

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 09.07.2025
Pronounced on: 06.08.2025

WP(C) No. 454/2024 CM No. 1170/2024

1. Union Territory of J&K through Commissioner/
Secretary to Government, Home Department
Civil Secretariat, Srinagar
2. Director General of Police, Kashmir.
3. Inspector General of Police, Kashmir.
4. Deputy Inspector General of Police, CKR.
5. Senior Superintendent of Police, Srinagar.
6. Superintendent of Police, Cargo, Srinagar.

...Petitioners/Appellant(s)

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maja Majeed, Assisting Counsel.

Vs.

Pawan Kumar
S/o. Munshi Ram
R/o. Surinsar Jammu.

...Respondent(s)

Through Mr. Bhat Fayaz, Advocate with
Ms. Nighat Amin, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Sanjay-Parihar-(J)

1. By this writ petition, challenge is thrown to the order/judgment dated 28.09.2022 passed by the Central Administrative Tribunal, Srinagar (hereinafter referred to as the 'Tribunal') in OA No. 565/2020 titled

“Pawan Kumar vs. UT of J&K and others”, whereby the Tribunal has proceeded to allow the OA of the respondent by directing the appellant herein to treat the suspension period of the respondent as on duty and grant him all the consequential benefits, which exercise was directed to be completed within a period of two months.

2. Being aggrieved, the petitioners seek quashing of the order on the ground that the Tribunal, without considering the objections of the petitioners, has passed the order impugned which is contrary to the facts and rules/regulations governing the subject, and, therefore, deserves to be set aside; that the respondent was involved in a criminal case for no fault of his employer and that his detention was as a consequence of his involvement in the FIR and not an outcome of any departmental proceedings; that reliance on Regulations 108-B and 109 of the Jammu and Kashmir Civil Service Regulations, 1956 (for short ‘Regulations’ hereafter) was uncalled in the given facts and circumstances; that the Tribunal has also failed to consider the issue of limitation as the OA had been filed after more than six years, thus, in terms of Section 21 of the Administrative Tribunals Act, application of the respondent was not maintainable having not been filed within one year from the date of the order; and that the respondent had completely failed to explain the delay in filing the OA.

3. Briefly stating, the respondent, while serving in the Police Department as Selection Grade Constable, was arrested on 04.03.2008 by Police Station Jajjar Kotli, Jammu, for his involvement in FIR 19/2008

under Sections 302, 148, 323, 142, 341 RPC and he remained under detention for five years and 39 days and was ultimately acquitted on 30.03.2013. On account of his involvement in criminal case, the respondent was placed under suspension on 12.06.2008. After his acquittal, a departmental enquiry was initiated against him with regard to his prolonged absence from duty owing to his involvement in criminal case. The enquiry officer vide report dated 30.10.2013 recommended as under: -

1. SqCt Pawan Kumar 640/JKAP 5th BN (AWP) ARP-993983 is hereby permitted to resume his duties and reinstated into services with immediate effect.
2. The period of his absence w.e.f., 28.02.2008 to 04.03.2008 is treated as Dies-non in the analogy of no work no pay.
3. The period he remained under police/judicial custody w.e.f 04.03.2008 to 11.04.2013 i.e., 05 years and 39 days is decided as under:
 - 04.03.2008 to 28.12.2008 i.e., 300 days as on earned leave.
 - 29.12.2008 to 11.04.2013 i.e., 12306 days as extraordinary leave.
4. The period w.e.f., 12.04.2013 (i.e., the date he applied for resumption) till date is treated as on duty.

4. The recommendations of the enquiry officer were accepted by the SSP, Srinagar, who vide his order No.572 of 2014 dated 11.03.2014 reinstated the respondent and treated his period of absence as leaves of different kind. Against the said order, the respondent preferred a statutory appeal before the Range Police Headquarters, Srinagar, which was disposed of vide order dated 18.02.2015 by holding that Regulations 108-

B and 109 of the Regulations were not applicable to the case of the respondent and that, his period of absence stood rightly treated as leaves of different types so as to protect him from future service complications as also to remove stigma of suspension. On the ground that the acquittal of the respondent in the criminal case was not an honourable one, the appeal was rejected. Thereafter, the respondent laid OA before the Tribunal which in terms of order impugned has been disposed of by holding as under:

“It is undisputed that the applicant was exonerated of all the charges levelled against him and was acquitted vide judgment dated 30.03.2013. Pursuant to acquittal of the applicant of all the charges and in view of Rule 108-B quoted above, we are of the considered view that the applicant’s suspension period between the date of arrest and acquittal is liable to be treated as spent on duty. We further find that Rule 108-B (supra) is fully applicable to the case in hand and the applicant is entitled to the relief claimed by him regarding treatment of his suspension period.”

