

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(Reserved on 03.09.2015)

OA No. 060/01102/2014

Date of decision : 29.9.2015

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

K.B. Sharma S/o Late Sh. Surinder Mohan Sharma, aged 65 years,
Resident of House No. 1546, Sector 38-B, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. V.K. Sharma.

VERSUS

1. Union of India through the Secretary, Government of India,
Ministry of Home Affairs, New Delhi.
2. Union Territory Chandigarh through its Administrator.
3. Chief Engineer, Union Territory, Chandigarh.
4. Municipal Corporation, Chandigarh through its Commissioner.

...RESPONDENTS

BY ADVOCATE: Sh. Aseem Rai, counsel for respondents no. 1 to 3.
Sh. Arvind Moudgil, counsel for respondent no. 4.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The applicant is aggrieved against the order dated 16.10.2014 read with order dated 22.04.2014 (Annexure A-1) vide which absence period of the applicant from 08.06.1998 to 18.06.1998 and suspension period from 19.06.1998 to 07.03.2003 has been treated as leave of the kind due. He has further sought issuance of a direction to the respondents to treat the above period as 'spent on duty' and grant full pay & allowances & all the consequential benefits arising therefrom along with the retiral benefits with interest and also re-fix the pay as per the revised pay scale w.e.f. 01.01.2006.

2. At the very outset, Sh. V.K. Sharma, learned counsel for the applicant submitted that he is restricting his relief/prayer qua treatment of suspension period as leave of the kind due, and with regard to the interest part, he will file a separate O.A.

3. This case has a chequered history. The applicant entered into service with the Chandigarh Administration as Sub Divisional Engineer on 29.12.1976 and he was promoted to the post of Executive Engineer w.e.f. 20.08.1986. He was also given current duty charge of the post of Superintending Engineer w.e.f. 15.10.1992 and independent charge thereof w.e.f. 20.04.1993 in the regular pay scale

and finally promoted as Superintending Engineer on regular basis w.e.f. 14.08.1995. An FIR No. 1/1998 was registered against the applicant under sections 406, 409, 420, 120-B of the IPC read with sections 13(1) (a) (b) (c) (d) & 13(2) of the Prevention of Corruption Act. He was placed under Suspension vide order dated 19.06.1998 in contemplation of disciplinary action against the applicant for committing a serious misconduct of absence from duty under Rule 4(1) (a) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The above departmental proceedings initiated against the applicant culminated into punishment of stoppage of two increments with cumulative effect vide order dated 29.05.1999. It is also stated that said punishment order was the subject matter before the Hon'ble jurisdictional High Court in C.W.P No. 422/2000 which was admitted and is still pending for adjudication. On conclusion of departmental proceeding on 29.05.1999, the order of suspension under Rule 4(1) (a), which was made on 19.06.1998, substituted on 29.07.1998, would cease to exist. His suspension order was revoked vide order dated 07.03.2003 by exercising the powers conferred under clause (c) of sub-rule (5) of Rule 4 of the 1970 Rules. The applicant filed O.A No. 146/CH/2010 before this Court claiming various reliefs including non regularization of suspension period from 19.06.1998 to 07.03.2003 etc. The said O.A was allowed vide order dated 15.04.2011 whereby

the respondents were directed to regularize the suspension period w.e.f. 30.05.1999 to 07.03.2003 as duty for all intents and purposes and also consequential benefits flowing there from and further grant him the scale of post of Chief Engineer w.e.f. 14.08.2003 and then fix the pay in the revised scale and then place in the revised scale w.e.f. 01.01.2006 and 8% interest was also allowed on leave encashment and DCRG. The said order of this court was subject matter before the Hon'ble High Court in C.W.P No. 15092/2011 at the hands of the Administration. In the meantime, the applicant was also acquitted from the charges levelled against him vide order dated 27.07.2013. The said judgment attainted finality as same has not been challenged till date. Aforementioned CWP was decided on 16.07.2014 and while disposing the writ petition, the Hon'ble High Court has recorded a finding that the criminal case lodged in pursuance of the said FIR has resulted into acquittal of the applicant, therefore, petitioner (Chandigarh Administration) is required to take a decision in respect of relief of grant of ACP scale, revised pension and other retiral benefits which was ordered to be done within a period of three months from the service of the order upon the authorities. Vide impugned order dated 21.01.2014 and subsequent order dated 22.04.2014 suspension period of the applicant from 08.06.1998 to 18.06.1998 and 19.06.1998 to 07.03.2003 has been treated as leave of any kind due.



