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WP-6204-2008

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 19<sup>th</sup> OF FEBRUARY, 2026WRIT PETITION No. 6204 of 2008*BASANT LAL VISHWKARMA**Versus**UNION OF INDIA AND OTHERS*

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Appearance:

Smt.P.I.Shrivastava - Advocate for the petitioner.

Shri Gulab Kali Patel and Shri Bharat Deep Singh Bedi, learned  
counsel for the respondents.

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ORDER

*Per. Justice Pradeep Mittal*

The present writ petition has been filed by the petitioner challenging the order dated 05.12.2006 passed by the learned Tribunal whereby Original Application No. 1018/2005 has been dismissed.

2. The petitioner is the son and legal representative of late Shri Ram Mani, who was working as Fitter (C & W) at New Katni Junction under Respondent No. 2. Shri Ram Mani expired on 09.11.2004 and the death certificate dated 10.11.2004 is on record.

3. It is not in dispute that late Shri Ram Mani was removed from service vide order dated 21.03.1986. Aggrieved by the said order, he approached the learned Tribunal by filing O.A. No. 669/1989, which was



disposed of on 02.08.1995 with a direction to the respondents to treat him as under suspension instead of removal.

4. In compliance with the said order, Respondent No. 2 passed an order dated 20/21.11.1995 placing him under suspension w.e.f. 19.03.1986 on account of pendency of a criminal case. The father of the petitioner was required to submit a non-employment certificate (Form No. 3), which he duly submitted. However, despite compliance with the requisite formalities, subsistence allowance was not paid to him, compelling him to file O.A. No. 283/1996. The Tribunal, vide order dated 14.05.1996, directed the respondents to consider the matter, pursuant to which subsistence allowance at the rate of 50% was paid.

5. Thereafter, on 07.02.2000, he submitted a representation seeking revision of subsistence allowance in light of the recommendations of the Vth Pay Commission effective from 01.01.1996. No decision was taken on the said representation. It is further the case of the petitioner that two similarly situated employees, namely Shiv Prasad Lauhar and D. Wilson, who were also facing criminal prosecution and were placed under suspension, were reinstated during the pendency of criminal proceedings, whereas the petitioner's father was denied such benefit.

6. The petitioner contends that under F.R. 53, the suspension was required to be reviewed periodically. Alleging non-compliance, late Shri Ram Mani filed O.A. No. 504/2000, which was disposed of on 28.06.2000 with a direction that upon submission of a fresh representation, the competent authority shall pass a speaking order within four months. In



compliance thereof, a representation dated 07.08.2000 was submitted before the Divisional Mechanical Engineer, Central Railway, Jabalpur, seeking review of suspension and enhancement of subsistence allowance. However, no decision was communicated.

7. In the meanwhile, the criminal case pending against him was decided on 22.08.2001 by the Special Railway Magistrate, wherein he was acquitted on benefit of doubt. Subsequently, vide order dated 27.03.2001, he was reinstated on the post of Fitter. The grievance of the petitioner is that despite reinstatement, the pay of his father was not properly fixed, he was denied annual increments from 1984 onwards, revised pay scales were not extended, and he was not granted various service benefits such as HRA, cycle allowance, bonus, leave encashment, and other admissible allowances.

8. It is contended that since the order of removal had been set aside and no penalty was ultimately imposed, he ought to have been treated as on duty for the entire intervening period and paid full salary and consequential benefits from 10.06.1984 till his superannuation on 31.08.2001. It is further contended that due to non-fixation of proper pay, his pension was fixed at a meager amount, causing grave financial prejudice.

9. Aggrieved by non-grant of service benefits, he filed O.A. No. 685/2001, which was disposed of on 29.04.2004 directing him to submit a detailed representation to the respondents, who were in turn directed to decide the same by a reasoned order within four months. Pursuant thereto, a representation was submitted. However, during its pendency, Shri Ram Mani expired on 09.11.2004. Since no response was received, a legal notice dated



07.12.2004 was issued by the petitioner. Thereafter, the representation was rejected by order dated 16.02.2005. Challenging the said rejection and raising all grievances relating to denial of service benefits, the petitioner filed O.A. No. 1018/2005 before the Tribunal. The Tribunal, after hearing the parties, dismissed the Original Application vide order dated 05.12.2006.

