

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 16781 of 2011 (O&M)

Date of Decision: 23.09.2016

DES RAJ MANGAL

... Petitioner

VS.

STATE BANK OF INDIA & OTHERS.

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioner.

Mr. Kapil Kakkar, Advocate,
for the respondents.

KULDIP SINGH, J. (Oral)

Brief facts of this case are that Des Raj Mangal-petitioner was working as a Field Officer in the Bhiwani Branch of State Bank of India since 02.04.1974. On the basis of a complaint made by one Narinder Kumar regarding acceptance of illegal gratification, an FIR No. 106 dated 28.03.2000 against the petitioner was registered under Section 7, 13 (2) of the Prevention of Corruption Act, 1988, at Police Station City Bhiwani. In the meanwhile, the Department also charge-sheeted the petitioner vide order dated 07.02.2001. Departmental inquiry was held and ultimately vide order dated 05.06.2004 (*Annexure P-2*), the petitioner was dismissed from service. The appeal against the said order was dismissed on 16.12.2004 (*Annexure P-3*). The petitioner further filed a review before the authorities and the following order (*Annexure P-4*) was passed on 24.11.2005:-

“Having considered thus, the Committee is of the view that the end of justice could be met if the petitioner is removed from the Bank’s service. The Committee, therefore, decides to modify the penalty from

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“dismissal from service” imposed on the petitioner to “removal from service”. The suspension period is to be treated as such. The committee orders accordingly.”

It comes out that later on vide judgement dated 17.02.2007 (*Annexure P-14*) passed by learned Special Judge-cum-Additional Sessions Judge, Bhiwani, the petitioner was acquitted of all the charges framed against him. Thereafter, in the year 2010, the petitioner had filed a writ petition (*Annexure P-10*) in which he prayed for reinstatement on the basis of acquittal from all the criminal charges. The said writ petition was disposed of directing the respondents to dispose of the representation dated 07.12.2007 by passing a speaking order in accordance with law within six months. The said representation was rejected by the respondents vide order dated 16.05.2011 (*Annexure P-12*).

Now, the petitioner has again approached this Court seeking quashing of the order dated 05.06.2004 (*Annexure P-2*), vide which he was dismissed from service and also of the orders dated 24.11.2005 (*Annexure P-4*) vide which he was removed from service. The petitioner further claims that vide order dated 26.04.2011 (*Annexure P-13*), the respondents revised his pension on the basis of pay-scales of 1992 instead of 2002 as was earlier done on the ground that he remained under suspension from 30.03.2000 to 05.07.2004. Accordingly, the pension was revised and recovery of ₹ 1,56,651/- towards excess payment was ordered.

I have heard learned counsel for both the parties and carefully gone through the content of facts available in case file.

So far as the impugned orders (*Annexures P-2, P-3 and P-4*) are concerned, I am of the view that the final order of reviewing authority

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(Annexure P-4) was passed on 24.11.2005 and the petitioner did not challenge the said order. However, he had filed writ petition for the first time in the year 2010, only when he was acquitted in the criminal case vide order (Annexure P-14) dated 17.02.2007 seeking re-instatement on the ground that he had been acquitted from all the charges by the learned Special Judge-cum-Additional Sessions Judge, Bhiwani. However, it comes out that the only prayer made was to direct the respondent No. 4 to decide the representation dated 07.12.2007 by passing the speaking order. No prayer was pressed that the removal order (Annexure P-4) should be set aside. The respondent had already passed the order of removal from service much before the acquittal in the criminal case. Even if employee is acquitted in criminal case, the Department could still hold independent inquiry and take different view. Hence, there is no illegality in the impugned order dated 05.06.2004 (Annexure P-2), 16.12.2004 (Annexure P-3) and 24.11.2005 (Annexure P-4). Hence, prayer qua said orders is declined.

Now, coming to the order (Annexure P-13) which shows that the said order was passed on 26.04.2011. It comes out that the following order was passed : -

“We advice that the Trustees’ of Pension Fund have accorded sanction for the refixation of pension of the captioned retiree w.e.f. 07.07.2004 vide their sanction No. SBI/PEN/11-12/01 dated 06.04.2011. The pension of Shri Mangal had been erroneously revised to Rs. 8820/- p.m. on the basis of 2002 pay scales vide sanction no. SBI/PEN/06-07 dated 22.03.2007 instead of Rs. 3898/- p.m. on the basis of 1992 pay scales as Shri Mangal remained under suspension from 30.03.2000 to 05.07.2004 and did not draw any salary during this period. Shri Mangal was paid subsistence allowance during the period of suspension. Recovery of Rs. 156651/- towards excess payment (calculation sheet enclosed) made to Shri Mangal has been started from this month. An amount of Rs. 6651/- has been recovered from the

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pension for April 2011 and Rs. 5000/- p.m. shall be recovered from the pension every month upto October 2013.”

The perusal of the above noted order shows that it was the passed on the basis of 2002 pay scales. Since, the petitioner earlier remained under suspension from 30.03.2000 to 05.07.2004, therefore, he is entitled to the pay scales of 1992 and not that of 2002. However, the pension to the petitioner had been revised as per the pay scales of 2002. It is not disputed by the respondents that during the suspension period, the petitioner was getting 90% subsistence allowance of his salary.

Now, the question would arise whether the pay scales of 1992 are applicable in the case of petitioner or not?

The pay scales of 2002 is admissible to the employee who retired from service prior to 2002 in view of the order dated 24.11.2005 (*Annexure P-4*) with all the retiral benefits. The reviewing authority passed a vague order regarding suspension period stating that it should be treated as such. It was not clarified whether the petitioner is entitled to full salary for the said period or not. It appears that the petitioner was given subsistence allowance of 90% of the salary which he has not disputed in the present petition and he has accepted the same. Even then the fact remains that the petitioner was dismissed from service on 05.06.2004 and the pay scale as admissible on the date of dismissal of the case of the petitioner are applicable and the salary of the petitioner is to be calculated as such. It was on the basis of such calculations that the pension is to be paid to the petitioner. Therefore, the previous order of calculating the pension on the basis of pay scales of 2002

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was correct and the order dated 26.04.2011(*Annexure P-13*) reviewing the said order is patently illegal.

Accordingly, the order dated 26.04.2011 (*Annexure P-13*) alongwith all consequential orders are quashed. The pension of the petitioner fixed vide sanction order No. SBI/PEN/06-07 dated 23.02.2007, is restored. The petitioner shall accordingly be paid his pension henceforth from the date of his retirement. The recovery already effected shall be refunded to him with interest @ 9% per annum from the date the recovery was made, till its payment.

In view of the above noted observations, the present petition is partly allowed.

September 23, 2016

Suresh Kumar

**[KULDIP SINGH]
JUDGE**

Whether speaking / reasoned

✓
Yes / No

Whether Reportable

✓
Yes / No