Thereafter the applicant submitted a detailed representation dated 28.10.2014 raising various pleas that once he has been acquitted of the charge, on the basis of which he was kept under suspension, then said period is to be treated as on duty for all intend & purposes. Hence, the present O.A.

4. The respondents contested the claim of the applicant by filing a detailed written statement wherein they have not disputed about the factual accuracy. However, it is submitted that in terms of the rule formulation, the period when the applicant was under suspension, was treated as leave of the kind due and he also supported the impugned orders. It is also submitted that since the applicant was placed under suspension on the account of departmental proceeding, therefore, as per the Rule 7.3 (5) of the 1970 Rules, the said period cannot be treated as having been spend on duty. It is further submitted that in terms of the order passed by the Hon'ble High Court in earlier round of litigation, the competent authority reconsidered the entire matter and thereafter, impugned order was passed. Therefore, the present O.A may be dismissed.

5. The applicant has also filed rejoinder contradicting the averment made in the written statement.

6. In support of the above, Sh. V.K. Sharma, learned counsel for the applicant vehemently argued that once the basis of suspension

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that was criminal case, has been decided in favour of the applicant and he has been acquitted from the court of law, therefore, impugned order treating that period as leave of kind due is illegal, arbitrary and against the rule formulation. To buttress his submission, he placed reliance upon the judgment passed by the Hon'ble jurisdictional High Court in the case of **State of Punjab and Ors. Vs. S. Bangra** -RSA No. 5143/2011, **Poonam Rani Vs. Uttar Haryana Bijli Vitran Nigam Ltd.**, 2008 (1) SCT 819, **Shashi Kumar Vs. Uttar Haryana Bill Vitran Nigam and another**, 2005 (1) SCT 577 and in the case of **Shiv Goel Vs. State of Haryana and another**, 2007(1) SCT 739. He also placed reliance upon the judgment passed by the Hon'ble Supreme Court in case of **Ashim Kumar Sharma & Ors. Vs. Arun Kumar Roy**, 2002 (1) SLR 472 to the effect that once it was directed that the respondents had to consider the case of the applicant, then they cannot brush aside the findings recorded by the this court by not considering his contention.

7. Sh. Aseem Rai, learned counsel for respondents no. 1 to 3 opposed the prayer of the applicant and submitted that once the Hon'ble High Court has granted the liberty to pass a fresh order, therefore, in terms of Rule 7.3 (5) of the 1970 Rule, the Advisor to Administrator after considering the entire case, passed the speaking order treating the suspension period as leave of the kind due. To

buttress his submission, he placed reliance upon the judgment passed by the Hon'ble Supreme Court in case **Phool Kumar Vs. State of Haryana & Ors.**, 2007(2) RSJ 257.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel appearing for the respective parties.

9. The solitary contention which is to be adjudicated is as to whether the period when the applicant was placed under suspension pending criminal trial, be treated as continuous service or not?

