IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112 CWP-24235-2025 (O&M)
Date of decision: 21.08.2025

Union Territory, Chandigarh and others

...Petitioners

Versus

Sushil Kumar Gupta and others

...Respondents

114 CWP-24251-2025 (O&M)

Union Territory, Chandigarh and others

...Petitioners

Versus

Sushil Kumar Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR.JUSTICE VIKAS SURI

Present: Ms. Sukhmani Patwalia, Advocate for the petitioners.

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VIKAS SURI, J.

1. The above captioned writ petitions, between the same parties, titled as *Union Territory, Chandigarh and others vs. Sushil Kumar Gupta and others*, have been taken up together for hearing and are being disposed of by a common judgment as the same issue is involved in both the cases.

2. The present petitions are directed against the orders dated 13.12.2024 passed in two Original Applications by the learned Central Administrative Tribunal, Chandigarh Bench, whereby the claim of respondent No.1 for treating his suspension period as “on duty” along

with all consequential benefits as per rules, has been accepted. CWP-24235-2025 pertains to the suspension period from 07.10.2005 till 06.03.2006 and CWP-24251-2025 pertains to the suspension period from 30.10.2007 till 30.08.2010.

3. Briefly, respondent No.1 while working as Inspector, Food and Supplies Department, was implicated in criminal case bearing FIR No.325 dated 05.10.2005 under Section 420 IPC, registered at Police Station Manimajra. The said FIR was registered on the complaint of Sh. S.K. Setia, Land Acquisition Officer, UT Chandigarh. Respondent No.1 was placed under suspension vide order dated 07.10.2005. The suspension was revoked vide order dated 01.03.2006. In the said criminal proceedings, no challan was presented against respondent No.1, rather cancellation reports were submitted twice, on 02.05.2006 and 28.04.2008. However, on the complainant's statement that he was not satisfied with the investigation, proceedings were deferred for further investigation. No protest petition had been filed in the said criminal case. Thereafter, the complainant moved an application therein stating that the original record could not be traced and expressed his inability to pursue the matter in the absence of record. Accordingly, the cancellation report was accepted by the Court concerned and respondent No.1 was discharged, vide order dated 02.06.2014.

3.1 On 30.10.2007, Respondent No.1 was issued a charge-sheet alleging pilferage of 48 bags of rice from FCI, during August 2007, under Public Distribution System, for distribution to Below Poverty Line and Antyodaya Anna Yojna ration card holders. Vide separate order dated 30.10.2007, respondent No.1 was placed under suspension.

3.2 On similar set of allegations of dishonestly misappropriating food grain bags, when respondent No.1 was still under suspension, he was implicated in case FIR No.01 dated 01.01.2009, under Sections 409, 420, 467, 468 read with Section 13 (1)(c)(d) of the Prevention of Corruption Act and Section 7 of the Essential Commodities Act, registered at Police Station Vigilance, UT Chandigarh. Pending investigation in the aforesaid FIR, the suspension of respondent No.1 was revoked vide order dated 30.08.2010 without prejudice to case FIR No.01 dated 01.01.2009.

3.3 In the meantime, respondent No.1 retired from service on attaining the age of superannuation on 30.06.2012, i.e., during pendency of the criminal trial in both the FIRs.

3.4 After a full trial, Respondent No.1 was acquitted in case FIR No.01 dated 01.01.2009, vide order dated 01.05.2014. The criminal Court concerned came to the conclusion that the prosecution had failed to connect the accused/respondent No.1 with the commission of any of the offences alleged. A categoric finding had been recorded that there was no evidence on record to suggest that accused/respondent No.1 had manipulated the record while preparing labour charges bills of labour contractor or had misappropriated any funds. It was, thus, held that the prosecution had not been able to bring home guilt of the accused, at least beyond reasonable doubt and resultantly, respondent No.1 was acquitted of the charges framed against him vide judgment dated 01.05.2014.

3.5 In the other criminal case registered earlier in point of time against respondent No.1, i.e., case FIR No.325 dated 05.10.2005, he stood discharged vide order dated 02.06.2014, as noticed above.

3.6 Accordingly, representations were moved by respondent No.1 for treating the period of suspension as “on duty”.

3.7 The department, under the provision of Rule 7.3 of the Punjab Civil Services Rules, Vol. I, Part I (hereinafter referred to as the “PCS Rules”), ordered that the period of suspension from 07.10.2005 to 06.03.2006 be treated as “leave of kind due”, vide order dated 06.11.2014.

3.8 Respondent No.1 represented to the department for authorization for full pension, pensionary benefits and payment of arrears on account thereof, as well as for necessary orders regarding the suspension period for the last two spells, i.e. 07.10.2005 to 06.03.2006 and 30.10.2007 till 30.08.2010. The said representation was rejected by a cryptic order dated 16.07.2015, which did not spell out grounds on which the same had been rejected. Respondent No.1 had also filed representations dated 01.12.2015 and 29.01.2016 against the order dated 06.11.2014 whereby the period of suspension for the first spell, i.e. 07.10.2005 to 06.03.2006 was ordered to be treated as “leave of kind due”. However, no order was passed with regard to the second spell, i.e. 30.10.2007 till 30.08.2010.

