

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00779/2016

Date of order:04.07.2018

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs. P.Gopinath, Member (A).

Gian Chand son of late Sh. Puran Ram,
resident of House No.12,
Block D, Shivalik Vihar,
Naya Gaon,
Mohali

.....Applicant.

(By Advocate :- Mr. Rohit Sharma)

Versus

1. Chandigarh Administration through
Home Secretary, U.T. Secretariat,
Sector 9,
Chandigarh.
2. Director Food & Supplies & Consumer Affairs, U.T.
Sector 17,
Chandigarh.
3. Accountant General (A&E)
U.T. Sector 17, Chandigarh.

...Respondents

(By Advocate : Shri Rakesh Verma, for respondents no.1 & 2.
Shri I.S.Sidhu, for respondent no.3).

ORDER

Sanjeev Kaushik, Member (J):

By means of present OA filed under Section 19 of the Administrative Tribunals Act, 1985, , applicant is seeking the following relief:-

" i) Quash the order dated 5.9.2014 (A-1) vide which the authorities have treated suspension period of the applicant from 6.11.2007 to 30.11.2008 as leave of kind due without there being any application made by him in that behalf and in violation of rules and law;

ii) Quash order dated 12.12.2014 (A-2) vide which upon treatment of suspension period as leave of kind due, the pay of the applicant has been re-fixed on lower side and on that basis a recovery of Rs.2,95,790/- was made from him without there being any show cause notice or hearing the applicant;

iii) Quash the order dated 16.3.2015 (A-3) to the extent it was conveyed to applicant that his suspension period has been treated as leave of kind due and his pay was fixed accordingly and the benefit of financial up-gradation on completion of 4/9/14 years is being delayed on the ground of non-availability of vigilance clearance;

iv) issue direction to the respondents to treat the period of suspension as having spent on duty upon exoneration of the applicant in criminal case by granting him full pay and allowances for that period and also grant the applicant benefit of financial up-gradation under 4/9/14 years of service from due dates, fix his pay and then re-fix the retiral dues of the applicant on that basis with arrears of pay and allowances and pension/retiral dues from due date with all the consequential benefits including interest on delayed payments @ 18% per annum from the date the amount became due to the actual date of payment".

2. Brief facts, as projected by the applicant, are that while working as Inspector, Food & Supplies Department of the Chandigarh Administration, a case under Section 7 of the Essential Commodities Act & 120-B IPC in Police Station Sector 31, Chandigarh, vide FIR

No.222 dated 5.11.2007, was registered against him. Applicant was placed under suspension vide order dated 22.11.2007 with effect from 6.11.2007, and was reinstated in service on 1.12.2008. Applicant sought voluntary retirement from service and was relieved w.e.f. 1.1.2013 and was granted provisional pension @ Rs.9662/- per month vide order dated 6.6.2013.

3. The applicant has stated that in the criminal case pending before the Judicial Magistrate, Ist Class, Chandigarh, he was exonerated of the charges levelled against him, vide order dated 21.3.2014. After exoneration in the criminal case, applicant submitted a representation dated 4.4.2014 that he be given the arrears of pay and allowances for suspension period from 6.11.2007 to 1.12.2008, by treating the same as duty for all intents and purposes; benefits of ACP on completion of 4/9/14 years in service; revised gratuity paid at the time of retirement; enhanced benefit of arrears of leave encashment; and full/regular pensionary dues.

4. The applicant has further stated that Rule 7.3(2) of the Punjab Civil Services Rules, Volume I, stipulates that where a government employee, who was placed under suspension, has been fully exonerated, he shall be paid his full pay and allowances for the suspension period. After exoneration in the criminal case of the applicant, the respondents vide order dated 5/23.9.2014, ordered that his suspension period from 6.11.2007 to 30.11.2008 is treated as "leave of kind due". Applicant has further stated that the respondents, vide order dated 16.3.2015, had conveyed that due to his suspension period, the financial up-gradation on completion of 4/9/14 years is being delayed owing to non-availability of vigilance clearance. Applicant again submitted a detailed representation

dated 10.2.2015, stating that he was entitled to be released all benefits in January, 2013, but the same has been denied to him, as such, he is entitled to interest on the delayed payment. Hence the present OA.

5. Along with the OA, the applicant has also filed a Misc. Application for condonation of delay in filing the OA. In the said application, the applicant has stated that he was informed by the officials of the department that the matter is under process and the retiral benefits, pending with the department, would be finalized and released only in December, 2015. He has stated that there is minor delay in approaching the Court of law as his near relative was on death bed and he was busy in medical treatment. He has further stated that there is recurring cause of action as he is getting lesser pension every month besides other retiral dues which are on the lower side.

