

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

M.A. No.60/997/2016
O.A. No.60/767/2016

Date of decision: 10.10.2018

...

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**
 HON'BLE MRS. P. GOPINATH, MEMBER (A).

...

Sh. Gurmail Singh son of S. Parmatma Singh, aged 61 years, resident of Village Singh Bhagwantpur, District Ropar, Group B.

... APPLICANT

VERSUS

1. Chandigarh Administration, Department of Home, Chandigarh Mini Secretariat, Sector-9, Chandigarh through its Home Secretary.
2. Inspector General of Police, Chandigarh Police Headquarters, Sector-9, Chandigarh.

... RESPONDENTS

PRESENT: Sh. Aalok Jagga, counsel for the applicant.
 Sh. Arvind Moudgil, counsel for the respondents.

ORDER (Oral)

...

SANJEEV KAUSHIK, MEMBER (J):-

M.A. No.60/97/2016

1. The applicant assails orders dated 01.12.2015 (Annexure A-11) and 16.03.2016 (Annexure A-13) whereby the respondents have treated the period from 09.11.2004 till his reinstatement as leave of kind due. Further, prayer has been made to direct the respondents to treat the dismissal period i.e. 14.12.2007 to 28.05.2012 as duty period and grant him all consequential benefits arising out of it.

2. Along with the O.A., the applicant has moved application U/s 5 of Limitation Act, with a prayer to condone the delay of 665 days in filing the O.A.
3. This Court in first instance issued notice on condonation of delay to which, the respondents have filed reply.
4. We have heard learned counsel for the parties.
5. Learned counsel for the applicant submitted that a complaint was made against the applicant before SP, CBI, Chandigarh alleging demand of bribe of Rs.2000/-. As a result thereof, FIR No.RCCHG2004A0026 dated 09.11.2004 under Sections 7 and 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, was registered against him. Vide order dated 11.11.2004, the applicant was placed under suspension w.e.f. 09.11.2004 (Annexure A-2). In criminal case, the applicant was convicted by competent Court of law vide order dated 7.10.2007. Based upon his conviction in criminal case, he was dismissed from service vide order dated 14.12.2007. Against the order CBI Court, applicant filed criminal appeal before the Hon'ble jurisdictional High Court which, vide order dated 20.12.2010, allowed his appeal and set aside the order passed by learned trial Court. After acquittal in criminal case, applicant made representation to respondent department for reinstatement of his service and vide order dated 26.09.2011 he was reinstated in service subject to final order to be passed in departmental proceedings. In departmental proceedings, applicant was acquitted vide order dated 20.02.2013. Subsequent to that order dated 07.10.2013 was passed by respondent no.2, whereby the period when he was under suspension was treated as duty period whereas the dismissal period was treated as leave of kind due. Against

that order, the applicant submitted representation dated 09.10.2015, which has been rejected by respondent no.2 vide impugned order dated 01.12.2015.

6. Learned counsel for the applicant submitted that that since applicant was pursuing departmental remedy as he was acquitted in criminal case and department inquiry was dropped, coupled with the fact that on similar lines respondents have allowed benefit to one Tarsem Singh as reflected in (Annexure A-14), therefore, this aspect of the matter has not been considered by the respondent while rejecting his claim. He therefore, stated that there is no delay in filing the O.A.
7. Sh. Arvind Moudgil submitted that since initial order passed by the respondents is dated 07.10.2013, therefore, limitation is to be counted from that date and filing of subsequent petition cannot extend the limitation.
8. We have given our thoughtful consideration to the entire matter.
9. Though the initial order passed by the respondents is dated 07.10.2013 but subsequently, the applicant moved to department to change that order and in view of the fact that respondents themselves have allowed him benefit for the period when he was out of service, therefore, it cannot be said that applicant was not before the authorities for redressal of his grievance or there is any intentional delay. He had also approached this Court by filing O.A. No.60/617/2016 in 2016, and as such we find good grounds made out to condone delay.
10. Accordingly, the M.A. is allowed.

O.A. No.60/767/2016

1. On the request of learned counsel for the parties, the main matter is also taken up for hearing today.
2. Learned counsel for the applicant submitted that while rejecting the claim of the applicant vide order dated 01.12.2015, the respondents have not considered points raised by him in his representation dated 09.10.2015 (Annexure A-10) and have also not considered the fact that they have already allowed similar benefit as claimed by the applicant in to Sh. Tarsem Singh and have passed a non-speaking order. Therefore, he prayed that the impugned order be set aside and matter may be remitted back to the respondents to reconsider his claim by dealing with the points raised by the applicant in his representation.
3. Counsel for the respondents is not in position to defend the order dated 01.12.2015 because it does not give reasons to rebut points raised by the applicant in his representation.
4. As per judicial pronouncements if an order is having civil consequence, then respondents have to give reasons while rejecting the claim of the employee. **Lord Denning M.R. in Breen v. Amalgamated Engg. Union** (1971) 1 All ER 1148, observed "The giving of reasons is one of the fundamentals of good administration". In **Alexander Machinery (Dudley) Ltd. V. Crabtree** 1974 ICR 120 (NIRC) it was observed "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". The same view has been expressed by Lordship in case of **Raj Kishore Jha versus State of Bihar & Others**, 2003(11) CC 519. Thus, impugned order being

non-speaking cannot be sustained. There is another reason for quashing the impugned order because the respondents have not considered points raised by the applicant that similar situated employees has already been granted benefit.

5. In view of the aforesaid analysis, we arrive at a conclusion that impugned order cannot stand on the touchstone of principles of natural justice. Accordingly, the impugned order is hereby quashed and set aside. Matter is remitted back to the respondents to pass a fresh speaking order by giving reasons. While deciding the same, respondents are directed to consider whether the case of the applicant is similar to Sh. Tarsem Singh or not. If it is held to be the same, then applicant will be entitled to similar treatment, otherwise reasoned and speaking order be communicated to him. The above exercise be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 10.10.2018.

Place: Chandigarh.

`KR'