10. A conjective perusal of the pleadings makes it clear that initially the applicant was placed under suspension 19.06.1998 in contemplation of departmental proceedings. The said departmental proceedings culminated into punishment of stoppage of two increments on 29.05.1999 but the applicant was not reinstated as he was involved in a criminal case. Pending criminal case, the applicant was continued under suspension. His suspension period was revoked only on 07.03.2003 by exercising the power under 4 (5) (c) of the 1970 Rules. Thereafter, the applicant was reinstated and he retired on 31.04.2007 after attaining the age of superannuation. Vide order dated 27.07.2013, he was acquitted in pending criminal case. In

earlier round of litigation, O.A No. 146/CH/2010 filed by the applicant was allowed vide order dated 15.04.2011. The relevant para 14 of the order reads as under:-

"14. In view of the discussion herein above the O.A. succeeds and the impugned orders Annexure A-2, A-3, A-5 & A-6 are not sustainable in the eyes of law and accordingly quashed. Orders Annexure A-1 and A-4 being consequential in nature are also quashed. The respondents are directed to restore the annual grade increments in terms of order (Annexure A-7) dt. 28.06.2000 and fix the pay of the applicant thereafter and further regularize the period of suspension with effect from 30.05.1999 to 07.03.2003 as duty for all intents and purposes and allow consequential benefits flowing there from and further grant the scale of the post of Chief Engineer w.e.f. 14.08.2003 and then fix the pay of the applicant in the re-revised scale and then place in the revised scale w.e.f. 01.01.2006 and revise the retiral benefits there from. The respondents shall also release the leave encashment and DCRG along with interest @ 8% with effect from 01.08.2007 with all consequential benefits. The aforesaid directions be carried out within a period of 2 months from the date of receipt of this order."

The said O.A was also subject matter before the Hon'ble High Court in CWP No. 15092/2011 titled **Chandigarh Administration Vs. K. B. Sharma & Ors.** decided on 16.07.2014, the relevant paras read as under:-

"The applicant was never charge sheeted for any misconduct except for the misconduct & absence from duty, in which punishment was imposed in the year 1999. A perusal of the impugned orders show that the suspension period was not treated as a duty period primarily for the reason that the applicant was involved in FIR mentioned above. Once, the criminal case lodged in pursuance of the said FIR has resulted into acquittal of the

applicant, the Petitioner is required to take a decision in respect of relief of grant of ACP scale, revised pension and other retiral benefits. It is necessary consequence of the order of acquittal. An appropriate decision in this regard has to be taken by the Chandigarh Administration.

Consequently, we dispose of the present writ petition with the direction to the Chandigarh Administration to pass an order in respect of suspension period of the applicant and also the consequential benefits of grant of ACP scale and other retiral benefits. Needful be done within a period of three months from the date of receipt of this order.

The writ petition stand disposed of accordingly."

11. A perusal of the above makes it clear that the findings of this Tribunal in its order dated 15.04.2011, were not upset by the Hon'ble High Court in its order dated 16.07.2014 but direction was only to pass the fresh order with regard to the suspension period of the applicant and consequential benefits flowing therefrom. Resultantly, the respondents passed the impugned order rejecting the applicant's claim on the ground that since he was under suspension, therefore, above period of suspension cannot be treated on duty for any purpose in terms of the Rule 7.3 (5) of the 1970 Rule. We are afraid that contention of the respondents cannot be accepted for the simple reason that rules formulation which the respondents are quoting for rejecting the applicant's claim for counting the suspension period on duty talks otherwise. Concededly, the applicant was placed under suspension on 19.06.1998 in contemplation of disciplinary proceeding which was completed on 29.05.1999 with imposition of punishment of stoppage of two increments. Even, the rule formulation

can be applied subsequent to that also, the applicant was continued to remain under suspension pending criminal case. In said criminal case, the applicant was acquitted. Once, he stands acquitted from a court of law and judgment has been accepted by the respondents, then that period cannot be treated as leave of kind due and that is to be counted as duty for all the intend and purposes.

