



**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.**

**CWP No. 3204/2009**

**Reserved on: 2.1.2016**

**Decided on: 7.1.2016**

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Bimla Devi.

...Petitioner.

Versus

State of Himachal Pradesh and others.

...Respondents.

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**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Hon'ble Mr. Justice P.S. Rana, Judge.**

**Whether approved for reporting? <sup>1</sup> Yes**

**For the Petitioner: Mr. Sanjeev Bhushan, Sr. Advocate with Ms. Abhilasha Kaundal, Advocate.**

**For the Respondents: Mr. J.S. Guleria, Assistant Advocate General for the respondent-State.**

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**Per Justice Rajiv Sharma, Judge:**

The petitioner has sought judicial review of the judgment rendered by the Himachal Pradesh Administrative Tribunal in OA (M) No. 331/2001 dated 20.7.2007 by way of present writ petition.

2. "Key facts" necessary for the adjudication of this petition are that Roshan Lal, husband of petitioner,

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? Yes

was appointed as Forest Guard with the respondent department. He was promoted as Deputy Ranger on 3.7.1970. He was charged with and tried for offences punishable under sections 41 and 42 of the Indian Forest Act. He was convicted by the trial court. In an appeal, his conviction was upheld. However, Roshan Lal filed a Criminal Revision before this Court. It was allowed on 5.12.1997. He was acquitted. The operative portion of the judgment reads as under:

**“After scrutinizing the entire oral and documentary evidence on record, I am of the considered view that both the courts below have committed grave error in appreciating the evidence in its right perspective and the judgments and orders of convictions and sentences have entailed miscarriage of justice to the convicts in the present case. No doubt, 91 sleeps of Deodar were recovered by the DFO, which were being illicitly transported in the truck hired by convict Narinder Kumar for transporting 146 logs in pursuance of challan Ex.PW-1/A. From the evidence on record, the prosecution has failed to prove beyond reasonable doubt that the timber was transported by convict Narinder Kumar and other convicts forest officials had conspired with him and allowed the transportation of the timber illegally. There is no evidence on record to show that 146 logs transported by convict Narinder Kumar under challan Ex.PW-1/A were not in conformity with the rules and thereby convicts have committed offence punishable under sections 41 and 42 of the Indian Forest Act for the reasons stated in the earlier part of the judgment.**

**In the result, for the above said reasons, all the revision petitions are allowed and the judgment and orders of convictions and sentences passed by both the courts below are**

**set aside. The convicts shall stand acquitted of the charges. Bail bonds are discharged. Fine if deposited, be refunded to the petitioners.”**

3. His suspension was also revoked on 5.6.1998. In the meantime, the Departmental Promotion Committee was also held on 12.5.1988 for considering him for promotion to the post of Ranger. However, the recommendations were kept in sealed cover due to pendency of criminal case. He was promoted notionally on 21.7.2000. Roshan Lal aggrieved by the order dated 21.7.2000 filed O.A. (M) No.331/2001. It was dismissed by the H.P. Administrative Tribunal on 20.7.2007. Hence, the present petition.

4. Case of the petitioner precisely is that her husband was acquitted by this Court on 5.12.1997. His suspension was also revoked on 5.6.1998. In view of this, petitioner's husband should have been granted actual/effective monetary benefits with effect from 8.2.1989. Case of the respondents precisely is that acquittal of the husband of the petitioner was not based on positive findings and moreover, he has not performed the duties/responsibilities of the higher post as Forest

Ranger. Thus, he was promoted as Ranger on 21.7.2000 on notional basis.

5. Mr. J.S. Guleria, learned Asstt. Advocate General has drawn the attention of the Court to para 16.32 (2) iv) of the Handbook on Personnel Matter. The relevant extract of the same has been placed on record. According to these instructions, on the conclusion of disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of next junior on the basis of such person. There is also a rider that there may be cases where the proceedings whether disciplinary or criminal are for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, in these cases, competent

authority may deny the arrears of salary or part of it. However, it has to record its reasons for doing so. Roshan Lal has been acquitted since the prosecution has failed to prove the case against him beyond the reasonable doubt. He has not been acquitted merely by giving him benefit of doubt. Thus, Roshan Lal was required to be promoted with effect from 8.2.1989 by giving him actual monetary benefits instead of promoting notionally with all the consequential benefits.

