

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5198-2019 (O&M)

Date of decision : 27.2.2019

Chandigarh Administration and another

..... Petitioners

Versus

Gian Chand and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- M/s Sanjiv Ghai, Kirpal Singh and
Abhilaksh Grover, Advocates for the petitioners.

KULDIP SINGH, J.

Petitioners have impugned the order dated 4.7.2018 (Annexure P-4) passed by learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh-respondent No. 2 (for short 'the Tribunal') in OA No. 060/00779/2016 titled as '*Gian Chand versus Chandigarh Administration and others*' vide which the order dated 5.9.2014 (Annexure A-1); order dated 12.12.2014 (Annexure A-2) and order dated 16.3.2015 (Annexure A-3) were quashed and respondents (present petitioners) were directed to treat the period of suspension, as having been spent on duty, on exoneration in criminal case, by granting him full pay and allowances and other benefits of financial up-gradation and revised retiral dues on that basis, within a period of three months, from the date of receipt of certified copy of the order.

The short facts which are required to be noticed for the purpose of disposal of the present petition are that applicant-respondent No. 1

namely Gian Chand was working as Inspector, Food and Supplies Department in Chandigarh Administration. A case under Section 7 of the Essential Commodities Act and 120-B of the Indian Penal Code was registered at Police Station Sector 31, Chandigarh vide FIR No. 222 dated 5.11.2007 against applicant-respondent No. 1. Accordingly, he was placed under suspension vide order dated 22.11.2007 w.e.f. 6.11.2007. He was reinstated in service on 1.12.2008. He sought voluntary retirement from service and was relieved w.e.f. 1.1.2013. He was granted provisional pension @ Rs. 9662/- per month vide order dated 6.6.2013.

Vide order dated 21.3.2014, passed by learned Judicial Magistrate Ist Class, Chandigarh, applicant-respondent No. 1 was exonerated of the charges levelled against him. Thereafter, applicant-respondent submitted a representation dated 4.4.2014 to allow him the arrears of pay and allowances for suspension period from 6.11.2007 to 1.12.2008 by treating the same as on duty and also grant him benefit of ACP on completion of 4/9/14 years for the period he remained in service; revised gratuity paid at the time of retirement; enhanced benefit of arrears of leave encashment and full/regular pension. Vide the order dated 5.9.2014 (Annexure A-1), the suspension period of applicant-respondent No. 1 i.e. from 6.11.2007 to 30.11.2008 was ordered to be treated as "leave of the kind due". Vide order dated 12.12.2014 (Annexure A-2), pay of applicant-respondent No. 1 was re-fixed on the lower side and recovery of Rs. 2,95,790/- was ordered. Vide order dated 16.3.2015 (Annexure A-3), financial upgradation on completion of 4/9/14 years were being delayed on

the ground of non-availability of vigilance clearance.

We have heard learned counsel for the petitioners and gone through the case file.

Reference can be made to Rule 7.3-B of the Punjab Civil Services Rules, Volume I, which is reproduced as under: -

“7.3-B (1) When a Government employee who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension the authority competent to order re-instatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government employee for the period of suspension ending with re-instatement 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) xxx xxx xxx (3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government employee shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

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 his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded

in writing, that the Government employee shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.”

The Tribunal has taken the view that the applicant-respondent No. 1 is not at fault for his suspension and remaining away from duty. There is no reason to deny him the actual pay. The Tribunal has relied upon the Division Bench authority of this Court in **2005 (6) SLR 464**, titled as '**Bhag Singh vs. Punjab and Sind Bank**'.

Undoubtedly, applicant-respondent No. 1 was placed under suspension on account of his arrest in criminal case registered under Section 7 of the Essential Commodities Act and 120-B of the Indian Penal Code at Police Station Sector 31, Chandigarh vide FIR No. 222 dated 5.11.2007. A perusal of the judgment dated 21.3.2014 passed by Judicial Magistrate Ist Class, Chandigarh shows that after examining the entire evidence, learned Magistrate came to the conclusion that the prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubts. Accordingly by affording the benefit of doubt, accused-applicant/respondent No. 1 was acquitted. What ever may be the reasons, the fact remains that the prosecution had failed to prove its case. Applicant-respondent No. 1 was placed under suspension only on the ground of his arrest in a criminal case. No separate departmental proceedings were initiated against the applicant-respondent No. 1 and he was not at fault for his suspension as according to him, a false case was planted on him.

Considering the entirety of the facts and circumstances, we are

of the view that there is no illegality or infirmity in the impugned order dated 4.7.2018 (Annexure P-4) passed by learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh-respondent No. 2.

Accordingly, the writ petition is dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

27.2.2019
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Whether speaking / reasoned	Yes
Whether Reportable:	Yes