

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 200 OF 2006**

**Gurpal Singh**

**...Petitioner**

**VERSUS**

**High Court of Judicature for Rajasthan**

**...Respondent**

**J U D G M E N T**

**SURINDER SINGH NIJJAR, J.**

1. In this petition, under Article 32 of the Constitution of India, the petitioner seeks a writ in the nature of Certiorari for quashing the order of suspension dated 20<sup>th</sup> December, 1985 by declaring the same to be void-ab-initio. The petitioner also claims a declaration that the order dated 24<sup>th</sup> January, 2009 is void and that the petitioner is entitled to all benefits for the period of suspension from 20<sup>th</sup> December, 1985 till 26<sup>th</sup> March, 2008, when he was reinstated in service.

2. We may briefly advert to the relevant facts on the basis of which the petitioner claims the aforesaid relief.
  
3. On 28<sup>th</sup> December, 1979, the petitioner was selected by the Rajasthan Public Service Commission (R.P.S.C.) for the post of Assistant Public Prosecutor Grade II. He served on the said post till 28<sup>th</sup> July, 1980. On the very next day, i.e. 29<sup>th</sup> July, 1980, he was selected for appointment to the Rajasthan Judicial Service and joined as Judicial Magistrate First Class. For sometime, he remained posted at Banswara as Judicial Magistrate. During this period, his judgments were graded as above average and integrity as “beyond doubt”. In the inspection report, it was further remarked that “his behaviour with members of the Bar, litigants and the persons coming to the Court needs improvement”. It appears that he was not on best of terms with the local Bar, which led to his transfer.
  
4. On 24<sup>th</sup> November, 1985, at about 10.30 p.m., a dead body was found near Ajmer Pulia on the railway track in the city of Jaipur. The dead body was identified as that of one Mr.

Suresh Chand Gupta, Advocate. A 'Marag' (death) case was registered on 24<sup>th</sup> November, 1985, at Serial No. 35/85 at Police Station GRP, Jaipur. It appears that the local bar association of which the deceased was a member protested that proper investigation was not being conducted about the manner in which Mr. Suresh Chand Gupta was found dead on the railway track. The members of the Bar Association insisted that his death was result of some foul play.

On 11<sup>th</sup> December, 1985, that is about 20 days after the incident, wife of the deceased gave a written complaint, alleging that the Petitioner was involved in the murder of her husband. In her written complaint, she alleged that her husband had informed her about three months prior to the incident that the petitioner had demanded a sum of Rs.1 lac for exercising his influence with the high-ups, in securing the appointment of the deceased as a member of Board of Revenue. She claimed that the money which was paid to the petitioner was arranged by her deceased husband by selling a plot of land. He had also borrowed money from her father and other relatives. In spite of having paid the aforesaid money, her

husband was not provided any appointment. Consequently, her husband had been insisting that the petitioner return the amount unnecessarily paid to him. She claimed that the petitioner had agreed to return the money and asked her husband to meet at a pre-arranged place. Her husband left home at 5.00 p.m. on 24<sup>th</sup> November, 1985 and did not return. She, therefore, concluded that the petitioner must have killed her husband on account of the dispute over money.

5. Upon coming to know about the complaint made by the wife of the deceased, the petitioner himself went to the Police Station on 18<sup>th</sup> December, 1985 and offered to join the investigation. He requested the police to complete the investigation as soon as possible, as in the meantime, he has been transferred and had to join at Vallabh Nagar. In the meantime, the local bar association continued the agitation against the inaction of the police. The lawyers resorted to strike and the work at the Courts was paralysed for many days to come. The situation was so grave that when the application of the petitioner for anticipatory bail

came up for hearing before the High Court on 20<sup>th</sup> December, 1985, members of the Bar Association did not allow the advocate of the petitioner to argue the case. The petitioner relies on the order passed by M.B. Sharma, J. on 20<sup>th</sup> December, 1985, which is as under:-

“20.12.1985

Mr. M.I. Khan, Public Prosecutor for the State.

The bail application was fixed for orders at 2.00 p.m. and the Public Prosecutor had sought time to get the case diary from the Investigating Officer. I am in the court for last 15 minutes, but the entry to the Court has been blocked by the advocates and others. It is for the members of the August profession to consider how far it is justified. The advocate for the petitioner could not come to the court because of that blockade. Hence the case cannot be taken up. I have no option but to retire to the Chamber. The case is adjourned to January 2, 1986.

Sd/- Sharma, M.B.”

6. Thereafter, the High Court was closed for winter break on 21<sup>st</sup> December, 1985. On 20<sup>th</sup> December, 1985, the petitioner was formally arrested and taken into custody by the police (CBI, Jaipur). He was placed under suspension on 22<sup>nd</sup> December, 1985 w.e.f. 20<sup>th</sup> December, 1985. Since the petitioner had already been arrested, the anticipatory

bail application was dismissed as having become infructuous on 2<sup>nd</sup> January, 1986. In view of the volatile atmosphere, the petitioner apprehended that he would not get a fair trial in the Criminal Case No. 3/86 pending before the Sessions Judge, Jaipur against him. He, therefore, approached this Court with a prayer for transfer of the criminal trial. By Order dated 4<sup>th</sup> August, 1986, this Court transferred the trial in the aforesaid criminal case to a Court of competent jurisdiction in Delhi. Thereafter, the trial was duly conducted at Delhi. By judgment and order dated 1<sup>st</sup> May, 2002, the petitioner was acquitted by the Additional Session Judge, Delhi.