12. This issue has already been considered by the Hon'ble Jurisdictional High Court in case of **Smt. Poonam Rani Vs. Uttar Haryana Bijli Vitran Nigam Ltd.** [2008 (1) SCT 819] as to how to treat acquittal suspension period during criminal proceedings. The relevant observation reads as under:

"The petitioner was suspended because of criminal prosecution against her. Once she is acquitted therein and reinstated into service, she is entitled to full pay during the period of her suspension. Similar view was taken by a Division Bench of this Court in the case reported as Shashi Kumar V. Uttar Haryana Bijli Vitran Nigam and another, 2005(1) Service Cases Today 577.

In the case of Shiv Kumar Goel V. State of Haryana and another, 2007 (1) Service Cases Today 739, also a Division Bench of this Court observed as under:-

"If the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the charged employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honorable acquittal. His benefits of pay and allowance over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges"

13. The following extract from **Jagmohan Lal Vs. State of Punjab (AIR 1967 Punjab 422)**, as quoted in the said High Court's judgment in **Maha Singh Vs. state of Haryana** [1994 (1) SCT 154], may also be noted:

"Whether a person is acquitted with benefit of doubt or for other reasons, the result is that his guilt is not proved. Criminal courts are not concerned to find the innocence of an accused, but only to see whether the guilt of accused has been proved beyond reasonable doubt. The intention of Rule 7.5 therefore is that when a criminal charge against a Government servant fails in a court of law, he should be deemed to be acquitted. Thus a Government servant, acquitted, though with benefit of doubt, is entitled to full pay and allowances during suspension period under Rule 7.5 of the Punjab Civil Service Rules Vol. I Part-I".

14. Further extract from Jagmohan Lal, as quoted in the said High Court's judgment in **Jagwant Singh Vs. State of Punjab** [1996 (3) SCT 45], may be noted:

"In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharge' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the

mind of the Court, the accused is acquitted. I am, therefore, quite clear in my mind that the intention underlying rule 7.5 can be no other except this, the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to except a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious, the Criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

15. To the same effect, there is another judgment of the Hon'ble jurisdictional High Court in CWP No.10808 of 2007; Paul Singh v. Punjab State Electricity Board, Patiala, through its Secretary, and others; decided on 24.01.2012 wherein it has been held as under:

"1. The petitioner's claim is for the grant of benefit of promotional increment in terms of the circular issued by the Government Finance Department on 23.04.1990. The qualifications which are mentioned for an employee on 23 years of regular service are as follows:- "i) He has not been benefited by the scheme of 9/16 years time bound promotional scale. ii) He has not earned three regular promotions in his career. iii) He has not earned third promotion in his regular service between 16th and 23rd years of service. iv) The increments referred to in para 2 above are in the nature of advance promotional benefit to be absorbed in next regular promotion." 2. The counsel says that the petitioner fulfills all the requisite qualifications for claiming the promotional increments but the same has been still denied by them. In each one of other writ petitions as well the same grounds are urged. 3. The counsel for the respondents admits that the petitioners fulfill the criteria mentioned in the circular but however

contests the petitioners' claim on the ground that the reliance which the petitioners have made in the writ petitions, referring to a decision of this Court in a second appeal cannot be applied in a writ proceeding. I will not go into the issue of whether a decision rendered in a regular second appeal should be a matter to draw lesson from but if the case has to be considered from the point of view of the eligibility criteria mentioned in the circular, there is no denying the fact that the petitioners are entitled to consideration for promotional increments. The case has to be allowed in favour of the petitioners on this short ground only. The respondents are directed to apply the appropriate scales to which the respective petitioners are entitled to and the arrears shall be calculated and paid within a period of 6 weeks from the date of receipt of copy of this order. If the same are not paid as stipulated, it will carry interest at 6% from today."

