

**Dinesh Kumar Kaln Vs. Assistant General Manager, Corpn. Bank and anr.**

**Dinesh Kumar Kaln Vs. Assistant General Manager, Corpn. Bank and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/714484](http://sooperkanoon.com/714484)

**Court :** Delhi

**Decided On :** Apr-21-2006

**Reported in :** 131(2006)DLT550; 2006(89)DRJ335

**Judge :** S. Ravindra Bhat, J.

**Acts :** Prevention of Corruption Act; Corporation Bank Officer Employees (Discipline and Appeal) Regulations, 1982 - Regulations 14, 15, 15(1), 15(2) and 15(3); [Constitution of India](#) - Article 311

**Appeal No. :** W.P. (C) 15044/2004

**Appellant :** Dinesh Kumar Kain

**Respondent :** Assistant General Manager, Corpn. Bank and anr.

**Advocate for Def. :** Dhruv Mehta, Adv.

**Advocate for Pet/Ap. :** R.K. Saini, Adv

**Judgement :**

**S. Ravindra Bhat, J.**

1. The writ petitioner claims directions for quashing of an order dated 7-11-2003, which had determined that the period of his suspension would not be treated as under duty, without any consequent entitlement to back-wages, and service

benefits.

2. The undisputed facts of the case are that the petitioner was arrested, and remanded to judicial custody, pursuant to an FIR lodged, alleging that he, inter alia, was guilty of having committed offences under the Prevention of Corruption Act. As per regulations of the Respondent Bank, the petitioner was placed under suspension, immediately upon his arrest. The bank did not conduct a separate domestic enquiry; it placed the petitioner under suspension, by order dated 8-4-1992, awaiting the ultimate outcome of the trial. The petitioner was reinstated to the services, by an order dated 9-6-2003. Eventually, the criminal court acquitted the petitioner, on 18-8-2003, of the charges. The bank thereupon issued the impugned order, which is in the following terms:

Dear Sir, In terms of letter No. PAD/IRW/DISC/554/2003 dated 9-6-2003, the order placing you under suspension has been revoked. While revoking the suspension order it was made clear to you that reckoning of the intervening period from the date of suspension till you report for duty for the purpose of pay and allowances, shall be decided on the basis of the final outcome of the criminal proceedings initiated against you by CBI. In terms of our letter dated 4-09-2003 you submitted a copy of the judgment dated 18-08-2003 of the Special Judge Delhi in the matter of the Charge Sheet filed by the CBI. Quoting Regulation 15 of the Corporation Bank Officer Employees(Discipline and Appeal) Regulations, 1982, you have stated that you are entitled to full pay together with all other allowances during the period of your suspension, since your acquittal is on merit. It is observed from the judgment dated 18-08-2003 that the Hon'ble Special Judge has held that you have become entitled to be extended with the benefit of doubt and accordingly acquitted you. It is therefore clear that your acquittal is not on merits as envisaged under Regulation 15 (1) of the Corporation Bank Officer Employees' (Discipline & Appeal) Regulations, 1982. Accordingly after careful consideration of the matter, it has been decided not to treat the period of your suspension as on duty. It has also been decided that you are not entitled to any more pay and allowances for the period of suspension. The pay and allowances for the period of your suspension is restricted to the subsistence allowance already paid to you. The period of your suspension shall be reckoned for the limited purpose of continuity of service for

gratuity and pension and not for any other purpose or benefit whatsoever.

3. Learned counsel for the petitioner submitted that with the judgment of the criminal court, which had held that the prosecution failed to establish the guilt of the petitioner, of the charges, leveled against him, the expression 'benefit of doubt' cannot be construed literally, as has been done by the bank; the entire judgment shows that the acquittal was on merits, since the prosecution had failed to establish the charges. He relied upon the judgment reported as Mohan Lal vis--vis Union of India : (1982)11LLJ174Del . In that case, the court held as follows:

It is a mandatory requirement of F.R. 54(3) that period spent on suspension should be treated as a period spent on duty for all purposes when a delinquent servant is fully exonerated and his order of dismissal, removal or compulsory retirement is set aside. On plain reading, F.R. 54(3) is not applicable to the present case. The term 'fully exonerated' is not defined or explained in the Fundamental Rules. Fundamental Rule 54(4) throws some light on the concept of full exoneration. The said rule provides that if a Government servant is exonerated for non-compliance with requirements of cl. (2) of Art. 311 of the Constitution, the Government has discretion (on satisfaction of the conditions mentioned therein) to pay an amount smaller than the full pay. The spirit of the provisions appears to be that if a delinquent servant is exonerated merely for non-compliance of the technical procedure Rules and is not exonerated on merits, he is not entitled to full pay. Even assuming that the petitioner was acquitted on benefit of doubt, it cannot be said that he is acquitted for non-compliance with the technical Rules of procedure. Indeed, in criminal law an acquittal on benefit of doubt is a complete acquittal on merits. Reasoning of the D.I.G. is contrary to law. The State did not prefer an appeal against the order of acquittal by the Magistrate. therefore, the judgment of acquittal has become final. It means that the acquittal on merits has become final. If it was a mere case of a doubt according to the strict requirement of rules in a criminal trial, the petitioner could have been proceeded against departmentally. Technical rules of evidence are not applicable to departmental proceedings. The petitioner was charged under S. 294 of the I.P.C. Indecent behavior with a woman is certainly a conduct unbecoming of a Government servant. But it appears that the respondents were convinced that there was no sufficient evidence to hold that

the conduct of the petitioner was unbecoming of a Government servant. By inference one can reach this conclusion, as no departmental proceeding was held against the petitioner. The impugned order was passed by the D.S.P. within four months of his acquittal. The impugned order cannot be justified under F.R. 54(1)(2) or (4).

4. Counsel also urged that the judgment of the Supreme Court, reported as *Brahma Chandra vis--vis Union of India* AIR 1981 SC 380 supported the petitioner's case, for the proposition that upon reinstatement, in the wake of acquittal from criminal charges, an employee would be entitled to full back-wages. Counsel also submitted that the determination by the bank that the period of suspension should be treated as not on duty, except granting continuity for the purposes of gratuity and pension is not based on any reason or logic. He relied upon Regulation 15(3) to say that the authority should apply its mind, and indicate reasons, to deprive service benefits. With the petitioner's acquittal, the doubt about his conduct, was cleared, and therefore, there was no rationale to deny him the benefit of continuity of service, for all purposes, or for withholding seniority, promotion, and increments, accruing during the period.

5. Learned counsel for the respondent reiterated the contentions and submissions made in the counter affidavit. He submitted that on a combined reading of Regulations 15(1) and 15(2) no employee could claim an entitlement to full back-wages for the entirety of period of suspension occasioned by a criminal trial. He relied upon the judgment of the criminal court, and submitted that the bank, was of the opinion that the petitioner was given benefit of doubt, and therefore, determined that he was not fully exonerated, to claim entire balance of salary. Reliance was placed upon the decision of the Supreme Court reported as *The Management of Reserve Bank of India, New Delhi vis--vis Bhopal Singh Panchal* : (1994)ILLJ642SC where the court held that:

In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent

authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable.

6. Counsel also submitted that the impugned order was not arbitrary, and that an important circumstance which the bank had considered in this case, was that the petitioner did not work during the period. He was also paid subsistence allowance, as per rules, which had even been enhanced, as per the conditions of service applicable, in such cases.

7. Regulation 15 reads as follows: 15. Pay, allowance and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation, (1), the office employee shall be granted such proportion of pay and allowances as the competent authority may direct,

Provided that the payment of allowance under this Sub-regulation shall be subject to all other conditions to which such allowances are admissible.

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under Regulation 14.

(3) (a) In cases falling under sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty.

(b) In the case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

8. In *Krishnakant Raghunath Bibhavnekar v. State of Maharashtra* : (1997)ILLJ 1190 SC the Supreme Court explained the right of an employee to claim back wages, after reinstatement, upon being acquitted, in the following manner:

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. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course on his acquittal.