7. Upon acquittal by the trial court, the petitioner submitted a joining report on 6<sup>th</sup> May, 2002 to the Registrar General, Rajasthan High Court. The request made by the petitioner remained under consideration of the High Court from the said date. The decision was deferred to await the result of the appeal, if any, preferred against the acquittal of the petitioner. It appears that an appeal was filed by the CBI,

which, however, came to be dismissed by a Division Bench of the Delhi High Court on 27<sup>th</sup> September, 2005.

8. The petitioner submitted his joining report on 3<sup>rd</sup> October, 2005. However, no action was taken by the High Court. It was only on 17<sup>th</sup> November, 2005 that he was directed to mark his attendance at the office of the District and Session Judge, Jaipur. By this time, the petitioner had been under suspension for a period of 20 years. He, therefore, submitted another representation on 2<sup>nd</sup> March, 2006 setting out the grievances and seeking permission to appear in person before the Chief Justice.

9. In the meantime, the petitioner came to know that instead of revoking the order of suspension, the High Court may initiate disciplinary proceedings against him. At that stage, the petitioner was only about 2 years short of the age of superannuation. He, therefore, moved the present Writ Petition, seeking immediate revocation of the order of suspension and consequential benefits. On 8<sup>th</sup> May, 2006, it was brought to the notice of this Court that after filing of

the writ petition, the High Court has initiated the departmental proceedings against the petitioner, but no fresh order of suspension has been passed. It was, therefore, submitted that direction be issued to the High Court to reinstate the petitioner forthwith. This Court issued notice on the Writ Petition and also on the application for ex-parte stay. Subsequently, the matter came up for hearing on 25<sup>th</sup> January, 2007 when this Court directed that the matter be posted for final disposal in the last week of March, 2007. On 4<sup>th</sup> January, 2008, it was submitted on behalf of the respondent that the enquiry proceedings were in progress against the petitioner. Therefore, this Court directed the High Court to complete the enquiry within a period of eight weeks and submit its report.

10. The enquiry was duly completed. In the Enquiry Report dated 27<sup>th</sup> February, 2008, the petitioner was exonerated of the charges levelled against him. It was only at that stage, that he was reinstated with immediate effect, by order dated 26<sup>th</sup> March, 2008. The orders passed by the respondent

were placed on the record of these proceedings with the affidavit dated 22<sup>nd</sup> April, 2008 filed by the Registrar (Writs). The petitioner was, thereafter, given the posting order at Vijai Nagar on 12<sup>th</sup> May, 2008. He retired from service on attaining the age of superannuation on 30<sup>th</sup> June, 2008.

11. It appears that the trials and tribulations of the petitioner did not come to an end, even after retirement. In fact on 24<sup>th</sup> January, 2009, an order was issued on the basis of the resolution passed by the Full Court in its meeting held on 29<sup>th</sup> November, 2008, wherein it was resolved as under:-

**“RAJASTHAN HIGH COURT, JODHPUR**

**ORDER**

No. Estt. (RJS) 15/2009 Date :- 24.01.2009

WHEREAS SHRI GURPAL SINGH, RJS presently retired was placed under suspension vide this office Order No. Estt. (RJS) 199/85 dated 22.12.1985.

AND WHEREAS it was decided that regular disciplinary proceedings under rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 be initiated against Shri Gurpal Singh, RJS presently retired.

AND WHEREAS Hon'ble the Chief Justice in exercise of the powers conferred by Rule 13 of the

Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 read with Full Court Resolution dated October 30, 1971 was pleased to order that on account of initiation of a regular enquiry under rule 16 of Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 the suspension of Shri Gurpal Singh shall continue.

AND WHEREAS Departmental Enquiry under rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 was initiated against said Shri Gurpal Singh vide Memorandum No. Estt. B2(iii) / /2006/1544 dated 20.04.2006.

AND WHEREAS in the above departmental enquiry said Shri Gurpal Singh has been exonerated vide order No. Estt. (RJS) 25/2008 dated 26.03.2008.

AND WHEREAS, Shri Gurpal Singh has been reinstated with immediate effect as Civil Judge (Jr. Div.) & Judicial Magistrate in the RJS vide order No. Estt. (RJS) 26/2008 dated 26.03.2008.

AND WHEREAS the matter regarding regularization of suspension period of Shri Gurpal Singh was considered by the Hon'ble Full Court in its meeting held on 29.11.2008 and it was resolved as under:-

“Perused office note and relevant record. RESOLVED that period of his suspension shall be treated as a period spent on duty, but without salary except subsistence allowances already paid to him. However, this will not effect **(sic)** his pensionary benefits but he will not be entitled for any promotion.”

NOW THEREFORE, the period of his suspension shall be treated as a period spent on

duty, but without salary except subsistence allowances already paid to him. However, this will not effect **(sic)** his pensionary benefits but he will not be entitled for any promotion.

BY ORDER

Sd/ 24.01.2009  
REGISTRAR (ADMN.)”