6. Division Bench of Orissa High Court in **Jogendra Garabadu and others vs. Lingaraj Patra and others**, AIR 1970 Orissa 91 has held that "acquittal on merits" means an acquittal after trial on a consideration of the evidence as distinguished from acquittals due to certain defects such as want of sanction, acquittals on weakness of prosecution evidence, on benefit of doubt or on insufficiency of evidence. Division Bench has held as under:

**[16] What the words "acquittal on merits" precisely connote have not been dealt with in any of the decisions. Reference was made to a decision of our High Court reported in (1959) 25 Cut LT 366 = (AIR 1960 Orissa 29) where a distinction has been made between "acquittal on grounds of extreme weakness of the prosecution evidence" and "acquittal by giving benefit of doubt." It has been observed that while the former**

will amount to an acquittal on merits, the latter will not. For this purpose, it was observed that the criminal court judgment can be gone through to find out the reasons for the acquittal, though the reasonings and conclusions therein cannot be relied upon as conclusive or decisive in the civil suit claiming damages for malicious prosecution.

[17] It is well settled that in every suit for malicious prosecution, the civil Court must hear the evidence on both sides and decide for itself independently whether or not the prosecution was without reasonable and probable cause and malicious. It is equally well settled that the judgment of the criminal Court is evidence and conclusive as to show the acquittal of the plaintiffs as a fact in issue which is one of the essential elements to be determined in a suit for damages, for malicious prosecution. No doubt the judgment of a criminal Court is admissible to show certain facts and circumstances, such as, the names of witnesses examined, the documents exhibited or that the acquittal was on some technical grounds without going into the evidence or on the merits of the evidence, but in our opinion, the reasonings and conclusions in the judgment of a criminal Court cannot be gone into to determine whether the acquittal resulted on account of the prosecution evidence being weak, insufficient or doubtful.

Therefore, the words "acquittal on merits" must mean an acquittal after trial on a consideration of the evidence as distinguished from and in contradistinction to acquittals which occur due to certain technical defects, such as, want of sanction etc. There seems to be no authority, and in our opinion, no adequate justification to make a further distinction between acquittals on weakness of prosecution evidence, acquittals by giving benefit of doubt or acquittals on insufficiency of evidence and holding that only some of them will amount to acquittals on merits and others not. Embarking on making such a distinction will necessarily mean utilisation of reasonings and conclusions in the criminal court judgment by the civil court in the trial of the suit which is not permissible.

7. The expression “benefit of doubt” has been explained by their Lordships of the Hon’ble Supreme Court in ***State of U.P. vs. Iftikhar Khan and others***, (1973) 1 SCC 512 as under:

[27] Mr. Mookerjee no doubt urged that the High Court might have been influenced by the fact that the evidence of the defence witnesses creates a lot of doubt about the participation of the first respondent in the crime. We are prepared to agree that if the said evidence really raises a reasonable doubt in the mind of the Court regarding the participation in the crime by the first respondent, that doubt must be resolved in his favour. In this context, it is pertinent to quote the following observations in the decision in AIR 1972 SC 975 (supra):

"The benefit of doubt to which the accused is entitled is reasonable doubt-the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy-though unwittingly it may be-or is afraid of the logical consequences, if that benefit was not given, or as one great Judge said it is not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism."

8. Learned Single Judge of Gauhati High Court in ***Pratul Bhattacharjee vs. The State of Assam***, Crimes 1987 (2) 816 has held that when the trial court comes to the finding that the prosecution totally fails to prove the charge, then the user of the expression 'benefit of doubt' in acquitting the accused is improper and illegal. Learned Single Judge has held as under:

[5] The trial courts should be very cautious in using that expression in a case where "Government servant is involved It should not be used as a fashion or ornamentally if not warranted, because the expression may be detrimental to the service career of the person getting acquittal. When the trial court comes to the finding that the prosecution totally fails to prove the charge, then the user of the expression 'benefit of doubt' in acquitting the accused is improper and illegal. The present case comes within this category."

9. In the present case also, the prosecution has failed to prove the case against Roshan Lal as per the evidence discussed by the learned Single Judge.

10. In criminal cases the charges are to be proved beyond reasonable doubt. The expression "beyond reasonable doubt" has not been correctly appreciated by the Tribunal while dismissing the original application.