In its later decision in *Hukmi Chand v. Jhabua Coop. Central Bank Ltd.* , the court again reiterated the same position, in the following terms:

The second contention of the appellant relates to Rule 49, sub-rule (ii) which provides that if ultimately the sentence awarded by a lower court is set aside by a superior court and the employee is acquitted, he is required to be reinstated in service. The appellant contends that this rule further provides that he is to be reinstated without any back wages unless otherwise stated in the order of reinstatement. This, according to the appellant, is a fetter on the power of the employer to award back wages to the employee and hence this rule is arbitrary. He contends that if the employee is reinstated, there should be provision for grant of back wages also. In the absence of such a provision, according to him, sub-rule (ii) is arbitrary. We fail to see any such fetter as contended by the appellant. Under sub-rule (ii), there is a clear implied power to order back wages if the employer considers it appropriate looking to the facts and circumstances of a given case. All that the rule provides is that the order must state that such back wages are being granted. In the absence of an order specifying the grant of back wages, the reinstatement will not automatically entitle an employee to back wages. The right to reinstatement on acquittal, therefore, does not carry with it, by necessary implication, a right to back wages under Rule 49(ii). But the employer has the discretion to grant back wages. Such a fetter if at all it is a fetter, cannot be considered as arbitrary, in view of the fact that the termination of services under sub-rule (i) of Rule 49 is on conviction. During the pendency of an appeal, the conviction is not obliterated. However, on acquittal, sub-rule (ii) provides for reinstatement. The grant of back wages, in these circumstances, will obviously depend upon the facts and circumstances of each case, especially because in the interregnum, the employee does not work with the employer on account of a valid termination of service.

The same position was taken in two other judgments of the Supreme Court, namely *Ranchodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board* : (1997)IILLJ683SC and *Union of India v. Jaipal Singh* : (2004)ILLJ431SC .

9. The correct position therefore, appears to be that the grant of back wages depends upon the facts and circumstances of each case, and a circumstance which has to be kept in mind is that the employee does not work with the employer on account of a cloud on his conduct, necessitating suspension due to pendency

of criminal charges. The right to claim reinstatement, if one can term it to be so, arises only after the court acquits the employee. Till then, the disability arising on account of the employee facing criminal charges, remains; he cannot claim reinstatement. The reliance placed on the judgment in Mohan Lal and Brahma Chandra, in my opinion, are not apt. In the former case, the court held that the terminology used by the criminal court would not be determinative of the true nature of the result, which is acquittal. The proposition, in my opinion, is too widely stated. The Supreme Court, as noticed above, has reiterated that the grant of complete back wages, and considerations which would be relevant, are to be on the basis of facts of each case. In this case, there is no dispute that the allegations against the petitioner, for which he stood trial, were of corruption. The matter was referred to the Central Bureau of Investigation. The court framed charges, and examined evidence. No doubt the petitioner was acquitted. Even if the matter were seen only from that perspective, ignoring for the moment whether the petitioner was given benefit of doubt, as observed in Krishnakant Raghunath Bibhavnekar, the nature of the charge would be relevant for determination of the issue by the employer. Further, the petitioner was granted subsistence allowance, during the period, which was even enhanced. thereforee, denial of arrears of full salary and allowances to the petitioner, for the period he was out of employment on account of pendency of trial into criminal charges, is neither arbitrary nor illegal.

10. The opinion of the bank not to grant a full salary for the duration the petitioner was under suspension, cannot be faulted. However, its decision not to treat him as on duty is unsupported by any reason. It is true that Regulation 15(1) entitles a competent authority to grant full pay in two eventualities, namely, when the official is fully exonerated or where the suspension was unjustifiable. Similarly, Rule 15 (3) requires that that period should not be treated as having spent on duty. Yet, the factual narrative in this case would show that the bank itself was of the opinion that for purposes of gratuity and pension, the petitioner was entitled to reckon the entire duration as having been on duty. thereforee, the order depriving the petitioner continuity of service benefits for purposes of seniority etc. for more than 11 years, operates in a very oppressive and arbitrary manner. Apart from citing Rule 15 (3), the respondent bank had not disclosed why the petitioner should suffer such deprivation or what were contributory factors on his part, disentitling

him to the consequential benefits of seniority, increment on the grade and other normal benefits that would have accrued to him. I am, therefore, of the opinion that the bland reliance on operation of the rule cannot be justified and that no reasons have been disclosed why the bank found it expedient to deny such reliefs.

11. In the light of the foregoing discussions, the impugned order is quashed to the extent it confines the reliefs regarding the period the petitioner was under suspension, to reckoning it only for purposes of gratuity and pension. The respondents are directed to pass a consequential order entitling the petitioner to all the service benefits which would have normally accrued to him including but not limited to, increments, seniority and consideration for promotion upon his turn, but excluding the entitlement to full salary, for the period he was under suspension within a period of eight weeks from today.

12. The writ petition is partly allowed to the extent indicated above. No costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**