12. The petitioner, therefore, sought amendment of the writ petition through I.A. No. 6 of 2009. The aforesaid application for amendment was allowed by this Court on 27<sup>th</sup> February, 2009. After the amendment, the counter affidavit was filed by the respondents to the amended writ petition. The matter was heard by this Court on a number of occasions. On 5<sup>th</sup> April, 2011, this Court passed the following order:-

“Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if the High Court is given an opportunity to pass appropriate orders under Rule 54 of the Rules. Therefore, the matter is remitted to the High Court on its administrative side to pass appropriate orders under Rule 54. The High Court shall issue notice to the petitioner and afford him an opportunity of hearing by calling upon him to file reply to the notice. The High Court shall thereafter consider the reply and pass a reasoned order under Rule 54 of the Rules of 1951. This exercise shall be completed as early

as possible and without any avoidable delay but in any case not later than six weeks from today. The High Court to file the order which may be passed by it in the present proceedings.”

13. Pursuant to the aforesaid direction, it appears that a Committee was constituted by the Rajasthan High Court (hereinafter referred to as ‘Committee’) to examine the case of the petitioner, in terms of Rule 54 of the Rajasthan Service Rules, 1951 (hereinafter referred to as “1951 Rules”) for determining “whether his suspension was wholly justified or *wholly unjustified* or partly justified and to what extent, he was entitled for salary and/or full salary during period of suspension?”

14. In this respect, a notice dated 25<sup>th</sup> April, 2011 was sent to the petitioner by the Registrar (Admn.), directing him to file a reply, and remain present before the aforesaid Committee on 5<sup>th</sup> May, 2011. In response to the said notice, the petitioner submitted a detailed reply dated 2<sup>nd</sup> May, 2011 and appeared before the Committee on 5<sup>th</sup> May, 2011. Thereafter on 16<sup>th</sup> May, 2011, the Committee passed the following order:

“THEREFORE, in the present facts & circumstances (Supra), period during which Shri Gural Singh remained under Suspension cannot be said to be wholly unjustified and sub-rule (2) of R. 54 of RSR in negative form where the authority has to examine as to whether suspension was wholly unjustified. However, after going through complete material on record (supra), the Court is of the view that in the given facts & circumstances (supra), suspension of Shri Gural Singh cannot be said to be wholly unjustified and what he was entitled for under law has been paid to him in terms of Resolution of Full Court dt.29.11.2008 (supra) conveyed vide order dt. 24.01.2009.”

15. It becomes clear from the perusal of the aforesaid order that the Rajasthan High Court after giving an opportunity of hearing to the petitioner, reiterated the Resolution of the Full Court dated 29<sup>th</sup> November, 2008, communicated vide order dated 24<sup>th</sup> January, 2009.

## JUDGMENT

16. We have heard the learned counsel for the parties at length.

17. Very elaborate submissions have been made by the learned counsel for the parties. We may, however, briefly notice the very crux of the submissions.

18. Mr. M.R. Calla, learned senior counsel appearing for the petitioner, submitted that the respondent has to justify the suspension order on the day it was passed, i.e. on 20<sup>th</sup> December, 1985. Further, since the suspension of the petitioner had continued for 22 years, 3 months and 7 days, the respondent would have to satisfy the court that such a prolong suspension was also justified. Whether or not the order of suspension was justified, partly justified or *wholly unjustified* would have to be seen in the light of result of not only the trial in criminal case but also of the departmental enquiry where the petitioner was proceeded against by the department. According to the learned senior counsel, whilst taking a decision under Rule 54 of the 1951 Rules, the disciplinary authority was required to keep in mind the outcome of the criminal trial and the departmental proceeding.

19. Relying on some judgments of this Court, Mr. Calla had submitted that an employee who is suspended due to the pendency of the criminal investigation/trial has to be reinstated upon acquittal. Further upon reinstatement, he

would be entitled to full salary and allowances for the period he is kept under suspension. According to the learned senior counsel, an acquittal either by trial court or by the appellate court would relate back to the date on which the order of suspension was passed. Mr. Calla then submitted that in the facts of this case, the petitioner was suspended due to the registration of the criminal case against him. At the time when the petitioner was acquitted he was entitled to be reinstated. However, since an appeal was filed against the acquittal by the CBI, the petitioner was neither reinstated nor his suspension was revoked. Even when the aforesaid appeal was dismissed by the High Court, the request of the petitioner for reinstatement was not considered. This, according to Mr. Calla, was a second stage when the appellant was entitled to reinstatement and to the payment of full salary and allowances. Mr. Calla further pointed out that even after acquittal, the appellant was unjustly subjected to a departmental enquiry. The charges in the departmental enquiry were based on the facts, which were alleged to be the motive for the murder. Since the petitioner was

acquitted in the criminal trial, the departmental proceedings against him were *wholly unjustified*. Therefore, according to Mr. Calla, the continuation of suspension was also *wholly unjustified*.

20. Even at this stage, the respondent did not pass any order under Rule 54 of the 1951 Rules. It was only on the directions issued by this Court on 5<sup>th</sup> April, 2011 that the respondent examined the case under Rule 54 and passed the necessary order on 16<sup>th</sup> May, 2011. It was also submitted that the order passed on the directions of this Court on 16<sup>th</sup> May, 2011 is contrary to the order passed by the High Court on 24<sup>th</sup> January, 2009. The latter order was passed after the petitioner was reinstated in service on 26<sup>th</sup> May, 2008, regarding regularization of the suspension period of the petitioner. In the order passed under Rule 54, the High Court had concluded that the period during which the appellant was kept under suspension shall be treated as a period spent on duty, but without salary except subsistence allowance already paid to him. Even this order was passed during the pendency of the

present petition. Mr. Calla then submitted that not only the petitioner has been deprived of full pay and allowances during the period of suspension, but even his case for promotion was not considered with effect from the date a person junior to him was considered for promotion and promoted.

