

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O. A. No.60/829/2016

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Date of decision: 30.05.2018

(Reserved On: 14.05.2018)

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

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Sunita Bakshi retd. Aged 60 yrs., Sub-Inspector No.567/CHG Presently resident of H. No.3354/1, Sec.40-D, Chandigarh (U.T.) Group C.

... APPLICANT

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Home Affairs, New Delhi-110011.
2. Union Territory, Chandigarh through Advisor to the Administrator, Sector-9 Chandigarh.
3. Home Secretary, Chandigarh Administration, U.T. Secretariat, Deluxe Building, Sector 9-D, U.T., Chandigarh.
4. Inspector General Police, U.T. Chandigarh.
5. Senior Superintendent of Police, Sector 9-D, Chandigarh, U.T.

... RESPONDENTS

PRESENT: Mr. Ranjit S. Dhiman, counsel for the applicant.
Ms. Nidhi Kalia vice Sh. Rajesh Punj, counsel for the respondents.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. Applicant is aggrieved against orders dated 04.03.2011 (Annexure A-4), dated 12.03.2015 (Annexure A-14) and letter dated 25.05.2016 (Annexure A-18) whereby the benefit of arrears of pay and other consequential benefits have been denied.
2. Applicant joined as lady Constable in Chandigarh Police on 05.02.1977 and was allotted Constabulary No.122/CP and O.B. No.75/77. She was promoted as head constable in the month of June 1986 and then promoted as ASI on 01.11.2002.

3. An FIR No.RCCHG2005A0014 dated 12.05.2005 under Section 7 of Prevention of Corruption Act, 1988, was registered against her. She was placed under suspension on 17.05.2005. Simultaneously, departmental inquiry was also initiated against her. Based upon the inquiry, vide order dated 25.05.2007, the applicant was dismissed from service. In criminal case, vide judgment dated 10.03.2007 Special Judge CBI Chandigarh held the applicant guilty of charges and convicted her. Against her conviction, the applicant filed Criminal Appeal No.614-SB of 2007 challenging the order of CBI Court and another Criminal Appeal No.1144-SB of 2009 was filed by CBI against acquittal of Hussan Lal which was co-accused in the criminal case. Appeal filed by the applicant was accepted vide judgment dated 25.08.2010 and another appeal filed by the CBI against acquittal of Hussan Lal was rejected. Thereafter, the applicant filed revision petition which was remanded back to respondent no.4 vide order dated 27.01.2011 on the plea that the applicant had already been acquitted by Court of law. Vide order dated 28.05.2007, the applicant was reinstated in service with immediate effect. However, period from the date of her dismissal i.e. 28.05.2007 till her joining was ordered to be treated as leave of kind due vide order dated 04.03.2011. On the basis of aforesaid order, respondent no.5 vide order dated 09.05.2011 treated the period from her suspension to date of dismissal except the period in which the applicant remained in judicial custody as duty and for the rest of the period from the date of dismissal till reinstatement on 04.03.2011 was treated as leave of kind due. The applicant stated to have submitted representation on the ground of discrimination

amongst similarly situated persons as in the case of Hussan Lal who has been granted all benefits whereas in the case of applicant, the period from her dismissal to reinstatement has been ordered to be treated as leave of kind due. Reminder was also filed and ultimately vide order dated 12.03.2015, respondents have rejected her claim for grant of actual benefit for aforesaid period. Hence this O.A.

4. The respondents while resisting the claim of the applicant did not dispute the factual accuracy. However, they have submitted that vide order dated 10.03.2007 CBI Court convicted the applicant whereas Sh. Hussan Lal was acquitted. The applicant was acquitted only by Hon'ble High court and on her acquittal, she was reinstated in service immediately i.e. on 04.03.2011.
5. The applicant has filed replication wherein she has annexed order passed in the case of Hussan Lal granting him benefit arising out of reinstatement.
6. We have heard learned counsel for the parties.
7. Sh. Dhiman, learned counsel appearing on behalf of the applicant argued that the impugned order treating period starting from 28.05.2007 till her reinstatement on 04.03.2011 as leave of kind due despite her honourably acquittal by the Court of law is illegal, arbitrary and contrary to rules governing the field. He submitted that the applicant was convicted by Special Judge, CBI, whereas Sh. Hussan Lal, who was co-accused therein was acquitted. Against his acquittal, CBI filed appeal and simultaneously against her conviction, applicant also filed appeal. Both the appeals were heard together and appeal of CBI was dismissed and appeal of applicant was accepted whereby she was honourably acquitted and on her