6. Pursuant to notice, respondents no.1 & 2 have filed their separate replies, wherein they have stated that applicant submitted three months notice for voluntary retirement from 1.10.2012 due to his ill-health, which was accepted by the competent authority, and he was retired voluntarily from government service from 1.1.2013, vide order dated 1.1.2013. Thereafter, his pension papers were forwarded to office of respondent no.3 vide letter dated 14.2.2013, but the same were received back with the remarks that since court case was pending, so the case be sent after the final outcome of the litigation. Respondent no.3 has further informed that provisional pension may be considered at departmental level. On the basis of the advice of the Respondent no.3, applicant was granted provisional pension @ Rs.9662/- i.e. 90% of Rs.10735/- as basic pension plus DA vide order

dated 6.6.2013. Leave encashment amounting to Rs.3,69,280/- was also released in favour of the applicant on 4.6.2013. After submission of copy of order dated 21.3.2014 passed by the Judicial Magistrate, Ist Class, Chandigarh by the applicant, wherein the applicant was acquitted in the criminal case by giving him the benefit of doubt. Thereafter, the respondents vide order dated 23.9.2014 treated the period from 6.11.2007 to 30.11.2008 as "leave of kind due." Respondents have further stated that the pay of the applicant was re-fixed vide order dated 21.11.2014, but his case for ACP 4/9/14 could not be submitted due to non-receipt of vigilance clearance. They have thus prayed for dismissal of the OA.

7. Respondent no.3 has filed separate reply wherein it is submitted that the OA deserves to be dismissed being barred by the law of limitation.

8. No rejoinder has been filed by the applicant.

9. We have heard the learned counsel for the parties and have perused the material placed on record.

10. 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 for the parties.

11. First of all, considering the grounds taken in the Miscellaneous Application for condonation of minor delay and recurring cause of action, it is allowed. The delay in filing the O.A. is condoned.

12. A conjunctive perusal of the pleadings would makes it very clear that while the applicant was in service, an FIR was registered against him. Pending criminal case, the applicant served notice for voluntary retirement on medical grounds, which was accepted and the applicant was allowed to retire, by order dated 1.1.2013 w.e.f

1.10.2012. Except full pension due to pendency of criminal case, he was granted all other service benefits. It is not in dispute that the respondents have not initiated departmental inquiry, against the applicant till date, and he was allowed to retire gracefully. The applicant was acquitted by giving benefit of doubt in the criminal case, by court vide judgment dated 21.3.2014. Perusal of rules makes it clear that pending departmental or criminal proceedings, department is well within its right to deny full pension and allow provisional pension, as has been done in his case.

13. After his acquittal in criminal case, the applicant has staked his claim for full salary, for the period, when he was under suspension minus the subsistence allowance already paid, which has been rejected by the impugned order. To examine validity of this order, one has to examine the rules and instructions on the issue.

14. The relevant provisions, which would govern the proceedings admittedly are Rule 7.3 (B) of the Rules, as applicable to U.T. Employees, which entitles an employee, who had been suspended and subsequently reinstated, to claim full pay and allowance. Rule 7.3(B) of the Rules is reproduced hereunder:-

"7.3-B (1) When a Government employee who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government employee for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) xxx xxx xxx xxx (3) Where the authority competent to order reinstatement is of opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended : Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government employee, had been delayed due to reasons directly attributable to the Government employee, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the Whole) of such pay and allowances as it may determine."

15. A bare perusal of the aforesaid provision goes to show that a specific order has to be made regarding Government employee, who had been suspended and reinstated, regarding his pay and allowances to be paid to him, during the period of suspension, on reinstatement and whether the said period is to be treated as period spent on duty or not. If the competent authority comes to the conclusion that the suspension was wholly unjustified, it shall give a right to the employee for the full pay and allowances.

16. In the case in hand, though the respondents have passed order, which is under challenge on various grounds, as they have not given any reasons for denying the actual benefits to the applicant and which does not meet the requirement of law. It was expected of the respondents to have given valid reasons for denial of relevant benefit. What to talk of giving any valid reason, they have not given any reason, at all.