3.9 Aggrieved by the aforesaid, respondent No.1 preferred an appeal before the Secretary, Food and Supplies, Chandigarh Administration, which was dismissed on merits as well as being time barred vide order dated 10.03.2016.

3.10 Still being aggrieved, respondent No.1 challenged the action of the department before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, ‘the Tribunal’) by way of OA-60/350/2016. The said original application (OA) was dismissed as withdrawn with

liberty to the applicant to file a fresh OA on the same cause of action, after removing the defects and with better particulars, vide order dated 20.11.2017.

3.11 Thereafter, on 08.01.2018, two original applications bearing OA No.60/36/2018 and OA No.60/38/2018, were filed by respondent No.1 claiming full benefits of the suspension period including salary etc. The claim raised in OA-60/36/2018 relates to the suspension period from 31.10.2007 till 30.08.2010, from which CWP-24251-2025 has arisen, whereas OA-60/38/2018 relates to the suspension period from 07.10.2005 till 06.03.2006, from which CWP-24235-2025 has arisen. Both the OAs were opposed by the petitioners by filing written statement thereto.

3.12 Considering the pleadings of the parties and the respective submissions made, vide separate orders dated 13.12.2024, the learned Tribunal allowed both the original applications and ordered that the suspension period in question be treated as “on duty” and further ordered that consequential benefits/dues of the applicant, as per rules, be also paid within a period of six weeks.

4. Aggrieved by the aforesaid orders dated 13.12.2024, the writ petitioners, i.e. Union Territory, Chandigarh Administration and its officials, have preferred the present writ petitions, challenging the supra orders passed by the learned Tribunal.

5. Ms. Sukhmani Patwalia, learned counsel for the petitioners has emphatically contended that respondent No.1 was acquitted in case FIR No.01 dated 01.01.2009 by granting benefit of doubt, hence, the period of suspension from 30.10.2007 till 30.08.2010, was rightly considered as leave of kind due. Therefore, the impugned order passed by

the Tribunal to treat the said suspension period on duty, is illegal and thus, liable to be set aside. It is further submitted that respondent No.1 was placed under suspension vide order dated 30.10.2007 on having been served charge-sheet alleging pilferage of 48 bags of rice from FCI, in August 2007, which suspension though was revoked vide order dated 30.08.2010 but the same was made without prejudice to criminal case FIR No.01 dated 01.01.2009, in which respondent No.1 has been acquitted after granting him the benefit of doubt. It is contended that the suspension order, passed on initiation of departmental proceedings, was subject to the result of the criminal case. Reliance has been placed upon ***Iqbal Singh vs. State of Punjab and others,*** **2023 LIC 2935**; **LPA No.1255 of 2023** decided on 17.09.2024, titled as ***Iqbal Singh vs. State of Punjab and others,*** **2024:PHHC:124554-DB**; ***Suraj Bhan vs. State of Haryana and another,*** **Law Finder Doc Id # 2228386,** affirmed in **LPA No.1201 of 2022,** decided in 17.07.2023 titled as ***Suraj Bhan vs. State of Haryana and others,*** **2023:PHHC:088933-DB;** ***Baldev Singh vs. Union of India and others,*** **(2005) 8 SCC 747** and ***Dnyaneshwar Kashinath Shingane vs. State of Maharashtra and others,*** **2023(176) FLR 979**.

6. We have heard learned counsel for the petitioners at some length and have perused the record with her able assistance.

7. The facts are not in dispute. It is conceded that during the service of respondent No.1, before his retirement on attaining the age of superannuation on 30.06.2012, he was implicated in the following proceedings:-

i. FIR No.325 dated 05.10.2005 under Section 420 IPC registered at Police Station, Manimajra.

ii. Department proceedings wherein charge-sheet dated 30.10.2007 had been issued.

iii. FIR No.01 dated 01.01.2009, under Sections 409, 420, 467, 468 IPC, Section 13 (1)(c)(d) of the Prevention of Corruption Act and Section 7 of the Essential Commodities Act, registered at Police Station Vigilance, UT Chandigarh.

8. Undisputedly, the first spell of suspension, i.e. from 07.10.2005 till 06.03.2006, was on account of registration of case FIR No.325 dated 05.10.2005. The second spell of suspension period from 30.10.2007 till 30.08.2010, was owing to the department proceedings against respondent No.1, wherein charge-sheet was issued to him on 30.10.2007. During the aforesaid latter suspension period, case FIR No.01 dated 01.01.2009 came to be registered, implicating respondent No.1. It is during the pendency of criminal trial in the supra case FIR, the suspension order dated 30.10.2007 was revoked without prejudice to the proceedings in case FIR No.01 dated 01.01.2009, vide order dated 30.08.2010. Respondent No.1 has been discharged in the first FIR and acquitted in the subsequent FIR. No material has been placed on record to show that the department proceedings were ever concluded. It is, however, urged that in view of the order dated 30.08.2010 (supra), the said proceedings would be dependent upon the outcome of case FIR No.1 dated 01.01.2009.

