
(2019) 01 P&H CK 0358

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 28902-CAT Of 2018

Union Territory, Chandigarh And Others

APPELLANT

Vs

Sunita Bakshi And Others

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13(1)(b), 13(2)
Punjab Civil Service Rules Vol. I, Part I, Chapter VII — Rule 7.3, 7(6)
Constitution Of India, 1950 — Article 311(2)

Citation : (2019) 01 P&H CK 0358

Hon'ble Judges : Rajiv Sharma, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Sanjiv Ghai

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J

The Union Territory, Chandigarh and others have filed the present writ petition laying challenge to the order dated 30.05.2018 of the Central Administrative Tribunal, Chandigarh Bench in O.A. No.60/829/2016, whereby, the Original Application filed by respondent No.1 has been allowed.

Respondent No.1 joined the Chandigarh Police as Lady Constable on 05.02.1997. She was promoted as Head Constable in June, 1986 and as ASI on 01.11.2002. An FIR dated 12.05.2005 under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') was registered against her and H.C. Hussan Lal on the complaint of one Zakir Hussain @ Sonu that while she was functioning as Assistant Sub Inspector in Police Station Manimajra, Chandigarh she had demanded an amount of Rs.2000/- as illegal gratification for effecting a compromise between the complainant and his in-laws. She was placed under suspension on 17.05.2005. A departmental enquiry was also initiated against both of them. The Enquiry Officer submitted his findings holding the delinquent officials not guilty of the charges levelled against them. However, the SSP

Chandigarh, the Punishing Authority, disagreed with the Enquiry Officer and served show cause notice dated 06.09.2006 proposing punishment of dismissal from service. While the matter was pending consideration with the SSP, the Special Judge/CBI, Chandigarh vide judgment dated 10.03.2007 convicted respondent No.1 under Section 7 of the Act and sentenced her to imprisonment for one year and to further undergo rigorous imprisonment for one year under Section 13(1)(b) read with Section 13(2) of the Act. H.C. Hussan Lal was acquitted.

On 28.05.2007, the Punishing Authority, holding that the charges against her had been fully established during the departmental proceedings awarded the punishment of dismissal from service with immediate effect. Her appeal against the orders of the Punishing Authority was dismissed by the I.G., Police (Appellate Authority) on 11.10.2007. Respondent No.1 filed Criminal Appeal No.614-SB of 2007 challenging the judgment and order of her conviction. Another Criminal Appeal No.1144-SB of 2009 was filed by the CBI against the acquittal of H.C. Hussan Lal co-accused of respondent No.1. The appeal filed by respondent No.1 was allowed vide judgment dated 25.08.2010. Judgment and order dated 10.03.2007 convicting her was set aside. The appeal of the CBI against the acquittal of co-accused Hussan Lal was dismissed.

On 24.12.2010, respondent No.1 filed a Revision Petition before the Home Secretary, Chandigarh Administration, who vide order dated 27.1.2011 remanded the matter back for examination in view of the judgment of acquittal. Thereafter, the matter was considered afresh by the Appellate Authority, who vide order dated 04.03.2011 set aside the order of the Punishing Authority dated 28.05.2007. Respondent No.1 was ordered to be reinstated with immediate effect. The period from the date of her dismissal from service i.e. 28.05.2007 till joining was directed to be treated as LKD (leave of the kind due). Vide consequential order dated 02.05.2011, her suspension was revoked from the date of her reinstatement in service i.e. 04.03.2011. Vide order dated 09.05.2011, her suspension period i.e. 17.05.2005 to 28.05.2007 was treated as duty for all intents and purposes. The police/judicial custody period i.e. 29.07.2005 to 04.08.2005 was treated as leave of the kind due.

Respondent No.1 submitted a representation against treating the period from dismissal to reinstatement as leave of the kind due. The same was rejected vide order dated 25.05.2016. Aggrieved, she filed the Original Application.

The Ld. Tribunal allowed the O.A. and quashed the order treating the period from the date of her dismissal till reinstatement as leave of the kind due.

Learned Tribunal relied on the provisions of Rule 7.3 of the Punjab Civil Service Rules Vol. I, Part I, Chapter VII which is as under:

"7.3. (1) When a Government employee, who has been dismissed, removed or compulsorily retired, is reinstated as a result of appeal, revision or review, or would have been so reinstated but for his retirement on superannuation while

under suspension or not, 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 his absence from duty including the period of suspension, preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the Government employee, who had been dismissed, removed or compulsorily retired, has been fully exonerated, the Government employee shall, subject to the provisions of sub-rule (6), be paid his full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be:

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 representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government employee shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount (not being the whole) of pay and allowances, as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of noncompliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

Provided that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of three years

immediately preceding the date on which order for reinstatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be."

As per the aforesaid Rule, where a Government employee, who has been dismissed, removed, compulsorily retired or suspended is reinstated upon having been fully exonerated then he or she shall be given full pay and allowances to which he or she had been entitled had he or she had not been dismissed, removed or compulsorily retired.

Not only was respondent No.1, acquitted in the criminal case, but in the departmental proceedings also the Appellate Authority in its order dated 4.3.2011 passed after remand by the Revisional Authority, had noted that the evidence on record was not sufficient to prove her guilty of the charges. Thus respondent No.1 stood fully exonerated both in the criminal case as also the departmental proceedings.

The Tribunal rightly held that in these circumstances respondent No.1 was entitled to full pay and allowances for the period between her dismissal and reinstatement.

There is no infirmity in the order which is as per the service rules.

Dismissed.