

The Indian Law Reports

REVISIONAL CIVIL

Before Inder Dev Dua. J.

SURJIT SINGH,—*Petitioner*

versus

THE DIVISIONAL SUPERINTENDENT, NORTHERN
RAILWAY,—*Respondent.*

Civil Revision No. 226 of 1962.

Indian Railway Establishment Code, Vol. II—Section III, Appendix XXXI and Rule 2044(2)—Acquittal by giving benefit of doubt—Whether amounts to acquittal of blame.

Held, that Section III, Appendix XXXI, Indian Railway Establishment Code, Volume II, merely lays down that an adjustment of the allowances of a railway servant against whom proceedings have been taken on a criminal charge for the period of suspension should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer having been acquitted of blame. This provision when it talks of the contingency being only when he is acquitted of blame, contemplates virtually the same situation as sub-rule (2) of Rule 2044 (FR. 54), Indian Railway Establishment Code, Volume II, does, the difference in phraseology notwithstanding; and unless he is fully exonerated it is not permissible to hold that he has been acquitted of blame. The purpose, motive and object of the two provisions can on no principle or precedent be held to be different, for the standard of blameworthiness for Government employees must from the very nature of things be higher than that of securing conviction on a criminal charge in criminal Courts as adopted by our jurisprudence, and indeed it is this higher standard of conduct and character which India expects from her public servants. Acquittal by giving benefit of doubt thus does not by itself or *ipso facto*, amount to acquittal of blame.

1963

Jan., 23rd.

Petition under Section 115 of Civil Procedure Code read with Article 227 of the Constitution of India for revision of the order of Shri A. D. Koshal, District Judge, Amritsar, dated 5th February, 1962, affirming that of Shri Kartar Singh, Authority under the Payment of Wages Act, Amritsar, dated 16th June, 1960, dismissing the petition and leaving the parties to bear their own costs.

... Application for issuing a direction to the respondent under section 15(3) of the Payment of Wages Act for paying the amount of Rs. 2,119.98 nP., illegally deducted from the wages of the applicant for the period 3rd April, 1958 to 30th June, 1960.

BHAGIRATH DAS, ADVOCATE, for the Petitioner.

PARTAP SINGH, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.

This is a revision petition filed under section 115 of the Code of Civil Procedure read with Article 227 of the Constitution and is directed against the order of the learned District Judge, Amritsar, acting as the Appellate Authority under the Payment of Wages Act.

It appears that Surjit Singh petitioner in this Court used to work as a Railway Guard Grade "C" at Amritsar. On 3rd April, 1958, he was placed under suspension on account of a criminal case under section 386, Indian Penal Code, against him. He was ultimately acquitted on having been given the benefit of doubt and was consequently reinstated with effect from 10th June, 1959. During the period of suspension he was paid only subsistence allowance admissible under the rules contained in the Indian Railway Establishment Code. The order of reinstatement (Exhibit A. 3), dated 9th June, 1959, contained the following direction:—

"The period he remained under suspension will be decided later on."

On 23rd July, 1959, the Divisional Personal Officer, Ferozeore,—*vide* Exhibit A. 4 decided as follows:—

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“* * * * *His suspension period from 3rd April, 1958 to 9th June, 1958, is treated as under:—

3rd April, 1958 to 18th April, 1958 L.A.P. (Leave on average pay).

19th April, 1958 to 8th July, 1958 H.A.P. (Half average pay).

9th July, 1958 to 9th June, 1959 L.W.P. (Leave without pay).

Please charge his pay accordingly.”

The Divisional Superintendent, Northern Railway, Ferozepore, controverted the petitioner's claim and pleaded that he had not been “honorably acquitted” but had been merely given the benefit of doubt with the result that he could not be treated as on duty during the period of suspension.

The Authority framed the following issues:—

- (1) Whether this Authority has jurisdiction to entertain the claim of the petitioner?
- (2) Whether there is a sufficient cause for not making the application within period of limitation, if not, what portion of the claim is within limitation?
- (3) Whether the petitioner is entitled to recover the sum claimed by him?

Issue No. 1 was decided by the Authority against the railway administration. Under issue No. 2, the petition was found to be barred by time, but the delay was condoned and issue No. 3 was decided against the petitioner. In the result, the petition was disallowed.

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The matter was taken by the petitioner on appeal to the learned District Judge but without success. The learned District Judge, however, considered the matter at great length and in a very exhaustive and thorough judgment came to the conclusion that the petitioner could not claim the whole of the salary as demanded.

On revision Shri Bhagirath Das has to begin with contended that acquittal on the basis of benefit of doubt would also entitle his client to claim full salary on the basis that he had never been suspended. He has in this connection referred me to para 2044 (F.R. 54) of the Indian Railway Establishment Code contained in Volume II and has submitted that sub-rule (2) of this rule whereunder the authority competent to order reinstatement has to form an opinion whether or not the railway servant has been fully exonerated for the purpose of deciding to give him both pay and allowances, applies only to departmental proceedings and that where a person is acquitted by the criminal Court this consideration does not come into the picture. According to the learned counsel in the case of an acquittal by a Court of law the relevant provision to consider is section III Appendix XXXI of the Indian Railway Establishment Code according to which if an officer is acquitted of blame then he is entitled to be given full amount of allowances. The counsel has attempted to get some assistance for his submission from some reported cases. I would merely mention those decisions because, in my view; they are not at all helpful to the petitioner on the facts and circumstances of the case in hand. The cases cited are:—

The General Manager, N. W. v. Swaroopraj, etc. (1), In this case, however, the observations show that the words "acquitted of blame" do not

(1) A.I.R. 1955 Raj. 55.

mean the same thing as the word "acquitted". They also suggest that the words "acquitted of blame" are not intended to connote anything different from "full exoneration" mentioned in Rule 2044 of the Code.

