



2026:DHC:2093-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 16.02.2026
Judgment pronounced on: 13.03.2026

+ **W.P.(C) 3231/2005**

MITHLESH SHARMAAppellant
Through: Mr. R.K. Saini, Adv.

versus

UOI & ORS.Respondents
Through: Mr. Amit Tiwari, CGSC with
Ms. Ayushi Srivastava, Mr.
Ayush Tanwar, Mr. Arpan
Narwa and Mr. Kushagra Malik,
Adv. for R-1/UOI.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

AMIT MAHAJAN, J.

1. The present Writ Petition is filed assailing the order dated 19.09.2003 (hereinafter '**impugned order**') passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter '**Tribunal**') in O.A. No. 937/2003.

2. Succinctly stated, the present petition is filed by the widow of late Shri Tirath Prakash, who was employed as a clerk in the Foreign Post Office, New Delhi. The husband of the Petitioner was placed under suspension with effect from 26.07.1973, by Respondent No. 2, on



account of a criminal investigation for corruption being initiated against him by the Central Bureau of Investigation.

3. The learned Trial Court, *vide* order dated 23.05.1977, convicted the husband of the Petitioner under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 157 of the Indian Penal Code, 1860. The learned Trial Court further sentenced the husband of the Petitioner to undergo one-year rigorous imprisonment and a fine of Rs. 2,000/-, for the offences punishable under the Prevention of Corruption Act, 1947, and one-year rigorous imprisonment and a fine of Rs.500/-, for the offences punishable under the Indian Penal Code, 1806.

4. As a consequence of the aforesaid conviction, the Petitioner's husband was dismissed from service by Respondent No. 2, *vide* order dated 27.07.1977. The relevant extract is reproduced as follows:

“Whereas Shri Tirath Parkash, clerk Foreign Post, New Delhi has been convicted on a Criminal Charge under Section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1947 and under section 161 I.P.C.

And, Whereas it is considered that the conduct of the said Sh. Tirath Parkash, Clerk, Foreign Post, New Delhi, which has led to his conviction is such as to render his further retention in the Public Service undesirable.

Now, therefore, in exercise of the Powers conferred by rule 19(1) of the C.C.S. (C.C.&A) Rules 1965, the undersigned hereby dismisses the said Shri Tirath Parkash, Clerk, Foreign Post, New Delhi, from service with effect from 27.7.1977.”

5. Aggrieved by the decision of the learned Trial Court, the Petitioner's husband preferred an appeal bearing Criminal Appeal No. 205 of 1977, against his conviction before this Court. During the



pendency of the said appeal, the Petitioner's husband expired on 23.05.1993 and thereafter, the Petitioner was granted leave by this Court to continue the Appeal. *Vide* judgment dated 10.07.2001, this Court allowed the appeal filed by the Petitioner's husband with the following observations: -

*“22. For the foregoing reasons, **I have no hesitation in holding that the present prosecution was launched without a valid sanction and, therefore, cognizance taken by the Special Judge was without jurisdiction.** Further, the trial was also vitiated on account of defective recording of statement of the appellant under Section 313 of the Code and for the incorrect framing of charge. **The appeal accordingly allowed on the legal grounds, without going into the merits of the allegations.** The judgment of the learned Special Judge is set aside and the conviction and sentence passed on the appellant are quashed.”*

(Emphasis supplied)

6. Thereafter, the Petitioner made a representation to Respondent No. 2, claiming that on account of the conviction of the Petitioner's husband being set aside, he would have been entitled to be reinstated in service with consequential benefits of arrears of salary and allowances. The Petitioner claimed that since her husband had expired on 23.05.1993, during the pendency of the appeal, she was entitled to receive all the benefits, which accrued to her husband as arrears of salary, allowances, etc. till the date of his death and other benefits such as gratuity, pension, which would have become payable after his death.

7. Upon receiving no reply to the aforesaid representation, the Petitioner approached this Court by way of Writ Petition No. 7635/2001, however, the said petition was disposed of as withdrawn, granting liberty to the Petitioner to approach the learned Tribunal.