acquittal she was reinstated, in service on 04.03.2011. On her reinstatement, it has been ordered to treat the period from her suspension to date of dismissal except the period in which the applicant remained in judicial custody as duty and for rest of the period from the date of dismissal till reinstatement was treated as leave of kind due. Learned counsel argued that in the case of Hussan Lal, respondents have taken different stand than that in the case of applicant. In the case of Sh. Hussan Lal, he was granted all benefits but in case of applicant, respondents have arbitrarily and discriminately not treated the period in service. To buttress his plea, learned counsel placed reliance on judgment in the case of **Yellinedi Sagareswara Rao vs. S. K. Jawahar Reddy** (2014(4) SCT 639) and judgment dated 17.04.2017 in the case of Harchand Singh vs. State of Punjab and others. (CWP No.8647 of 2015 (O&M)).

8. Per contra Ms. Nidhi Kalia reiterated what has been stated in the written statement.
9. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
10. Short controversy that arises for our consideration is as to whether the applicant can be denied her full pay and allowances for period in question i.e. from the date of her dismissal till the date of her reinstatement in service. Rule 7.3 of Punjab Civil Service Rules, Vol.I, Part I, Chapter VII, deals with the present situation which reads as under:-

7.3(1) When a Government employee, who has been dismissed, removed or compulsory retired or suspended, is reinstated or would have been reinstated but for his retirement on superannuation the

authority competent to order the reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on 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) Where the authority mentioned in sub rule (1) is of 7 of 19 opinion that the Government employee has been fully exonerated or, in case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, has he not been dismissed, removed, compulsorily retired or suspended, as the case may be:

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 representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years immediately preceding the date on which order for re-instatement of

such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.”

A bare reading of the above provision would make it clear that the government employee who has been dismissed, removed, compulsory retired or suspended, is reinstated upon having been fully exonerated, then he/she shall be given full pay and allowances to which he/she would have been entitled to had he/she not been dismissed, removed, compulsory retired or suspended, as the case may be. In the case in hand, the applicant was dismissed from service based upon her involvement in a criminal case under Prevention of Corruption Act, 1988, after her honourable acquittal by the Hon'ble High Court in the criminal appeal while considering her revision petition against order of dismissal, the revisionary authority by considering her acquittal in the criminal case modified orders of her dismissal from service and ordered reinstatement in service vide order dated 04.03.2011. While doing so, it has been ordered that the period from date of her dismissal from service i.e. 28.03.2007 till her reinstatement is to be treated as 'leave of kind due'. Against this order, the applicant is before this Court. No reasons what so ever has been spelt out by revisionary authority for treating the aforesaid period as "leave of kind due". As noted in the preceding para that Rule 7.3 of Punjab Civil Service Rules, which envisages that if an employee is dismissed, removed, compulsory retired or suspended, is reinstated upon having been fully exonerated, then he/she shall be given full pay and allowances to which he/she would have been entitled to had he/she not been dismissed, removed, compulsory retired or suspended. Thus, view

taken by the respondents cannot be allowed to sustain. Accordingly, the same is invalidated. There is another reason for declaring the view taken by the respondents as invalid because respondents have discriminated vis. a. vis. similarly situated persons by giving different treatment. Admittedly, two persons were involved in criminal case one Sh. Hussan Lal and another present applicant, but in the case of former after his acquittal, he was granted all service benefits whereas restrictions have been imposed upon the applicant, as noticed above, without there being any reasons. Thus, action of the respondents is arbitrary, discriminatory and in violation of Articles 14 and 16 of Constitution of India. Even otherwise, once the conviction of the applicant under Prevention of Corruption Act has been set aside and she has been fully exonerated/acquitted, then the applicant is entitled to all benefits as provided under Rule 7.3 of Punjab Civil Service Rules. Dismissal of the applicant was on account of involvement in criminal proceedings initiated by the department under Prevention of Corruption Act and not on the basis of private complaint, thus, in terms of Rule 7.3, the impugned orders cannot sustain. Accordingly, the same are hereby quashed and set aside. Our view is also fortified by judgment in the case of Yellinedi Sagaraswara Rao(supra). No other points raised. No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 30.05.2018.
Place: Chandigarh.

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