

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

231

**CWP-13988-2015 (O&M)
Date of decision: 24.01.2017**

Anil Kumar Tyagi

....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Malik, Sr. Advocate with
Mr. Mandeep Singh, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the present writ petition, the petitioner has questioned denial of salary for the suspension period from 22.08.1997 to 04.11.1999 and further denial of salary for the termination period from 14.08.2001 to 13.01.2015. To that extent the same has been denied by the respondent vide order dated 13.01.2015 (Annexure P5). The petitioner while working as a Meter Reader he was caught red handed by the police while accepting a sum of Rs.500/- stated to be illegal gratification from one Sh.Bal Raj resident of H.No.10/240 Bhim Basti, Old Faridabad. Pursuant to the same, FIR was registered against the petitioner on 22.08.1997 for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988. Arising out of the same the petitioner is stated to have been arrested and subsequently

released on bail. Pursuant to the knowledge of arrest of the petitioner, the respondents placed the petitioner under suspension on 28.8.1997 w.e.f. 22.08.1997. Suspension order was revoked on 04.11.1999. The petitioner was convicted in the criminal case under the offences punishable under Sections 7 and 13 of Prevention of Corruption Act, 1988 by the Sub-Judge, Faridabad.

2. Feeling aggrieved by the order of conviction he preferred a criminal appeal before this court. This court acquitted the petitioner on 17.07.2014. In the meanwhile, the petitioner's services were terminated pursuant to the order of conviction dated 10.10.2001. Question for consideration in the present petition is relating to entitlement of salary during the suspension period and so also out of service period.

3. Learned counsel for the petitioner submitted that petitioner was also subjected to disciplinary proceedings by framing charges way back on 26.03.1998. There was no progress in the disciplinary proceedings and the same was dropped on 13.01.2015 in view of the acquittal of the petitioner. In view of these facts and circumstances, petitioner is entitled for arrears of pay for the suspension period as well as out of service period. In this regard, learned counsel for the petitioner relied on Rule 7.3 and 7.5 of Punjab Civil Services Rules, Volume I. Rule 7.3 relates to allowances on reinstatement and Rule 7.5 relates to suspension during pendency of criminal proceedings, or proceedings for arrest for debt, or during detention under a law providing for preventive detention etc. Perusal of the rules it is evident that the person who has been fully exonerated in such circumstances, full

pay and allowances is to be extended. Insofar as criminal case is concerned, full amount is being given only in the event of the officer being acquitted of blame or (if the proceedings take against him were for his arrest for debt). Further learned counsel for the petitioner relied on decision of this court passed in CWP No. 1326 of 2013 dated 30.04.2015 vide Annexure P9 in particularly para 19 of the judgment. Thus, the impugned decision of the respondents denial of salary for the suspension period and out of service is contrary to the rules cited above so also the above mentioned decision of this court.

4. On the other hand, learned counsel for the respondents relied on decision of this court passed in case titled as ***Baldev Singh versus State of Punjab and others*** CWP No. 3344 of 2012 dated 03.08.2012 wherein this court relying on ***Union of India Versus Jaipal Singh*** reported as (2004)1 SCT 108. The Supreme court as well as this court has distinguished that if an employee in respect of criminal proceedings initiated against him and if it is in individual or personal capacity of an employee involved in criminal case. Having regard to the fact that petitioner is involved in criminal case at the behest of private citizens of the country and not at the behest of the department therefore, the petitioner is not entitled for difference of pay for the suspension period and arrears of pay during out of service.

5. Heard learned counsel for the parties.

6. Admittedly, the petitioner was involved in a criminal case relating to the offence under the Prevention of Corruption Act, 1988. The alleged bribe of Rs.500/- accepted by the petitioner is in connection with the

service. For the reasons that in order to favour the complainant while abusing the power of the petitioner in official capacity, petitioner has been implicated in a criminal case. Hence the cited decision by the respondents that in case of ***Union of India Versus Jaipal Singh*** is distinguishable.

7. That apart, having regard to the provisions of Punjab Civil Service Rules, Volume I in particularly Rules 7.3 and 7.5 which deals relating to regulating his suspension period as well as out of service like termination dismissal etc. Rule 7.3 and 7.5 is crystal clear that if an employee is involved in a criminal case or in a disciplinary proceedings if he is exonerated or acquitted in such circumstances, the employee is entitled to monetary benefits like payment of salary during the suspension period so also salary for the out of service kept by the respondents. As long as rule is not amended appropriately by the competent authority, extending monetary benefits with reference to acquittal and exoneration in a disciplinary proceedings cannot be denied. The supreme Court in the case of ***Nair Service Society versus T. Beermasthan and others*** reported in (2009) 5 SCC 545 held as follows:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the

communal rotation has to be applied taking 20 vacancies as a block.”

8. In view of the above decision, one must examine the relevant rules governing the issue and not the decisions. In the present case, statutory rules cited above are crystal clear that if an employee is exonerated and acquitted he is entitled for regularising the period so also for monetary benefits.

9. In view of these facts and circumstances, the conditions imposed in the order dated 13.01.2015 that denial of arrears of salary for the suspension period i.e. 22.08.1997 to 04.11.1999 and denial of salary for the termination period from 14.08.2001 to 31.01.2015 is hereby set aside. The respondents are directed to calculate and disburse the monetary benefits to the petitioner within a period of 6 months from today.

24.01.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No