10. Learned counsel for the petitioner submits that the impugned order dated 16.02.2005 is arbitrary, illegal and violative of the principles of natural justice, as no cogent reasons have been assigned for treating the period from 10.06.1984 to 17.04.2001 as “non-duty”. It is contended that such action is in clear contravention of F.R. 54-B, which requires proper consideration of the suspension period upon reinstatement. The respondents have erroneously relied upon the ground that the petitioner's father was acquitted on “benefit of doubt” and not by way of “honorable acquittal”. Learned counsel submits that there is no concept of “honorable acquittal” under the Code of Criminal Procedure, and once the prosecution fails to prove the case beyond reasonable doubt, the accused is entitled to acquittal. In the present case, no departmental enquiry was initiated, and therefore, reliance upon the distinction between honorable acquittal and acquittal on benefit of doubt is wholly misconceived.

11. It is further submitted that the order of removal had already been set aside and the petitioner's father was reinstated without imposition of any penalty. Placing reliance on the judgment of the Hon’ble Supreme Court in *Union of India v. K.V. Jankiraman*, learned counsel contends that when an employee is completely exonerated and is not visited with any penalty, even



of censure, he cannot be deprived of consequential benefits, and the principle of “no work no pay” would not apply where the employee was kept away from work for no fault of his own. Therefore, the petitioner’s father was entitled to full salary and all consequential service benefits for the intervening period.

12. It is argued that the order passed by the Tribunal is perverse, non-speaking and suffers from non-application of mind, as it neither properly considers the statutory provisions nor deals with the judgments cited on behalf of the petitioner. The impugned order is stated to be violative of Articles 14, 16 and 21 of the Constitution of India and unsustainable in law. It is, therefore, prayed that the impugned orders be set aside and the respondents be directed to treat the aforesaid period as duty for all purposes with consequential arrears and benefits.

*We have heard learned counsel for the petitioner and perused the records.*

13. Upon consideration of the rival submissions and perusal of the record, it is not in dispute that late Shri Ram Mani was removed from service on 21.03.1986. The said order of removal was set aside by the Tribunal vide order dated 02.08.1995, with a direction to the respondents to treat him as under suspension instead of removal. In compliance with the said order, the respondents passed an order dated 20/21.11.1995, placing late Shri Ram Mani under suspension with retrospective effect from 19.03.1986. Consequently, the period from 21.03.1986 till the date of reinstatement stood converted from removal into suspension. It is further an admitted position



that during the entire period of suspension, only a criminal case was pending against late Shri Ram Mani. No departmental enquiry was ever initiated, nor was any departmental charge-sheet issued against him at any stage. The criminal case was finally decided on 22.08.2001, wherein late Shri Ram Mani was acquitted. Thereafter, he was reinstated in service vide order dated 27.03.2001. Admittedly, after reinstatement, no penalty of any nature not even censure was imposed upon him.

14. Thus, it is evident that the suspension of late Shri Ram Mani did not culminate in any punishment, and in service jurisprudence, he stood fully exonerated, particularly as the respondents themselves chose not to initiate any departmental proceedings even after conclusion of the criminal case.

15. In the above factual backdrop, this Court finds that the case squarely falls within the ambit of Fundamental Rule 54-B. Under F.R. 54-B(1), which reads as under:-

*F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order-*

*(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and*

*(b) whether or not the said period shall be treated as a period spent on duty.*

*(2) Notwithstanding anything contained in Rule 53, where a*



*Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.*

*(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:*

*Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.*

*(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.*

*(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall, subject to the provisions of sub-rules (8) and (9)*



*be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.*

*(6) where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.*

*(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:*

*Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.*

*NOTE.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-*

*(a) extraordinary leave in excess of three months in the case of*



*temporary Government servant; and*

*(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.*

*(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.*

*(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than subsistence allowance and other allowances admissible under Rule 53.*

16. Further, since no departmental proceedings were either pending or concluded, and no misconduct was proved, the suspension cannot be held to be justified after the conclusion of the criminal case. Accordingly, the case falls under F.R. 54-B (3), which mandates payment of full pay and allowances where suspension is found to be wholly unjustified, and under F.R. 54-B (4), the suspension period is required to be treated as duty for all purposes.

17. The Apex Court in case of in *Union of India & others vs K. V. Jankiraman and others (1991) 4 SCC 109* whereby the questions involved were set forth vide para 8 thereof as under:-

*"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in*



*such proceedings if the guilt merits punishment other than that of dismissal?*

*(3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions."*

Vide observations in Paras 16, 17 and 18 thereof it was observed to the effect:-

*"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue chagememo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a*



*promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating the, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)*

*(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;*

*(2) \* \* \**

*(3) \* \* \**

*(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;"*



*17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when chagememo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.*

*18. We, therefore, repel the challenge of the appellant authorities to the said finding of the Full Bench of the Tribunal.”*

18. It is also not in dispute that late Shri Ram Mani superannuated on 31.08.2001. Due to the incorrect treatment of the suspension period as non-duty, his pay was not properly fixed, annual increments were denied, and revised pay scales were not extended, resulting in incorrect fixation of pension, thereby causing continuing financial prejudice to the petitioner, who is his legal representative.

