made on 17.10.2003 although the complainant had stated that initially Rs.4 lacs were agreed to be paid but later, the amount was agreed to be paid in two equal installments but Dr. Shaukatullah is completely silent on this aspect. He rather stated that the agreed amount was Rs.4.35 lacs. So far as the independent witness namely, Satbir Singh, stated to be hiding in the bathroom, is concerned, he has also not stated the details of conversation as stated by the complainant. Further, he did not witness the conversation but only heard it only through an earphone.”*

22. It may be stated here that pursuant to his conviction by the Special Judge, CBI, the petitioner who was working with the respondent organisation, was issued a Memorandum, informing that the disciplinary authority has proposed the penalty of dismissal under Rule 19 (i) of the CCS (CCA) Rules, 1965 and calling upon him to reply to the same.

23. On March 13, 2013, the petitioner was dismissed under the said provision. The submission of Ms. Maheshwari is primarily that the petitioner, having been acquitted in the appeal and the CBI not having preferred any appeal thereto before the Supreme Court, is entitled to reinstatement. Mr. Gogna has contended otherwise inasmuch as, the petitioner is not entitled to reinstatement automatically. Moreover, it is his submission that the acquittal granted by this Court was not an honourable acquittal, but merely an acquittal where a benefit of doubt was granted, because the prosecution had failed to prove the charges against the petitioner.

24. The law in this regard is quite well settled. The Supreme Court in its decision in the case of *Union Territory, Chandigarh*

*Administration & Ors. v. Pradeep Kumar & Anr., (2018) 1 SCC 797*, has held that the mere acquittal in a criminal case is not conclusive of the suitability of the candidate to the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely implicated or that he had no criminal antecedents. If it is not an honourable acquittal, the candidate cannot claim the benefit of the case. The Supreme Court, in paragraph 10 has also referred to its earlier decision in the case of *Inspector General v. S. Samuthiram, (2013) 1 SCC 598*, wherein the expression honourable acquittal was considered. The relevant paragraph is reproduced hereunder: -

*“10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram, in which this Court held as under: (SCC p. 609, para 24)*

*“24. The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted*

*after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted. ””*

25. Looking from the prism of the law, as has been laid down by the Supreme Court, it is to be seen whether the acquittal of the petitioner by this Court in the criminal appeal bearing CRL. A. No. 106/2013, would create any entitlement on part of the petitioner to be reinstated.

26. The charge against the petitioner as noted above is that he had demanded a bribe. The finding of this Court on the aspect of the demand is in paragraphs 42 to 45 of the Judgment dated May 5, 2020, reproduced hereunder for expediency: -

*“42. The prosecution case meets its Waterloo on the above aspect in the contradiction appearing in its case put up in the charge sheet as compared to the evidence recorded in the trial. Whereas in the complaint (Ex.PW13/A), the charge sheet and the sanction order, it was the specific case of the CBI that the whole talk about dividing the amount of Rs.4 lacs in two installments took place on 16.10.2003 and not on 17.10.2003. However, during the trial, as per the complainant’s testimony, the entire conversation of splitting of amount in two installments took place on 17.10.2003 and not on 16.10.2003.*

*43. Further, as per prosecution case, the prime witnesses i.e., the complainant and Dr. Shaukatullah were stated to be present on 16.10.2003 and 17.10.2003 in the hotel room when the appellant is stated to have visited and demanded the bribe amount. A combined reading of their testimonies would show that Dr. Shaukatullah has not stated the material particulars of the conversation as deposed by the complainant. So far as demand made on 16.10.2003 is concerned, he has neither given any details nor stated any amount. For the demand stated to be made on 17.10.2003 although the complainant had stated that*

*initially Rs.4 lacs were agreed to be paid but later, the amount was agreed to be paid in two equal installments but Dr. Shaukatullah is completely silent on this aspect. He rather stated that the agreed amount was Rs.4.35 lacs. So far as the independent witness namely, Satbir Singh, stated to be hiding in the bathroom, is concerned, he has also not stated the details of conversation as stated by the complainant. Further, he did not witness the conversation but only heard it only through an earphone.*

*44. In A. Subair v. State of Kerala reported as (2009) 6 SCC 587, it was held that the prosecution in order to prove the charge under the above provisions has to establish by proper proof, the demand and acceptance of the illegal gratification and until that is established, the accused should be considered to be innocent.*

