

J U D G E M E N T

In this Application, being O.A. No. 146 of 2014, the Applicant has challenged the order passed by the Disciplinary Authority vide memo no 263 dated 16-01-2014 praying for setting it aside and for issuing a direction upon the Respondent authorities to release all the consequential service benefits to which he is entitled as per law, during the period of suspension, treating the same as period 'spent on duty'.

2. Appearing on behalf of the applicant, Mr. Manujendra Narayan Roy, Learned Counsel, submitted that the Applicant while working at Sub-jail, Contai was unfortunately implicated in a criminal case, being T.R. No. 01 of 2009 before the Learned Court of Special Judge, Purba Midnapur, Tamluk, wherein he was charged under section 8 and 9 of the Prevention of Corruption Act, 1988. After a prolonged trial, he was honourably acquitted of the charges framed against him. Prior to his acquittal, he was reinstated in service and was transferred to Dum Dum Correctional Home where he has been working since 23-02-2012 till date. During the period of his suspension, he was paid 50% of his pay as subsistence allowance. There was no revision of his subsistence allowance throughout the suspension period that ranged from 07-01-2008 to 23-02-2012. Although he was reinstated upon revocation of his suspension, the Disciplinary Authority vide his order dated 16-01-2014 confirmed the period of his suspension and directed that the said period be treated as 'not spent on duty'. As a result, he has been denied of his dues and all consequential service benefits to which he is entitled as per law. Being aggrieved, he has challenged the impugned order dated 16-01-2014 passed by the Disciplinary Authority in the present application before the Tribunal.

3. The challenge of the Applicant is mainly based on the following grounds:-

- (i) That the impugned order essentially amounts to imposition of a penalty without initiation of a departmental proceeding. It is,

therefore, not sustainable in law because no punishment can be imposed on an employee without initiation of a departmental proceeding;

- (ii) That since his order of suspension was revoked and as he was reinstated in service consequent to his honourable acquittal by the competent Criminal Court, he is entitled to receive all his service benefits for the period of his suspension treating the same as spent on duty and ought to be paid all consequential service benefits, such as, arrears of pay and allowances including arrears of subsistence allowance and the arrears thereof;
- (iii) That the impugned order lacks logic and proper application of mind inasmuch as it has not taken into account that the Applicant has been honourably acquitted by the competent Criminal Court;
- (iv) That the impugned order is not sustainable in law as it is arbitrary, and is, therefore, hit by Article 14 and 21 of the Constitution of India.

4. Based on the above arguments, Mr. Roy submitted that the impugned order passed by the Disciplinary Authority is not sustainable in law. The same is, therefore, liable to be quashed and the Applicant may be allowed the reliefs prayed for by him in this application.

5. The contentions of the Applicant have been challenged by the State Respondents by filing a reply in which they have generally denied and disputed the averments made by the Applicant in the instant application except those that are matters of record. According to the Respondents, the application is mala fide, vexatious and is liable to be dismissed.

6. The matter was admitted for adjudication on 17-06-2014 and the parties were directed to exchange reply and rejoinder. The State Respondents, however, took some time to file their reply and ultimately, after over a year, they filed their reply on 15-07-2015. Thereafter, rejoinder was filed on behalf

of the Applicant on 23-09-2015 following which the matter was taken up for hearing. However, on the prayer of the Learned Counsel for the State, the matter was adjourned. Later on 05-04-2016, the Learned Advocate for the State was directed to place the concerned file in respect of the instant application. It further transpires from records that no one on behalf of the State was present before the Tribunal since 06-03-2018. Consequently, last chance was granted to the State and Mr. G. P. Banerjee, In charge of the State panel Advocates of WBAT, was directed to take appropriate steps to ensure the presence of the Respondents by the next date.

7. Pursuant to the said direction of the Tribunal, Mr. Banerjee appeared and submitted that confirmation of suspension has no relation with the criminal case. So the outcome of the criminal case cannot be the basis for two independent proceedings. Therefore, the Applicant cannot get the benefit of the outcome of the criminal case.

8. Refuting the submissions of the Respondents, the Applicant has filed a rejoinder in which he has generally reiterated the points raised by him earlier in the original application. He has particularly stressed that the impugned order is arbitrary and illegal as there was no departmental proceeding initiated against him. As such he cannot be subjected to a financial punishment by way of confirmation of his suspension period without following the due process of law. It has to be particularly borne in mind that he was reinstated in service after having been honourably acquitted from the criminal case. The impugned order that his suspension period be confirmed and that it is to be treated as period 'not spent on duty' is, therefore, devoid of any logic or reason. All his dues pertaining to the period of suspension and all consequential service benefits, as prayed for in the present application, may, therefore, be directed to be released.

9. Heard the rival submission of both sides and also perused the materials on records.

10. It transpires from the records that though the Applicant was placed under suspension because of his purported involvement in a criminal case, no departmental proceeding was drawn up against him. His suspension was revoked and he was reinstated in service following his acquittal from the criminal case. Despite there being no disciplinary proceeding against him, the period of his suspension was confirmed and the period of his suspension was directed to be treated as period 'not spent on duty'. This, in our opinion, is not sustainable in law as no such direction, which is essentially in the nature of a punishment, can be passed without following the due process of law as prescribed under the service rules, namely, without conducting a departmental proceeding. As such the impugned order is illegal, arbitrary and suffers from no-application of mind.

11. In view of the above, having regard to the factual matrix of the case and based on the materials on record, we allow the application and set aside the impugned order dated 16-01-2014. We also direct the Respondent authorities, in particular Respondent no. 2, namely, Inspector General of Correctional Services, Government of West Bengal, to release all the consequential service benefits to which the Applicant is entitled for the period of his suspension, in accordance with rules, treating the same as period spent on duty, including arrears of pay and allowances, arrear of subsistence allowance and benefit of revision of pay including arrears thereof, within six weeks from the date of communication of this order.

12. The instant Application is disposed of with the above direction. No costs.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER(J)