16. The Hon'ble Jurisdictional High Court has also decided the similar issue in case **State of Punjab & Ors. Vs. S.S. Bangra** and dismissed the appeal at the hands of the respondents vide judgment dated 02.01.2011. The relevant observations made therein reads as under:-

"The Division Bench of this Court in the case of Smt. Poonam Rani Vs. Uttar Haryana Bijli Vitran Nigam Ltd. 2008(1) SCT 819 held as follows:

"7. Learned Additional Chief Judicial Magistrate, Jind, has ordered acquittal of the petitioner after threadbare examination of the evidence. It has been noticed that the prosecution has miserably failed to connect the accused with the commission of offences for which they have been charge sheeted. It has further been noticed that no guilt can be attributed to the accused and due to lack of evidence charges are not sustainable against them. In such circumstances, it can hardly be said that the acquittal of the petitioner is not honourable. As such, contention of the learned

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counsel for the Nigam, to the contrary, cannot be accepted. The petitioner was suspended because of criminal prosecution against her. Once she is acquitted therein and reinstated into service, she is entitled to full pay during the period of her suspension. Similar view was taken by a Division Bench of this Court in the case reported as Shashi Kumar V. Uttar Haryana Bijli Vitran Nigam and another, 2005(1) Service Cases Today 577. In the case of Shiv Kumar Goel v. State of Haryana and another, 2007(1) Service Cases Today 739, also a Division Bench of this Court observed as under: "If the Criminal Court recorded finding that there was no evidence to prove the charge of corruption against the charged employee, notwithstanding observations as to acquittal by benefit of doubt, it will be considered honourable acquittal. His benefits of pay and allowance over and above subsistence allowance cannot be forfeited still observing him guilty of the same charges."

For the reasons recorded above, I am unable to persuade myself to take a different view as regards the entitlement of the plaintiff/respondent with regard to the suspension period as has been taken by the Courts below. There is no infirmity in the impugned judgment whereby the plaintiff/respondent has been held entitled to all benefits for the period he remained under suspension as also the benefit of proficiency step up upon completion of 8 years of service.

Learned counsel for the appellant has placed reliance on the judgment rendered by the Apex Court reported as 1997(2) SLR 396 titled as Krishnakant Raghunath Bibhavnekar Versus State of Maharashtra & others to contend that even upon reinstatement after acquittal the benefit of the suspension period and the same could not have been given the benefit of the suspension period and the same could not have been treated as on duty. The facts of the case relied upon by the counsel for the appellant are on a completely different footing. The observation of Hon'ble the Supreme Court were in the backdrop wherein the conduct of the employee therein was in question and such employee had been placed under suspension on the charges of defalcation of public funds

and fabrication of records. Even under such circumstances, the Hon'ble Supreme Court held that the grant of full backwages for the period under suspension would not be granted as a matter of course. The facts of the case in hand are entirely different.

No question of law much less substantial question of law arises for determination of the present appeal. The appeal is devoid of merit and is, accordingly, dismissed."

17. Recently, the Hon'ble High Court has dealt with the same issue after considering the law on subject in case of **Jaswinder Kaur Vs. Punjab State Power Corporation Limited & Ors.**, CWP No. 26076/2013 decided on 24.04.2015 by the Single Bench wherein it has been held as under:-

"In view of the above, the petitioner is held entitled as under: (i) The petitioner would be entitled to the grant of full salary and allowances from 2.7.2007 to 15.7.2010 i.e. the period when the petitioner has been kept out of service on account of his conviction which was ultimately set aside by this Court on appeal. (ii) The petitioner would also be entitled for the grant of time bound higher pay scales after 23 years of service. However, while granting the benefit of 23 years of service, the arrears are restricted to 32 months from the date of filing of the present writ petition. The writ petition stands allowed in the above terms."

18. In the light of the above, we are of the considered view that impugned order cannot sustain in the eye of law, therefore, same is hereby quashed and set aside. The matter is remitted back to the respondents to pass a fresh reasoned and speaking order by treating the above said period, when the applicant was under suspension, as

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period on duty along with all consequential benefits, within a period of three months from the date of receipt of a copy of this order.

19. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 28.9.2015.

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