5. Learned counsel appearing for the petitioners vehemently argued that the respondent has been fairly treated. The period from 04.03.2008 to 28.12.2008 has been treated as on earned leave, which would entitle him to full salary. The period of absence from 29.12.2008 to 23.12.2009 has been treated as “half pay leave” and w.e.f., 24.12.2009 to 12.04.2013 has been treated as “extraordinary leave”. This clearly speaks of employer having taken a humanitarian view in the case though, in law, the respondent was not entitled to any back wages. The suspension was ordered for the conduct of respondent having involved himself in the crime. Learned counsel would further urge that the detention of the

respondent was not actuated by any act of the department, and, therefore, the later cannot be made accountable for the fault of respondent as he was away from service because of his own conduct. The petitioners cannot be made liable to pay for the period for which they could not avail any services of the respondent.

6. *Per contra*, supporting the order passed by the Tribunal, it was argued by learned counsel appearing for the respondent that since the employer had placed the respondent under suspension w.e.f. 12.06.2008 for his involvement in a criminal case in which he ultimately earned acquittal, as such, he would be entitled to full salary for the period of suspension after he is reinstated.

7. We have heard learned counsel appearing for the parties and considered the material on record.

8. The Tribunal appears to have taken note of Regulation 109 of the Regulations and concluded that since the respondent stood exonerated of all the charges levelled against him, so, pursuant to his acquittal and in view of Regulation 108-B, the suspension period post his arrest until the earning of acquittal order, is liable to be treated as 'period spent on duty'.

For convenience, Regulations 108-B and 109 are reproduced as under: -

“108-B. Reinstatement after suspension.

- i. When a Government Servant who has been dismissed, removed, compulsorily retired before attaining the age of superannuation, or suspended is reinstated, the authority competent to order the reinstatement shall consider and made a specific order: -

a. Regarding the pay and allowances to be paid to such Government Servant for the period of his absence from duty; and

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

ii. Where the authority mentioned in sub-rule (i) is of the opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified the Government servant shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired before attaining the age of superannuation or superseded, as the case may be. The period of absence from duty shall be treated as period spent on duty.

109. Committals to prisons.

A servant of the State committed to prison either for debt or on a criminal charge, should be considered as under suspension from the date of his arrest and not allowed to draw any pay until the termination of the proceeding against him, when an adjustment of his allowances should be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or if the imprisonment was for debt, of its being proved that the officer's liability arose from circumstances beyond his control."

9. From plain reading of the aforesaid Regulations, it is seen that what Regulation 108-B provides is that, if an employee is reinstated post his suspension, which was wholly unjustified, the period of absence shall be treated as period spent on duty rendering the employee entitled to full pay and allowances to which he would have otherwise been entitled, had he not been suspended. Whereas, Regulation 109 speaks of a Government servant committed to a prison either for debt or on criminal charge, he should be deemed to be under suspension from the date of his arrest and, therefore, not entitled to draw salary until termination of the said criminal

proceedings. He shall be entitled to full amount only in the event of the officer being acquitted of the blame or if the imprisonment is for debt of its being proved that the officer's liability arose from circumstances beyond his control.

10. In **“(1994) 1 SCC 541, Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal”**, the Regulations of Reserve Bank of India governing the service conditions of the bank employee were under consideration of Hon'ble the Supreme Court. Under Regulation 46-B, the absence due to arrest was not to be treated as due to circumstances beyond the control of the employee. Further Regulation 47(1) of the said Regulations provided that the employee, who is under arrest in a criminal charge, shall be considered as being or having been under suspension from the date of his arrest. Similarly, Regulation 46(2) further provided that subsistence allowance paid to the employee during suspension is adjustable against the pay and allowance which become admissible to the employee on regularization of suspension period as duty or leave. Regulation 46(4) provided for reinstatement in service of employee who has been dismissed on account of his conviction. While considering the request of the employee for payment of back wages for the period in custody, it was held thus:

“15. We have already profited out the effect of the relevant provisions of Regulations 39, 46, 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence

allowance paid to him is liable to be adjusted against his pay and allowance if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable."

11. Hon'ble the Supreme Court in para 4 of **"Union of India vs. Jaipal Singh (2004) 1 SCC 121"**, has held as under:-

"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 therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). 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 it 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 re-instatement cannot be sustained and the respondent has to be re-instated, 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 in so far as it directed payment of back wages are liable to be and is hereby set aside.”