In support of his submission, Mr. Calla had relied on a number of judgments which are as under :

**Shri Manni Lal Vs. Shri Parmai Lal & Ors.<sup>1</sup>,  
**Muhammad Ayooob Khuhro Vs. Emperor<sup>2</sup>, Robert  
**Stuart Wauchope Vs. Emperor<sup>3</sup>, Vidya Charan Shukla  
 Vs. Purshottam Lal Kaushik<sup>4</sup>, O.P. Gupta Vs. Union of  
**India & Ors.**<sup>5</sup>, R.P. Kapur Vs. Union of India & Anr.<sup>6</sup>,  
**Commissioner of Police, New Delhi Vs. Narender**  
**Singh,**<sup>7</sup> **Corporation of the City of Nagpur, Civil Lines,**  
**Nagpur & Anr.** Vs. **Ramchandra & Ors.**<sup>8</sup>, **Jasbir Singh**  
 Vs. **Punjab & Sind Bank & Ors.**<sup>9</sup>, **The Divisional********

<sup>1</sup> (1970) 2 SCC 462

<sup>2</sup> AIR (33) 1946 SIND 121

<sup>3</sup> (1933) 61 ILR 168

<sup>4</sup> (1981) 2 SCC 84

<sup>5</sup> (1987) 4 SCC 328

<sup>6</sup> (1964) 5 SCR 431

<sup>7</sup> (2006) 4 SCC 265

<sup>8</sup> (1981) 2 SCC 714

<sup>9</sup> (2007) 1 SCC 566

**Superintendent, Northern Railway & Anr. Vs. R.B. Hanifi<sup>10</sup>, Govind Prasad Vs. Union of India,<sup>11</sup> Union of India & Ors. Vs. K.V. Jankiraman & Ors.<sup>12</sup>, Union of India & Ors. Vs. Sangram Keshari Nayak<sup>13</sup>, Sulekh Chand & Salek Chand Vs. Commissioner of Police & Ors.<sup>14</sup>, State of Kerala & Ors. Vs. E.K. Bhaskaran Pillai<sup>15</sup>, Union of India & Ors. Vs. Lt. Gen. Rajendra Singh Kadyan & Anr.<sup>16</sup>**

21. Mr. Pallav Shishodia, learned senior counsel on behalf of Respondent No.1, sought dismissal of the present writ petition, inter-alia, on the ground of delay. It was pointed out that there is a delay of more than 20 years in challenging the order of suspension dated 20<sup>th</sup> December, 1985. The learned senior counsel, in response to submissions of Mr. Calla, submitted that the initial suspension of the petitioner and further continuation of the same, during the criminal trial; during pendency of the

<sup>10</sup> (1976) Lab. I.C. 1403

<sup>11</sup> (1980) RLW 258

<sup>12</sup> (1991) 4 SCC 109

<sup>13</sup> (2007) 6 SCC 704

<sup>14</sup> 1994 Supp (3) SCC 674

<sup>15</sup> (2007) 6 SCC 524

<sup>16</sup> (2000) 6 SCC 698

appeal against acquittal; and during the pendency of the departmental enquiry; was not “only justified, but *imperative*,” in the view of “sensitive nature of judicial work” which was being undertaken by him. It was also submitted that since it is never possible to anticipate the outcome of a criminal trial or disciplinary proceedings which may eventually lead to acquittal or exoneration, as the case may be, suspension of the petitioner cannot be termed as “*wholly unjustified*”. In addition, Mr. Shishodia pointed out that the petitioner was acquitted by the trial court on “benefit of doubt”. Further, dismissal of the appeal against acquittal does not in any manner affect the legal position.

22. It had also been pointed out by Mr. Shishodia that since there is no allegation of suspension being “mala-fide, vindictive or otherwise motivated”, there remains no reason to interfere with the impugned order dated 24<sup>th</sup> January, 2009, as affirmed by the order dated 16<sup>th</sup> May, 2011. The learned senior counsel had also submitted that there is no challenge to the order dated 16<sup>th</sup> May, 2011 in the present writ petition, nor the petitioner had made a submission that

his prosecution by the CBI was malicious or otherwise vitiated. In the light of aforesaid submissions, it was contended that suspension pending criminal proceedings and/or departmental enquiry was *fully justified*. Mr. Shishodia has also argued that the order denying full pay to the petitioner was passed by the High Court, in bonafide exercise of its powers and on the basis of well settled interpretation of Rule 54 of the 1951 Rules.

23. The learned senior counsel, relying upon a number of judgments of this Court, had further contended that matters relating to the grant of salary, promotions and other benefits to an employee during the period of his suspension are subject to the discretion of the employer. The employer has to strike a balance between the rights of the employee and the imperatives of an institution. He submitted that the High Court, acting in a fair, objective and reasonable manner, has drawn the line so as to avoid any disproportionate penalty. It has struck a balance between the entitlement of the petitioner and imperatives of

the institution charged with public duty of administration of justice.