11. Learned Single Judge of the Allahabad High Court in ***Sita Ram Dixit vs Divisional Commissioner, Allahabad Division***, 1991 Law Suit (All) 322 has held that there is a distinction between the words "benefit of doubt" and "establishment of guilt beyond reasonable doubt".

12. Roshan Lal has been acquitted and the words "the prosecution has failed to prove beyond reasonable doubt" in the judgment of this Court has been taken by

the Tribunal as Roshan Lal has been given benefit of doubt. The exception given in para 16.32 (2) iv) of the Handbook on Personnel Matter not to grant benefit and restricting the same would be applicable in those cases where the person has been given benefit of doubt etc.

13. Their Lordships of the Hon'ble Supreme Court in ***Bank of India and another vs. Degala Suryannarayana***, (1999) 5 SCC 762 have held that the sealed cover procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over. Their Lordships have held as under:

**“[14] However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India v. K. V. Jankiraman, AIR 1991 SC 2010, 2113 : (1991 AIR SCW 2276 : 1991 Lab IC 2045). As on 1-1-1986 the only proceedings pending against the respondent**

were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D. E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.”

14. The criminal proceedings launched against Roshan Lal ended in acquittal wiping out the retrospective effect of the adverse consequences.

15. There is no material placed on record of this case that after the acquittal of Roshan Lal any departmental proceedings were initiated against him. Moreover, this power to initiate disciplinary proceedings after the acquittal has to be exercised equitably and reasonably.

16. Their Lordships of the Hon'ble Supreme Court in ***Deputy Inspector General of Police and another vs. S. Samuthiram***, (2013) 1 SCC 598 have

dealt with expression “honourable acquittal”. Their Lordships have held that 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. Their Lordships have also explained that there may be a case where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile. Their Lordships have held as under:

**[24] The meaning of the expression 'honourable acquittal' came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, 1994 1 SCC 541. 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] In *R.P. Kapoor v. Union of India*, 1964 AIR(SC) 787, it was held even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam and another v. Raghava Rajgopalachari*, 1972 SLR 45, this Court quoted with approval the views expressed by Lord Williams, J. in 1934 61 ILR(Cal) 168 which is as follows:

"The expression "honourably acquitted" is one which is unknown to court of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term 'honourably acquitted'".

[26] As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to

be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

17. We have gone through the judgment rendered by the learned Single Judge. The Court has appraised the entire evidence led by the prosecution and has categorically held that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

Thus, the acquittal of the accused was “honourable acquittal”. It is not a case where accused Roshan Lal was acquitted for technical reasons, but he was acquitted after consideration of entire evidence led by the prosecution.

18. Now, as far as applicability of “no work no pay’ is concerned, this question is no more *res integra* in view of the law laid down by their Lordships of the

Hon'ble Supreme Court in *Union of India and others*  
vs. *K.V. Jankiraman and others*, (1991) 4 SCC 109.

Their Lordships have held as under:

"25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise

public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

19. The Departmental Promotion Committee in the instant case was held in the year 1988. He was acquitted on 5.12.1997 by this Court. However, despite that he was promoted on 21.7.2000 on notional basis. He was always ready and willing to discharge the duties of Ranger, but has been prevented for the simple reason that the recommendations made by the Departmental Promotion Committee were kept in sealed cover and these were opened only on 21.7.2000. Thus, the principles of "no work no pay" would not be applicable. It is reiterated that Roshan Lal has been acquitted by this Court after perusal of entire evidence and not on

any technical defects. He was required to be promoted with effect from due date, i.e. 8.2.1989 with monetary benefits.

20. Accordingly, in view of the analysis and discussion made hereinabove, writ petition is allowed. The judgment dated 20.7.2007 rendered by the Tribunal in O.A. (M) No. 331/2001 is set aside. Letter dated 21.7.2000, is also quashed and set aside by applying the principle of severability and the legal heirs of Roshan Lal would be entitled to all the consequential monetary benefits of the promotional post of Ranger with effect from 8.2.1989 with interest @ 9% per annum. Respondents are also directed to work out the pensionary benefits as per actual monetary benefits released to the legal heirs w.e.f. 8.2.1989. The amount shall carry out interest @ 12% per annum. Needful be done within a period of six weeks from today. Pending application(s), if any, also stands disposed of. No costs.

**(Justice Rajiv Sharma),  
Judge.**

**(Justice P.S. Rana),  
Judge.**

7.1.2016\*awasthi\*