12. Given the aforesaid legal position, two dimensional issues arise for consideration in the instant petition. One that, since the suspension of the respondent was not because of any disciplinary proceedings but on account of deemed suspension following his arrest in a criminal case, that too, which was not registered at the instance of the petitioners. The respondent remained absent from duty due to his involvement in a criminal case and detention therein. In the eventuality, where absence from duty due to arrest is not attributable to employer, the employer is well within its right to decline release of full pay to the respondent for the period he was in custody. Secondly, whether the provisions of Regulation 109 of the Regulations could be used in extending benefit to an employee who has suffered criminal prosecution unconnected with his official duties.

13. In so far as the principle of ‘no work no pay’ is concerned in this regard Hon’ble the Supreme Court in “**Union of India vs. Jaipal Singh (2004) 1 SCC 121**” has held that the employer cannot be made liable to pay for the period for which it could not avail the services of an employee, such employee will not be entitled to the back wages for the period for

which he remains in custody except for the period post his acquittal till his reinstatement.

14. Therefore, a distinction has to be drawn between an employee who has been put under suspension or deemed to be under suspension following a criminal charge laid by the employer and the one where the employee is arrested or detained for a criminal offence unconnected with the affairs of his service. In case of former, having regard to the provisions of Regulation 108-B, following his exoneration from the departmental proceedings or the criminal charges on the strength of the employer being unable to sustain the charge against the employee, in that background the later would be entitled to all the back wages and full salary for the period for which he remained under suspension. However, such an employee is required to discharge the onus that during the period of his suspension he was not gainfully employed somewhere else. In the second case, the situation would be different and the employee cannot, as a matter of right be held entitled to back wages. In this regard the position of law has been clearly laid in **Bhopal Singh Panchal (Supra)** wherein the regulation spoke of reinstatement of an employee who had been dismissed on account of his conviction which had been set aside by the High Court and where the employee has been honorably acquitted of a blame. There too a provision had been made that the employee, who had been arrested of a criminal charge, was to be considered as 'under suspension' and entitled to subsistence allowance from the employer during suspension, to be adjusted at the time of reinstatement and full pay

and allowances would be admissible only on satisfying twin conditions, one that the authority has treated him on duty during such period and that he has satisfied the employer that he had been guilty of improper conduct resulting in his detention. Here, in this case as well, the respondent on account of criminal case was committed to custody and remained so until he was acquitted and period of his custody from 04.03.2008 to 28.12.2008 amounting to 300 days has been termed as earned leave, for that the leave would ensure payment of full pay. Whereas, from 29.12.2008 till 11.04.2013, the period has been treated as extraordinary leave leaving no entitlement of salary and post 12.04.2013, he has been treated as on duty. What Regulation 109 would provide is that it vests power to the employer to treat the period of suspension on duty or on leave or otherwise, the words 'full amount' can count only in the event of officer being acquitted of blame that are to be read in the manner to advance the spirit of Regulation 108-B and 109, because once the period of detention has been induced on account of his own misconduct in service, the reinstatement follows as a necessary consequence and the acquittal from the criminal charge, which charge had no co-relation with the duties to be rendered by the respondent.

15. The language in which Rules 108-B and 109 of CSR 1956 stand couched, are certainly *pari materia* with the regulations those were under consideration in **Bhopal Singh Panchal** (supra). We have, thus, no hesitation in holding that the respondent herein had remained in custody not on account of any blame or charge of misconduct raised by the

employer, rather was in custody in a criminal case and merely because he has been acquitted would not automatically result in holding the petitioners liable to pay back wages and salary to the respondent for the period he was under detention. Though the respondent was under a deemed suspension being in custody, which suspension ultimately was revoked following his acquittal and in order to prevent the respondent from further loss of service on account of his being in custody, he has been suitably compensated. The petitioners, under the Regulations, have the exclusive power to treat the period of such suspension on duty or leave or otherwise, as the case may be, which has been rightly done. Before the Tribunal also there was no material to warrant any interference in the decision taken by petitioners to settle the claim of the respondent. There appears to be no *mala fides* on the part of the petitioners in reaching to the order dated 11.03.2014 and the Tribunal has landed in error by extending the benefit of Regulation 108-B to the respondent, which ought not to have been given as both the Regulations aforesaid are to be given a harmonious construction to achieve their intended object. The respondent's period of absence from duty following his custody from 04.03.2008 to 11.04.2013 having been suitably decided by the petitioners, the same could not have been interfered with by the Tribunal, because his absence from duty was not due to any blame or charge laid by the petitioners but was on account of his own conduct which had nothing to do with his service condition.

16. For the foregoing reasons, we see merit in this writ petition, which is, accordingly, allowed. The impugned order of the Tribunal dated 28.09.2022 is set aside and as a consequence, the OA of the respondent is dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
06.08.2025
"SHAHID"

Whether approved for reporting.

Yes