24. The learned counsel had further submitted that whatever amount was legally due to the petitioner has already been paid to him. It had been stated that Rupees Twelve Lac Seventy Three Thousand Eight Hundred Forty Two Only, i.e. Rs. 12,73,842/-, have been paid to the petitioner under various heads, like dearness allowance, subsistence allowance, etc. Also, the petitioner gets a monthly pension to the tune of Rupees Twenty Two Thousand Three Hundred Eighty Five Only, i.e. Rs. 22,385/-.

The counsel relied upon the following judgments to substantiate his contentions:

**Management of Reserve Bank of India, New Delhi Vs.**

**Bhopal Singh Panchal<sup>17</sup>, Krishnakant Raghunath**

**Bibhavnekar Vs. State of Maharashtra and Ors.<sup>18</sup>, K.**

**Ponnamma (Smt.) Vs. State of Kerala & Ors.<sup>19</sup>,**

**Dhananjay Vs. Chief Executive Officer, Zilla Parishad,**

<sup>17</sup> (1994) 1 SCC 541

<sup>18</sup> (1997) 3 SCC 636

<sup>19</sup> (1997) 9 SCC 36

**Jalna**<sup>20</sup>, **Union of India & Ors.** Vs. **Jaipal Singh**<sup>21</sup>,  
**Baldev Singh** Vs. **Union of India & Ors.**<sup>22</sup>, **N. Selvaraj**  
Vs. **Kumbakonam City Union Bank Ltd. & Anr.**<sup>23</sup>,  
**Banshi Dhar** Vs. **State of Rajasthan & Anr.**<sup>24</sup>,  
**Divisional Controller, Gujarat SRTC** Vs. **Kadarbhai J.**  
**Suthar**<sup>25</sup>, **Union of India** Vs. **B.M. Jha.**<sup>26</sup>

25. We have considered the submissions made by the learned senior counsel for the parties.

26. The only issue that needs to be resolved at this stage is as to whether the petitioner would be entitled *only* to the subsistence allowance as already paid to him or full salary and allowances, in view of his acquittal in the criminal case and the exoneration in departmental proceedings. Related to the aforesaid issue would be a consequential issue of notional promotion from the date an officer junior to him was promoted in the Rajasthan Judicial Service and the consequential entitlement to the emoluments on the promotional post, which in turn would determine the

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<sup>20</sup> (2003) 2 SCC 386

<sup>21</sup> (2004) 1 SCC 121

<sup>22</sup> (2005) 8 SCC 747

<sup>23</sup> (2006) 9 SCC 172

<sup>24</sup> (2007) 1 SCC 324

<sup>25</sup> (2007) 10 SCC 561

<sup>26</sup> (2007) 11 SCC 632

amount of suspension allowance and the other retiral benefits.

27. In our opinion, it is not really necessary to notice the ratio in each of the judgments cited, as all of them reiterate certain well known principles of law. We may, however, notice some of the principles highlighted in the judgments cited by the learned counsel. In the case of **Corporation of the City of Nagpur (supra)**, it is observed that it may not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, where the accused has been acquitted honourably and completely exonerated of the charges. At the same time, it is pointed out that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.

28. The same principle is reiterated in the case of **Commissioner of Police, New Delhi Vs. Narender Singh (supra)**.

29. In **Jasbir Singh's case (supra)**, the appellant was a confirmed peon in the respondent Bank. On an allegation that he had forged the signature of a depositor R and fraudulently withdrawn a certain sum, a departmental proceeding was initiated against him. A criminal case was also initiated simultaneously under Sections 409/201 IPC. He was acquitted in the criminal case. However, despite acquittal, the departmental proceedings continued and ultimately ended in an ex parte report to the effect that the charges had been proved. The respondent Bank also filed a suit against the appellant for recovery of the said sum. The suit was decreed but the appellate court held that the Bank failed to prove that the appellant had withdrawn or embezzled the said sum. It was held that the Bank was not entitled to recover the said amount. That judgment was not challenged. Thus, the same attained finality. However, the writ petition filed by the appellant, challenging the disciplinary proceedings and the order of punishment was dismissed by the Punjab and Haryana High Court. Without taking note of the decision of civil court and relying on a provision of the Bipartite Settlement, the High Court held

that the departmental proceedings could have been initiated even after the judgment of acquittal in the criminal case. The appellant employee then filed an appeal in this Court.

Allowing the appeal, this Court held that the respondent Bank invited findings of a competent civil court on the issue as to whether the appellant had committed any embezzlement or not. Embezzlement of fund was the principal charge against the appellant in all the proceedings. The respondent Bank failed to prove any of the charges before any court of law. The judgment in civil matter having attained finality, was binding on the respondent Bank.

It was further observed that in a case of this nature, the High Court should have applied its mind to the facts of the matter with reference to the materials brought on record. It failed to do so and did not take note of the decision of the civil court. It could not have refused to look into the materials on record. Therefore, the impugned judgment was set aside.

30. In **O.P. Gupta's case (supra)**, this Court emphasised the principle that any order which would cause adverse civil consequences, can only be passed upon observance of the

rules of Natural Justice. There is, therefore, insistence upon requirement of a “fair hearing”. It was also emphasised that long, continued suspension affects the government servant injuriously. Since the order of suspension entitles the government employee only to “subsistence allowance”, resulting in penal consequences, it should not be lightly passed. The court also emphasised that the expression “life” does not merely connote animal existence or a continued drudgery through life. These are all well known principles of law. We only make a reference to the same, since the cases have been cited.