17. A survey of judicial pronouncements on the subject, cited by learned counsel for the parties, would lead to inescapable conclusion that there is no automatic right to back wages, and other financial

benefits on reinstatement, for the period spent out of service on dismissal on conviction, and much would depend on the facts of each case. Reliance in this regard on the judgment of the Supreme Court in **JAIPUR VIDYUT VITRAN NIGAM LTD. & ORS. VS. NATHU RAM,** 2010(1) SCC 428. In this case, the Hon'ble Supreme Court dealt with the case of a casual labour working in the erstwhile Rajasthan State Electricity Board who was subsequently regularized on the post of Helper but was caught accepting bribe by the Anti Corruption Bureau which led to his suspension and registration of a criminal case. He was sentenced by the trial Court for committing offences under various provisions of Indian Penal Code read with S.5(1) (d) and S.5(2) of the Prevention of Anti Corruption Act, 1947 and was sentenced to one year rigorous imprisonment. The trial Court acquitted the Helper of the charges framed against him. He was reinstated but denied back wages. In these circumstances, the Court held that the circular issued by the Nigam provided that the employee could be deemed to be notified to full pay and allowances for the period from the date of acquittal to the date of reinstatement. The Hon'ble Supreme Court considered its earlier judgment in **UNION OF INDIA VS. JAIPAL SINGH,** 2004(1) SCC 121 to which this Court would refer to later in the narration of the case.

18. In cases involving criminal acts leading to police remand and judicial custody and thereafter accused faces trial and is convicted of criminal offences, would be in deprivation of employer's rights of availing the services of such person not by their own actions but by an act of the employee for which it pays salary for work done out of public funds and thus cannot be compelled to pay for no fault of it.

Therefore, fault theory becomes relevant. Who was at fault? If the Government initiates action and fails it must pay. If the employee gets into trouble, suffers jail and faces trial which has nothing to do with the employer, is convicted or acquitted he has only himself to blame. The State exchequer cannot be lightly burdened for acts which do not originate in the employer nor over which it has any control. The employer/State Government in this case can only watch and wait for the end of the criminal trial held.

19. In the case of **Jaipal Singh** (supra), the Hon'ble Supreme Court dealt with the issue at hand in a case arising from conviction of an employee under Section 302 IPC by the trial Court but acquitted by the High Court in appeal and its effect on back wages upon reinstatement for the period he was out of service due to involvement in a criminal case and observed thus:

"If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by 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 [ins. Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr., AIR 1997 SC 1802], 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 reasons that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny backwages 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 backwages also, without advertent to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of backwages are liable to be

and is hereby set aside."

20. A Division Bench of the Hon'ble jurisdictional High Court in **BHAG SINGH VS. PUNJAB AND SIND BANK**, 2005(6) SLR 464, examined the said issue wherein an employee had been acquitted by giving the benefit of doubt. Accordingly, it came to the conclusion that the concept of honourable acquittal, fully exonerated or acquitted of blame are all unknown to the Criminal Procedure Code, 1973 and held that the petitioner employee was entitled to all consequential benefits especially since he had already been exonerated in the departmental proceedings. Relevant portion of the judgment reads as under:-

"10. The expression "honourable acquittal" has been considered by a Division Bench of the Madras High Court in the case of Union of India v. Jayaram, AIR 1960 Madras 325. In that case, Rajamannar, C.J. delivering the judgment observed as under:-

"There is no conception like "honourable acquittal" in Criminal P.C. The onus of establishing the guilt of accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be **** acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply."

As noticed earlier, the petitioner has been acquitted in both the criminal cases as there was no evidence of his participation in any undesirable activity. Therefore, the petitioner was reinstated in service."

21. The aforesaid observations on legal issue, squarely cover the case in hand. Since in the present case, even no departmental proceedings were ever initiated against the applicant and only because of the criminal trial, he had been placed under suspension, and once he stands acquitted by disbelieving the recovery, which had been shown from the applicant, and giving him benefit of doubt, no

fault can be fastened upon him in remaining away from his duties and responsibilities.

22. In the conspectus of the aforesaid discussion and legal position, this Original Application is allowed. The orders dated 5.9.2014 (Annexure A-1), 12.12.2014 (Annexure A-2) and 16.3.2015 (Annexure A-3) are quashed and set aside. At the same time, the respondents are directed to treat the period of suspension, as having spent on duty, on exoneration in criminal case, by granting him full pay and allowances and other benefits of financial up-gradation and revised retiral dues on that basis, within a period of three months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own respective costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A)

Place: Chandigarh.
Dated: July 4 , 2018

KKS/HC*