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The Union of India v. Jayaram Damodhar Timiri (2). According to this decision, there is no concept like "honourable acquittal" in Criminal P.C., as the onus of establishing the guilt of the accused is on the prosecution. This case, it may be mentioned, does not deal with the provisions of the Indian Railway Establishment Code or the Discipline and Appeal Rules for non-gazetted railway servants—the provisions which concern us in this case.

Viswanath Tukaram v. General Manager, C.R., (3), and *The Management Hotel Imperial v. Hotel Workers' Union* (4).

On behalf of the respondent, to begin with, objection has been raised to the competency of the revision under section 115, Code of Civil Procedure, but, as is apparent from the record, the petition is filed both under section 115, Code of Civil Procedure, and Article 227 of the Constitution. I, therefore, need not refer to the authorities cited in support of the plea of incompetency of the petition under section 115, Code of Civil Procedure, applicability of Article 227 is not disputed.

Shri Partap Singh has also assailed the decision of the authority under the Payment of Wages Act in condoning the delay by the petitioner in making the application. In support of the challenge, it has been emphasised that the applicant

(2) A.I.R. 1960 Mad. 325.
(3) A.I.R. 1958 Bom. 111.
(4) A.I.R. 1959 S.C. 1342.

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himself did not care to go into the witness box. I am disinclined on revision to go into this point.

The respondents counsel has also submitted that the claim now relates to the period of suspension and is, therefore, not covered by the Payment of Wages Act. In support of this submission, reference has been made to a Full Bench decision of this Court in *Divisional Superintendent, N. R. v. Mukand Lal* (5). Head-note (d) of this judgment says that the railway administration has an undisputable power to suspend its employees and if he is duly suspended in the exercise of that power, the employee is not entitled to any salary for the period of suspension excepting the subsistence grant. In head-note (e) it is stated that if there is any conflict between the provisions of the Payment of Wages Act and the rules contained in the Indian Railway Establishment Code framed under section 241(2), Government of India Act, 1935, it is the Code which must prevail and, therefore, a railway employee cannot during his period of suspension claim his full wages and he cannot go to the authority under the Payment of Wages Act alleging that his wages have been deducted because in fact there has been no deduction. Reference has also been made to the *Imperial Hotel's case*, already cited. Reliance has further been placed on Rule 1711, Indian Railway Establishment Code, Volume I which confers power to suspend and to Appendix XXXI Section III of the same Code, Volume II; Sub-rule (2) of this provision has been specifically referred to and it has been submitted that the charge against the petitioner involved moral turpitude. It has also been urged that suspension has the effect of suspending the contract of service and, therefore, there is no enforceable right to claim wages. Support for this

(5) A.I.R. 1957 Punj. 130.

submission has been sought from *Punjab State v. Subedar Wazir Chand Chopra* (6).

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It has next been contended that the order of suspension is by itself a penalty as stated in Rules 1702 and 1711 in Volume I of the Indian Railway Establishment Code. I am not quite sure if this rule still survives but whether or not it is so, I do not think it is necessary to decide this point in the present case, as the case can be disposed of on other grounds.

Shri Partap Singh has then submitted that acquittal entitling the petitioner to the sum claimed does not include an acquittal based on only benefit of doubt, because that is not an acquittal of blame. That the rules framed have the force of law, as urged by **Shri Partap Singh**, cannot admit of any doubt and it is, therefore, unnecessary to refer in detail to the Supreme Court decision in *State of U. P. v. Babu Ram Upadhyaya* (7).

On behalf of the petitioner, in reply, it has not been contested that the railway administration had a right to suspend the petitioner and that during the period of suspension he could get no wages. It is only after his acquittal and reinstatement that, according to the counsel, he is claiming his wages. The learned counsel has conceded that the statutory rules are binding on the petitioner and it is under the scheme of the Act and the statutory rules alone that he is enforcing his right.

After considering the contentions raised in my opinion, the petitioner's claim has no merit. Section III, Appendix XXXI, Indian Railway Establishment Code, Volume II, on which reliance has been placed merely lays down that an adjustment of the

(6) A.I.R. 1955 Punj. 40.

(7) A.I.R. 1961 S.C. 751.

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allowances of a railway servant against whom proceedings have been taken on a criminal charge for the period of suspension should thereafter be made according to the circumstances of the case, the full amount being given only in event of the officer having been acquitted of blame. In my opinion, this provision when it talks of the contingency being only when he is acquitted of blame, contemplates virtually the same situation as sub-rule (2) of Rule 2044(FR. 54), Indian Railway Establishment Code; Volume II does, the difference in phraseology notwithstanding; and unless he is fully exonerated it is not permissible to hold that he has been acquitted of blame. The purpose, motive and object of the two provisions can on no principle or precedent be held to be different, for the standard of blameworthiness for Government employees must from the very nature of things be higher than that of securing conviction on a criminal charge in criminal Courts as adopted by our jurisprudence, and indeed it is this higher standard of conduct and character which India expects from her public servants. Acquittal by giving benefit of doubt thus does not by itself or *ipso facto*, in my opinion, amount to acquittal of blame.

In any case, I am wholly unable to persuade myself to exercise the extraordinary discretionary power of revision whether under section 115, Code of Civil Procedure or under Article 227 of the Constitution and grant relief to the petitioner on the facts and circumstances of the present case, for the impugned orders have not been shown to be tainted with any such serious vice as would justify interference on revision.

For the foregoing reasons, this petition fails and is hereby dismissed with costs.

B.R T.