

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

CWP No. 5425 of 2015

Date of Decision: 27.09.2016

MEHAR SINGH

... Petitioner

VS.

STATE OF HARYANA AND OTHERS.

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Dilbagh Singh, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana

KULDIP SINGH, J. (Oral)

Brief facts of this case are that the petitioner was working as Driver in the Transport Department, Haryana since 12.07.1988. On 14.11.1991, the bus being driven by him met with an accident. A criminal case under Section 279/304-A/427 and 429 of Indian Penal Code (IPC) registered against him in which he was ultimately convicted by the Judicial Magistrate Ist Class, Rohtak vide order dated 01.10.1999. In the meanwhile, the petitioner was placed under suspension from 20.11.1991 to 04.05.1992. The appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge, Rohtak on 14.01.2003. He again remained under judicial custody from 14.01.2003 to 26.04.2003 and remained under suspension for the said period also.

The General Manager, Haryana Roadways, Jind, vide order dated 21.10.2008, removed the petitioner from service on account of conviction in the criminal case. The petitioner filed an appeal against the said order. The Additional Transport Commissioner-cum-Appellate Authority, vide order

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dated 04.03.2014 (*Annexure P-1*), partly allowed the appeal and reduced the penalty from 'removal of service' to 'compulsorily retirement'. It was directed that the petitioner will not be paid anything else for the suspension period than what has already been paid to him as subsistence allowance.

The petitioner made the following claim in the present writ petition: -

1. To count the two spells of suspension period i.e. 20.11.1991 to 04.05.1992 and 14.01.2003 to 26.04.2003 as qualifying service for the grant of pension and subsistence allowance should be paid for the same.
2. That the period from 21.10.2008 till 04.03.2014, the date on which the appeal was decided, be also counted for the grant of pensionary benefits and interest on the delayed payment be also paid.
3. That he should be granted ACP on completion of 20 years which he completed on 12.07.2008.

I have heard learned counsel for the parties and carefully gone through the case file.

So far as the two spells of suspension periods are concerned, as per the order of the appellate authority, he is entitled to subsistence allowance for the said period. Therefore, the respondent shall pay him subsistence allowance for the said suspension period, if not paid earlier. Since, the petitioner was in service during the said period and that period under the Rules be treated as leave of kind due, therefore, the said two spells of suspensions mentioned above shall be treated as period of qualifying service for pension except period of extra-ordinary leave.

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So far as the interest on the delayed payment is concerned, when the petitioner was dismissed from the service, he was not entitled to anything and it was only on account of the order passed by the appellate authority on 04.03.2014 that he was compulsorily retired. Thereafter, the dues payable to the petitioner were immediately released to him. Therefore, he is not entitled to interest on the delayed payments made in pursuance to the order dated 04.03.2014 nor the period from the date of dismissal till the order of the appellate authority is to be counted as qualifying service for the pension.

The prayer in this regard is declined.

So far as the grant of ACP on completion of 20 years is concerned, the respondents are directed to count the two spells of suspension period for pension under Rules and thereafter, if the petitioner fulfills all the terms and conditions, which are required for grant of 20 years of ACP, pass the necessary order in this regard within two months from the receipt of the copy of this order as to whether the ACP is to be granted to the petitioner or not?

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

September 27, 2016

Suresh Kumar

**[KULDIP SINGH]
JUDGE**

	✓	
<i>Whether speaking / reasoned</i>	<i>Yes</i>	<i>No</i>
		✓
<i>Whether Reportable</i>	<i>Yes</i>	<i>No</i>