*45. In the opinion of this Court, the prosecution is duty bound to prove its case beyond reasonable doubt against the appellant by clear, cogent & convincing evidence which has not been done in the present case. In the opinion of this Court, keeping in view the above contradictions in the prosecution case, it is held that the prosecution has failed to prove the demand of Rs.4 lacs by the appellant beyond reasonable doubt and as such the appellant is entitled to the benefit of doubt.”*

27. A perusal of the above would reveal that the basis for this Court to set aside the conviction was primarily that there were contradictions in the case of the prosecution, due to which it failed to prove the demand of ₹4,00,000/- by the petitioner beyond reasonable doubt, and that as such, he is entitled to the benefit of doubt. The Judgment also indicates that the petitioner had indeed visited the hotel where the complainant and Dr. Shaukatullah were staying, as is clear from the statement of the petitioner himself. The prosecution relied upon the statement of independent witness one Satbir Singh, who was hiding in the bathroom and heard the conversation through an

earphone. The evidence of Satbir Singh was discarded as he did not depose on any other aspect of the conversation as stated by the complainant.

28. At this juncture, I must state, that the nature of the charges levied against petitioner, coupled with the fact that he was merely accorded the benefit of doubt on account of the failure of the prosecution to prove their case beyond reasonable doubt, would cast a shadow of doubt, in the eyes of the employer, insofar as his suitability for re-employment / reinstatement in public service is concerned. In this regard, I may refer to the observations made by the Supreme Court in the case of ***Krishnakant Raghunath Bibhavnekar v. State of Maharashtra and Ors., 1997 3 SCC 636*** as reproduced below:

*“.....The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of the prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or foolproof. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public.....”*

Further, in the case of *T.N.C.S. Corpn. Ltd. v. K. Meerabhai*, (2006) 2 SCC 255, the Supreme Court in paragraph 35 has held as under:

*“35. In the instant case, the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning and, therefore, in our opinion, the matter should be dealt with firmly with firm hands and not leniently. In the instant case, the respondent deals with public money and is engaged in financial transactions or acts in a fiduciary capacity and, therefore, highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, the conclusion of the learned Single Judge as affirmed by the Division Bench of the High Court do not appear to be proper. We have no hesitation to set aside the same and restore the order passed by the disciplinary authorities upholding the order of dismissal.”*

29. While there are no standards in service jurisprudence as to how integrity, honesty and trustworthiness of an employee can be measured, the meaning of these terms in general parlance has to be taken into accord. No doubt, the prosecution of the petitioner, who was an accountant in public service, has culminated in his acquittal on account of the benefit of doubt, however while seeking reinstatement, such acquittal alone cannot be claimed to be an indubitable testament to the bona fide conduct of the petitioner.

30. The issue can also be seen from another angle, inasmuch as, it is a settled position of law that the nature of evidence required to be seen in criminal proceedings and in disciplinary proceedings is different. In disciplinary proceedings, the charge framed needs to be proved on preponderance of probability, unlike in a criminal case

where the offence has to be proved beyond reasonable doubt. Had disciplinary proceedings been initiated against the petitioner on the charge which was the subject matter of the criminal proceedings on the basis of the evidence that has surfaced, i.e., the fact the petitioner had visited the hotel and that Satbir Singh, the independent witness who was hiding in the bathroom had heard the conversation wherein the petitioner had made a demand of ₹4,00,000/-, the same would have been a sufficient ground for dismissal of the petitioner from service.

31. Given the nature of the offence for which the petitioner was proceeded against, and the conviction having been set aside only on a technical ground that the offence could not be proved by the prosecution beyond reasonable doubt, and the acquittal not being an honourable acquittal, it must be held that the reinstatement of the petitioner cannot flow as a matter of right. This Court is of the view that the petitioner is not entitled to the prayers made in the petition, *inter alia*, for setting aside the order of dismissal dated March 19, 2013 and reinstating him in service. If such a relief is granted, it would have the effect of turning a blind eye towards the concern of the employer regarding the integrity, honesty and trustworthiness of the employee. Such a concern of the employer cannot be ignored merely because the petitioner was accorded the benefit of doubt in a criminal case, more so, in light of the judgments referred to above.

32. The petition is dismissed. No costs.

**V. KAMESWAR RAO, J**

**FEBRUARY 10, 2022/jg**