31. Similarly the judgments cited by Mr. Shishodia reiterate the principle that “*no hard and fast rule*” can be laid down as to whether on reinstatement the employee is entitled to full back wages or no back wages at all. All the cases reiterate the principle that the facts and circumstances of each case have to be examined by the concerned authority. It has to take an informed decision on the basis of the material on record. These judgments also reiterate that acquittal of an employee would not automatically entitle him to reinstatement or to payment of full back wages. The

power is normally vested with the disciplinary authority to hold a departmental enquiry, even upon conclusion of the criminal trial where the employee is acquitted.

32. We have examined the entire issue keeping the aforesaid principles in mind. In order to determine the issue relating to the entitlement of petitioner to the salary and other allowance(s) upon reinstatement, the matter needs to be examined at the different stages/point of time. The first stage commenced at the time when the petitioner was initially suspended on 22<sup>nd</sup> December, 1985 w.e.f. 20<sup>th</sup> December, 1985. The petitioner, in our opinion, cannot legitimately protest against his suspension, at the initial stage, when he had remained in police custody for more than forty eight hours, though unfortunately for circumstances for which he was not responsible. This suspension was naturally continued when he was facing the trial for murder.

33. The next stage is when he was acquitted by the trial court on 1<sup>st</sup> May, 2002. The observations made by the Additional

Session Judge, Delhi whilst acquitting the petitioner are as follows:-

“285. The case in hand does not pass the muster. The circumstances that can be safely held as duly proved would include only that there was long-standing friendship between the accused and the deceased, and discovery of dead body of the latter in circumstances indicating unnatural death. The prosecution has failed to prove beyond all reasonable doubts the theory of accused having taken an amount of Rs. one lakh 20 thousand from the deceased on the promise of helping him in securing appointment as Member in Board of Revenue, or upon failure faced by the deceased in getting the said appointment refusing to, or haggling over, return of the said amount of money. The theory of accused having returned Rs. one lakh to PW 1 after the incident is suspect. There is a inordinate delay in the lodging of FIR which, seen against the backdrop of claims by all and sundry that they suspected involvement of the accused from the very beginning, has remained unexplained and is bound to prove fatal to the case (AIR 1996 SC 607).

286. The evidence regarding “last seen” does not inspire confidence and has rather come out as a fabricated one. Efforts to cook up evidence in the course of investigation, for example the recovery of blood stained clothes of the accused at his instance, coupled with unauthorized handling of the material exhibits recovered from the scene where the dead body had been found, have given the impression that the same might have been doctored. This erodes confidence in the prosecution case. The investigation conducted smacks of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused. The benefit of doubts arising as a result must accrue in favour

of the accused, since suspicion, however strong, cannot take the place of proof in the final analysis.”

These observations would indicate that the trial court disbelieved the very foundation of the prosecution case. The alleged motive has been found to be without any basis. The judgment of the trial court clearly indicates that the evidence produced does not reach even the bare minimum standard required for establishing the guilt of the petitioner. The theory of the prosecution that petitioner had demanded or taken money from the deceased was not supported by any independent evidence. The trial court also noticed that there was an inordinate delay in the registration of the FIR, which had to be seen against the backdrop of claims, by all and sundry, that they suspected the involvement of the petitioner from the very beginning. The trial court categorically observed that in the peculiar circumstances of the case, the delay in registration of the FIR was *fatal* to the case of the prosecution. The trial court also observed that the evidence with regard to “*last seen*” was fabricated and, therefore, did not inspire confidence. It is also observed that the investigation in the case had not been conducted fairly. The Trial Court was left

with a definite impression that the evidence had been “doctored”. The Court categorically observed that “*the investigation conducted smack of bias and prejudice under influence of certain elements inimically placed vis-à-vis the accused*”. These observations, in our opinion, would bring the present case within the realm of those cases which are often described as cases of “*no evidence*”. Merely because the Court ultimately used the term that prosecution has failed to prove the case “beyond reasonable doubt” would not raise the stature of the evidence, produced by the prosecution, in this case from the level of being thoroughly unreliable.

34. As noticed above, Mr. Calla has submitted that the suspension of the petitioner should have been revoked at this stage. It will not be possible to accept the proposition that as soon as the trial court had acquitted the petitioner, the Rajasthan High Court was required to forthwith revoke the order of suspension. Undoubtedly, the petitioner could have been given a non-sensitive posting, not involving judicial functions. But, it was not imperative for the High Court to revoke the suspension, at that stage. It is a matter

of record, that the prosecution agency decided to file an appeal against the judgment and order passed by the trial court, acquitting the petitioner. The appeal filed by the CBI was admitted by the Delhi High Court and remained pending till it was decided on 27<sup>th</sup> September, 2005. Therefore, the conclusions recorded by the trial court, were not final. They were liable to be reversed in appeal by the High Court. Thus, during the said period/stage, it cannot be said that the continuance of the suspension of the petitioner was *wholly unjustified*. Merely because the High Court could have revoked the suspension, would not render the decision to continue the suspension, *wholly unjustified*.

35. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated by the Delhi High Court. The High Court, literally, had no option but to place and keep the petitioner under suspension. It was not as if the petitioner had unwittingly breached a traffic regulation, which may not invite, even a frown from the general public. It was also not where he may had a minor altercation with someone which may well be

overlooked by a reasonable man, as it would not involve any moral turpitude. He was facing a trial for the offence of murder, a crime of highest moral turpitude. Since time immemorial, Judges have been placed on a very high pedestal in every civilized society. Such high status is accompanied by corresponding responsibility of a judge maintaining an unusually high standard of dignity, poise and integrity. There can be no two ways about it! Therefore, the decision of the High Court to continue the suspension of the petitioner can not be said to be *wholly unjustified* till his acquittal by the Delhi High Court.

36. At this stage, we may just mention observations of this Court in two decisions of this Court in relation to the high standards of behaviour expected from a Judge. For instance, in **Daya Shankar Vs. High Court of Allahabad & Ors. Through Registrar & Ors.**<sup>27</sup>, this court observed as under:

“Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and

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<sup>27</sup> (1987) 3 SCC 1

integrity. They cannot act even remotely unworthy of the office they occupy.”

Further, in the case of **C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors.**,<sup>28</sup> again while elucidating the nature of the position held by a judicial officer, this Court observed as under:

“21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge.....It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.”

37. The decision of the High Court to keep the petitioner under suspension has to be judged by keeping the aforesaid

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<sup>28</sup> (1995) 5 SCC 457

standards in mind. Therefore, we are unable to accept the submission of Mr. Calla that the suspension of the petitioner was *wholly unjustified* after he was acquitted of the criminal charges by the trial court.

38. We now come to the stage after the appeal against the acquittal was dismissed by the High Court. It appears that a Division Bench of the Delhi High Court re-appreciated the entire evidence and dismissed the appeal filed by the CBI. In its judgment, the High Court has clearly held that the prosecution had failed to prove any motive for the alleged murder. It is noticed by the High Court that the entire prosecution case is based on circumstantial evidence. It is further observed that the injuries suffered by the deceased were not inconsistent with the plea that it was a case of accidental death. The High Court also disbelieved the witnesses of the prosecution with regard to the deceased having been "last seen" alive with the petitioner. Having disbelieved the evidence with regard to the motive and with regard to the victim being "last seen" alive with the petitioner, the High Court proceeded to examine the

evidence with regard to the disclosure statement under Section 27 and the recoveries of incriminating pieces of evidence. Upon examination of each issue, the High Court observed that the facts brought on the record “*put a question mark on the genuineness of the story of the recoveries made*”. The High Court disbelieved the recovery of the clothes allegedly belonging to the deceased. The story of recovery of blood stains was also disbelieved. Ultimately, the High Court recorded the following conclusions:-

**“43.** In the present case, *the major links between the alleged offence and the accused are entirely non-existent. The above discourse shows positively that the prosecution has failed at every step to bring home the guilt of the accused.* The first step was to prove that it was a case of murder rather than a case of accident. The prosecution has failed to prove beyond reasonable doubt that it was a case of murder and not that of an accident.

**44.** The second step was to prove that the accused and the deceased were last seen together soon before the incident. The prosecution has also failed to prove this fact beyond reasonable doubt. Apart from what has already been stated above an important fact in this case is that post-mortem report along with the CFSL report, Ex.PW-34/DA proves existence of alcohol in the stomach of the deceased. This tends to support the accident theory.

**45.** The third step was to prove that the prosecution had recovered incriminating articles, either

following the disclosure statement or on its own initiative. The prosecution has failed even at doing the same. In this situation, even if the prosecution is able to prove existence of motive, the same by itself would not be of any value. The trial court has disbelieved the story of motive. However, for us it is not necessary to go into those details.

**46.** .....*The prosecution has failed to prove firstly that there was any murder and secondly that the accused is the one who committed it. There is absolutely no merit in the appeal and the same is accordingly dismissed.*”

39. The acquittal of the petitioner having been affirmed by the High Court of Delhi, in our opinion, it was necessary for the High Court of Rajasthan to take a decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the receipt of money allegedly received by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension.

40. It appears to us that given the findings recorded by the trial court, subsequently reiterated by the High Court of

Delhi, the decision to continue the petitioner under suspension, thereafter, was rather harsh. It is true that the suspension of the petitioner was continued as the High Court had decided to hold a departmental enquiry against the petitioner on the charges that he had wrongly extracted certain money from the deceased. But it is a matter of record that both the trial court as well as the High Court had found the entire story with regard to the alleged receipt of money to be false. The enquiry was founded on the same facts and the same evidence which have had been examined by the trial court as well as the High Court. In such circumstances, it was necessary for the High Court to examine the findings of the trial court as well as the High Court in detail before taking a decision to initiate departmental proceedings against the petitioner, founded on the same set of facts and the evidence. It is apparent from the record that no such examination of the judgment was undertaken by the High Court. Even after taking a decision to initiate departmental proceeding against the petitioner, it was no longer imperative to continue the petitioner under suspension. The petitioner was no longer

charged with any criminal offence as both the trial court as well as the High Court had literally concluded that the charges against the petitioner had been concocted. The petitioner had been subjected to continued suspension since 22<sup>nd</sup> December, 1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In our opinion, from the time of dismissal of the appeal by the Delhi High Court, the continued suspension of the petitioner was *wholly unjustified*.