19. This Court finds that the order dated 16.02.2005 passed by the respondents, as well as the order dated 05.12.2006 passed by the Tribunal, fail to consider the mandatory provisions of Fundamental Rule 54-B, the admitted fact of absence of any departmental penalty, and the settled law laid down by the Hon'ble Supreme Court in Union of India v. K.V. Jankiraman.

20. The competent authority/disciplinary authority while passing the order dated 16.02.2005 has observed as under in the relevant paras:-



*"13. In the second demand (i.e. demand (b) ), he has asked for proper fixation of pay and annual increment since the year 1984. It is seen that his pay was fixed properly and he was correctly not given any annual increment since he was not on duty. Rather during that period, either he was out of service / on suspension. Therefore, the question of granting any annual increment does not arise.*

*However, he shall be entitled for annual increment / proforma notional increment depending on the regularization of the period as duty / otherwise. Since due to the reasons being listed hereafter, I am inclined to treat this period as non-duty, therefore, automatically he shall not be entitled for any annual increment.*

*14. In the third demand (i.e. demand (c) ), he has asked that the period of suspension should be treated as duty and should be paid full dues. Considering the circumstances of the case and consequent upon the fact that the criminal court has decided to acquit him only on the "benefit of doubt" rather than on merit, I am inclined to treat the period of suspension as 'non-duty'. Moreover, since the employee was involved in a criminal case and he was not given any honorable acquittal / acquitted on merit but he was acquitted by the criminal court only on the tenuous basis of 'benefit of doubt', I treat the above period as that of 'not on duty', treating the suspension as wholly justified. As far as the payment of wages for the period is concerned, he should be given the wages equal to the subsistence allowance (i.e. 50% of pay and allowance as per Rules), which he has already drawn. Therefore, no arrears are due on this account.*



*17. The next demand i.e. demand (f) is for giving seniority benefit vis-a vis his colleague Shri Prasad. Since the period has been treated as 'not duty', therefore, he is not entitled for any proforma promotion vis a vis his colleagues."*

21. The authority has recorded a finding that the employee was acquitted by giving the benefit of doubt and, therefore, he is not entitled to the benefits. The above finding is not a proper evaluation of the evidence because the judgment passed by the Special Railway Magistrate dated 22.08.2001 categorically records that there was a paucity of evidence against the accused, therefore, the appellant was acquitted. This clearly indicates that the appellant was not merely acquitted on the benefit of doubt but was acquitted due to absence of any prosecution evidence. The authority has also recorded a finding that the employee was treated as not on duty because he was under suspension. After the revocation, the appellant ought to be treated as on duty.

22. Learned Tribunal has relied on the judgement *Krishnakant Raghunath Bibhavankar v/s State of Maharashtra AIR 1997 SC 1434*, where as it was held that if the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back wages etc. cannot be as a matter of course. Even



otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72(3), 72 (5) and 72 (7) of the Rules give a discretion to the disciplinary authority. Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service he would not be entitled to the consequential, he was reinstated into service, he would not be entitled to the consequential benefits.

23. Tribunal has wrongly been considered that judgement because the facts of the case are not similar and Maharashtra civil services law are not applicable to the employee. We are the opinion said judgement cannot be applicable to the present case because Rule 72(3) of the Maharashtra civil services (Joining Time, foreign Services, and Payment during Suspension, dismissal and Removal) Rules, 1991 (for short, the 'Rules') the Rules cannot be applied to employee secondly the offence was not defalcation of public funds and fabrication of the records.

24. We hold the period of suspension be treated as on duty and employees are entitled to get all service benefits. Therefore, we set aside an impugned orders and directed the employer to provide all service benefits.

25. In view of the foregoing discussion, the order dated 05.12.2006 passed by the Tribunal and as well as order dated 16.02.2005 passed by competent authority/disciplinary authority are hereby quashed. The matter is



remanded to the respondent authorities with a direction to reconsider the case of the petitioner strictly in accordance with the provisions of Fundamental Rule 54-B and the law laid down by the Hon'ble Supreme Court in Union of India v. K.V. Jankiraman (1991) 4 SCC 109 within a period of 60 days from the date of receipt of a certified copy of this order.

26. With the above, writ petition is disposed of.

**(VIVEK RUSIA)**  
**JUDGE**

**(PRADEEP MITTAL)**  
**JUDGE**

Praveen