8. Thereafter, the Petitioner filed the present O.A. before the learned Tribunal praying for the following reliefs:

- “i) quash the illegal order dated 27.7.1977*
- ii) Direct the respondent to treat Late Shri Tirath Prakash having continued in service after 27.7.1977.*
- iii) Direct the respondents to pay arrears of wages due to Late Shri Tirath Prakash from 27.7.1977 onwards alongwith consequential benefits of promotion to the higher posts from the date of promotion of his juniors.*
- iv) Direct the respondents to pay retiral benefits settlement due of Late Shri Tirath Prakash alongwith arrears.*
- v) Direct the respondent to grant family pension to the Applicant alongwith arrears after the death of Late Shri Tirath Prakash on 23.5.1993.*
- vi) Direct the respondent to pay interest on these delayed payments due upto the date of payment.*
- viii) Grant any other relief that this Hon'ble Tribunal may deem fit.”*

9. The learned Tribunal, taking note of the fact that the acquittal of the Petitioner's husband was merely on technical grounds and that his dismissal from service was based on the conviction in the criminal case and not by way of disciplinary proceedings, held that the Petitioner was not entitled to receive any back wages of her husband.

10. The learned Tribunal, however, held that in the facts and circumstances of the present case, the Petitioner's husband shall be deemed to have continued in service on notional basis from 27.07.1977 till the date of his superannuation on 31.01.1992. The learned Tribunal further held that the intervening period from the date of dismissal of the Petitioner's husband till the date of his retirement shall be taken into account for the purpose of computation of retiral benefits due to the Petitioner's husband and family pension, as due to the Petitioner, in accordance with the CCS (Pension) Rules, 1972.



11. The learned Tribunal further rejected the claim of the Petitioner for payment of interest on the retiral benefits. The other reliefs prayed for by the Petitioner were also rejected.

12. Aggrieved thereby, the Petitioner filed the present Writ Petition.

13. The Petitioner passed away during the pendency of the present Writ Petition on 24.11.2009 and the Legal Representatives were impleaded *vide* order dated 25.10.2010.

14. The learned counsel appearing on behalf of the Legal Representatives of the Petitioner submitted that the learned Tribunal failed to appreciate that the conviction and sentence passed by the learned Trial Court having been set aside and quashed by the Hon'ble Court *vide* order dated 10.07.2001, the order of dismissal dated 27.07.2001 passed in pursuance thereto had become illegal and inoperative. Hence, the Petitioner's Husband ought to be treated as "*on service*" till his superannuation and would be entitled to back wages along with interest. To buttress the arguments, reliance is placed upon ***Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Ltd. and Ors.:(2016) 16 SCC 663*** and ***Deepali Gundu Surwase v. Kranti Junior Adhyapal Mahavidyalaya and Ors.:MANU/SC/0942/2013***.

15. He submitted that the Petitioner's Husband would have been entitled to all the consequential benefits of promotion to higher grades which he could not avail due to his illegal dismissal from service.

16. *Per contra*, the learned counsel for the Respondents submitted that Lt. Shri Trinath Prakash was caught redhanded demanding and



accepting illegal gratification and was then arrested by the CBI, and was subsequently convicted and sentenced for the offences under the P.C. Act, after due appreciation of the evidence. He submitted that the Petitioner's husband was dismissed from service pursuant to the said conviction and no appeal has been preferred against the said order of dismissal.

17. He submitted that the claim of the Petitioner for gratuity to the tune of Rs. 27,885/- was settled on 08.04.2004 and her family pension payment order dated 05.04.2004 was sent to PM, Naraina HO, New Delhi on 20.04.2004. He submitted that no other amount is liable to be paid to the Petitioner.

Analysis

18. It remains undisputed that the Petitioner's husband was dismissed from service on 27.07.1977 pursuant to being convicted for offences under the Prevention of Corruption Act. The said order of conviction was set aside by this Court *vide* order dated 10.07.2001 on technical grounds without going into the merits of the case. The Petitioner's husband had passed away on 23.05.1993, during the pendency of the said appeal.

19. It is pertinent to note that the learned Tribunal, pursuant to the order of conviction of the Petitioner's husband being set aside, has held that the Petitioner's husband shall be deemed to have continued in service on notional basis from 27.07.1977 till the date of his superannuation on 31.01.1992 and the said period shall be taken into



account for the purpose of computation of retiral benefits and family pension as due to the Petitioner.

20. It has also been submitted before this Court that the Petitioner has already received gratuity and family pension pursuant to the order of the learned Tribunal.

21. Hence, the only remaining grievance of the Petitioner was with regard to her entitlement to receive arrears of wages, due to her husband from 27.7.1977 onwards, alongwith consequential benefits of promotion to the higher posts from the date of promotion of his juniors. Further, the Petitioner claims interest on the said amount and on the retiral benefits awarded to her.