41. Again it is a matter of record, that even in the departmental enquiry the charges against the petitioner were not proved and he was *exonerated* of the same. It was only at that stage that the suspension of the petitioner was revoked. The petitioner had already moved the present writ petition immediately after the order of acquittal was upheld by the Delhi High Court. The enquiry proceedings were completed during the pendency of the writ petition. Undoubtedly, the

order of suspension was revoked by the High Court on 26<sup>th</sup> March, 2008 but without giving any direction as to how the period of suspension was to be treated. It was only subsequently that the matter with regard to regularization of his period of suspension was considered by the Full Court in the meeting held on 29<sup>th</sup> November, 2008. Even at that stage though the Full Court passed a resolution that period of suspension shall be treated as period spent on duty, but it was to be without payment of any salary except for the subsistence allowance already paid to him. On the basis of the aforesaid resolution, the High Court passed the order dated 24<sup>th</sup> January, 2009. So even by order dated 24<sup>th</sup> January, 2009, the petitioner was granted only partial relief. This necessitated the amendment of the writ petition by the petitioner questioning the legality of the aforesaid order. It was only at that stage that this Court by order dated 5<sup>th</sup> April, 2011 directed the High Court to pass appropriate orders under Rule 54 of the Rules. It appears even at that stage the High Court did not consider it necessary to grant any further relief to the petitioner.

42. We are of the considered opinion, having regard to the sequence of events narrated above, that it would be unjust to deny the salary to the petitioner with effect from the date the appeal against acquittal was dismissed by the High Court of Delhi. We see no cogent reason as to why it was necessary to continue the suspension of the petitioner during the pendency of the departmental proceedings. There was no distinction between the facts or the evidence relied upon in the criminal trial as well as the department proceedings. This apart, the petitioner had been acquitted of any involvement in the crime of murder. Whilst exercising its jurisdiction under Rule 54, it was necessary for the High Court to pass a detailed and reasoned order as to whether the period of suspension was *wholly unjustified*. Undoubtedly, the power under Rule 54 is discretionary but such discretion has to be exercised reasonably and by taking into consideration the material relevant to the decision. Upon acquittal of the petitioner from the criminal charges, it was no longer necessary to keep him under suspension during the pendency of the departmental enquiry. In our opinion, the High Court failed to exercise its

jurisdiction properly under Rule 54, as directed by this Court in the order dated 5<sup>th</sup> April, 2011. In our opinion, the suspension of the petitioner ought to have been revoked upon acquittal by the High Court even during the pendency of the departmental enquiry.

43. This now leads us to the last submission of Mr. Calla that upon exoneration in the departmental proceedings, the petitioner was required to be considered for promotion from the date a person junior to him was promoted.

44. In view of the authoritative judgment rendered by this Court in the case of **Jankiraman (supra)**, the submissions made by Mr. Calla would have to be accepted. In the aforesaid judgment it was held that:-

“**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.”

45. In this case, it is a matter of record that upon exoneration in the departmental enquiry, the petitioner was reinstated in service. No punishment was inflicted on him at all. However, during the pendency of the criminal trial as also the departmental proceedings, he was not considered for promotion, when the cases of persons junior to him were considered. In our opinion, the High Court erred in directing in the Full Court Resolution dated 29<sup>th</sup> November, 2008, and the communication dated 24<sup>th</sup> January, 2009 that the petitioner shall not be entitled for any promotion.

46. We, therefore, partly allow the writ petition. We reject the submissions of Mr. Calla that the suspension of the petitioner was rendered *wholly unjustified* upon acquittal by the trial court. We also reject the submissions of Mr. Calla that the suspension of the petitioner was *wholly unjustified* during the pendency of the appeal before the High Court. We, however, hold that the continued suspension of the petitioner during the pendency of the departmental proceedings was *wholly unjustified*. The petitioner is, therefore, held entitled to full pay and allowances from 27<sup>th</sup>

September, 2005, i.e. the date of the judgment rendered by the Delhi High Court onwards. We further hold that the petitioner was entitled to be considered for promotion notionally from the date when an officer junior to him was promoted. We, therefore, direct the High Court to consider the case of the petitioner for promotion (if he otherwise satisfies the requirements as per the rules) from the date when a person junior to him was considered and promoted to the next higher post. Let such a decision be taken by the High Court within a period of three months from the date of receipt of this order. We further direct that the petitioner would be entitled to all consequential benefits, such as salary and other allowances by treating him on duty with effect from the date the appeal against acquittal was dismissed by the Delhi High Court and after fixing his last pay drawn correctly. The consequential benefits shall be paid to him with 6% interest from the date of the dismissal of the appeal by the High Court on 27<sup>th</sup> September, 2005. The enhanced retiral benefits shall be released to him within three months of the receipt of a copy of this order.

47. Assuming that, the Rajasthan High Court wanted to conduct its own departmental enquiry after the acquittal of the petitioner being confirmed by the Delhi High Court, his suspension during that period was wholly uncalled for because of which he unnecessarily suffered and had to litigate further. We, therefore, award costs of Rs. 25,000/- to the petitioner to be borne by the respondent High Court.

.....J.  
[Surinder Singh Nijjar]

.....J.  
[H.L.Gokhale]

**New Delhi;**  
**November 27, 2012.**

JUDGMENT