22. Undisputedly, the Petitioner's husband did not work for the Respondents from 27.07.1977 till his death on 23.05.1993, on account of him being convicted by the learned Trial Court. Firstly, applying the principle of "no work no pay", the Department cannot be asked to pay the Petitioner's wages for the period he had admittedly not served the department.

23. Though much has been emphasised upon the dismissal being illegal after acquittal and the Petitioner's husband not being able to serve the department because of their own decision. The Petitioner has placed reliance on the judgments of the Hon'ble Apex Court in ***Shobha Ram Raturi v. Haryana Vidut Prasaran Nigam Ltd. and Ors.*** (supra) and ***Deepali Gundu Surwase v. Kranti Junior Adhyapal Mahavidyalaya and Ors.***(supra), to agitate that the Petitioner would be



entitled to receive back wages of her husband as he had been wrongfully dismissed due to the fault of the Respondents.

24. In the opinion of this Court, the reliance placed by the Petitioner on the aforesaid judgments is misplaced as those decisions arose in the context of illegal termination or wrongful denial of reinstatement by the employer, where the action of the employer itself was found to be unjustified.

25. In the present case, it remains undisputed that the Petitioner's husband was convicted on the basis of appreciation of evidence as he was held guilty of demanding and accepting illegal gratification. The Petitioner's husband's dismissal from service was not due to any independent action by the department which has been subsequently found to be illegal, but admittedly on the basis of his conviction in a criminal case, that too with respect to abuse of official powers for demanding illegal gratification. The legality of such dismissal is to be assessed with reference to the circumstances prevailing on the date the order was passed. Thus, the department cannot, in any manner, be found at fault for dismissing him from service as a conviction for such an offence, upon appreciation of evidence, reflects that his conduct not only rendered him unbecoming of a government servant but also against the foundational principles of integrity and devotion to duty. Pertinently, no appeal had been preferred against this dismissal by the Petitioner or her husband.

26. Even otherwise, the subsequent acquittal, is admittedly, as also recorded in the order passed by this Court, essentially on the ground of



the sanction accorded being improper and was without delving into the merits or allegations of the case. Such a setting aside of conviction cannot be equated with an honourable acquittal establishing the innocence of the accused. Hence, in the facts of the present case, the subsequent setting aside of the conviction would not *ipso facto* render the dismissal illegal from its inception, particularly when the employer had no role in initiating the criminal prosecution and the conviction was recorded after due trial by a competent court.

27. This view is further strengthened by the view taken by the Hon'ble Apex Court in *Union of India v. Jaipal Singh : (2004) 1 SCC 121*, wherein it was held that when a public servant is implicated in a criminal case and, upon trial, is convicted by the competent court, the department is legally bound to keep such an employee out of service. In the event the conviction is subsequently set aside, no fault can be attributed to the department for having excluded him from service during the period of conviction, as the law obliges that a person convicted of an offence cannot be retained in service. The relevant extract of the aforesaid judgment is reproduced herein below:

*“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in Ranchhodji [(1996) 11 SCC 603 : 1997 SCC (L&S) 491] . If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. **On the other hand, if***



as a citizen, the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside.

28. A similar view has also been taken by the Hon'ble Apex Court in ***Ranchhodji Chaturji Thakore v. Gujrat Electricity Board, Himmatnagar : (1996) 11 SCC 603.***

29. Hence, considering that the acquittal of the husband was solely on legal grounds, without going into the merits of the case, while he had been convicted by the learned Trial Court after due appreciation of evidence, the learned Tribunal has already taken a lenient view in awarding the Petitioner retiral benefits by holding him notionally in service in the said period. No case has been made out by the Petitioner for awarding back wages to the Petitioner for the period from 27.7.1977 onwards alongwith consequential benefits of promotion, especially considering that undisputedly, the Petitioner's husband did not serve with the Respondents from 1977 till his death and was dismissed from service due to his conviction.



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30. The Petitioner is also not entitled to receive any interest on the amount awarded to her considering that the post retiral benefits have been allotted belatedly only because the Petitioner's husband had been previously convicted in a criminal case and no fault can be attributed to the Respondents for the same.

31. Any contentions with respect to the procedural lapses by the department while dismissing the Petitioner's husband, are untenable and cannot be agitated at this stage, since undisputedly, the Petitioner or her husband had chosen not to challenge the dismissal from service in 1977, i.e. almost 5 decades ago.

32. In view of the above, we find no reason to interfere with the impugned order.

33. Accordingly, the present petition is dismissed, along with pending application(s), if any.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MARCH 13, 2026

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