9. The question that arises for consideration is whether in the peculiar facts and circumstances of the case, the period of suspension, in both the spells, could be treated as “on duty” or not, under the Punjab Civil Services Rules.

10. To appreciate the arguments advanced by learned counsel for the petitioners, it is necessary to examine both the aforesaid proceedings, i.e. criminal and departmental, as well as to consider their outcome in relation to the consequential action, in the light of the well settled principles of service jurisprudence.

11. On a complaint made by Sh. S.K. Setia, the then Land Acquisition Officer, UT Chandigarh, respondent No.1 was implicated in case FIR No.325 dated 05.10.2005. Owing to registration of the aforesaid criminal case, respondent No.1 was placed under suspension vide order dated 07.10.2005, which was revoked vide order dated 01.03.2006. In the said criminal case, the complainant failed to bring on record any incriminating evidence against respondent No.1. Concededly, in the said proceedings, twice cancellation reports had been submitted but the complainant made a statement that he was not satisfied with the investigation. However, no protest petition was filed by him. Subsequently, an application was moved by the complainant stating that record of the case could not be traced and as such, he expressed his inability to pursue the case in the absence of record. Keeping in view the aforesaid and that there was no incriminating material against the accused, respondent No.1 was discharged by the criminal Court vide order dated 02.06.2014, which reads as under:

> "On the last date of hearing the complainant had Sought time to avail appropriate remedy against the cancellation report filed by the prosecution Today an application has been moved by the complainant Sh. S.K. Setia, the then Land Acquisition Officer, U.T. Chandigarh stating that the record of the case could not

> be traced out and accordingly it cannot be established whether the accused was having knowledge of announcement of award or not. As such he has shown his in ability stating that he cannot pursue with the present matter in absence of record. Heard. Admittedly twice cancellation reports have been submitted in the present matter dated 02.05.2006 and 28.04.2008 and on both the occasions the complainant had got his statement recorded to the effect that he was not satisfied with the investigation, But till date no protest petition has been tiled by the complainant. More so ever, today he has shown his debility to pursue with the present mater. Accordingly, the cancellation report is hereby accepted. There is no point keeping the present case pending. The accused stands discharged. Though the complainant shall be at liberty to avail in any other remedy as available under the law, if so advised. File b sent back to SSP Office. Papers of this Court be consigned to the record room."

11.1 Admittedly, pursuant to the charge-sheet dated 30.10.2007, considering the reply submitted by the delinquent official, an inquiry was instituted. The Inquiry Officer in his report submitted on 16.09.2008, exonerated respondent No.1 as the charge against him was not proved. The relevant portion of the said report reads as thus:

> "6. I have examined the evidence and record and have considered the written arguments submitted by P.O. only charge against Sh. Sushil Kumar Gupta, C.O. is that he pilfered 48 bags. The charge sheet has been issued on the basis of a report dated 10.10.2007 of the then Joint Director, F&S. The report itself clearly mentions that the physical verification was not carried out. Shortage was evidently worked out on the basis of the assumption that each bag

> contained standard 50 k.g. and was also being issued accordingly. Actual position is that surplus bags were supplied by F.C.I. to make up for the loss of weight through moisture loss. This plea of the C.O. in para 16 of the reply dated 20.12.07 was not controverted at any stage. Another important factor which stands out is the report dated 31.12.2007 which mentions that the quantity (weight) shown in stock register tallied with the bills. This does not show any shortage.
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> 7. In view of the foregoing discussion the charge against Sh. Sushil Kumar Gupta, C.O. does not proved."

11.2 However, the disciplinary authority gave a dissenting note and vide order dated 25.02.2009, show cause notice was issued to respondent No.1 proposing to impose penalty of stoppage of one annual grade increment with cumulative effect. Respondent No.1 submitted reply dated 09.03.2009, wherein it was submitted that he was falsely involved in case FIR No.01 dated 01.01.2009. Thereafter, vide order dated 30.08.2010, the suspension of the applicant/respondent No.1 was ultimately revoked.

11.3 On a query of the Court, regarding the department proceedings, learned counsel for the petitioners has not been able to point out any material to show that the same ever proceeded beyond the stage of issuance of show cause notice and reply thereto. In fact, after revocation of the suspension vide order dated 30.08.2010, which was made subject to outcome of case FIR No.01 dated 01.01.2009, respondent No.1 retired on attaining the age of superannuation on 30.06.2012. However, the period of his suspension from 30.10.2007 till 30.08.2010 was not regularized. In the absence of any material to show that the departmental proceedings had

concluded, not much reliance can be placed on the contention that respondent No.1, though exonerated by the Inquiry Officer, despite that was proceeded against on the basis of a dissenting note recorded by the disciplinary authority. Nevertheless, the charge levelled against the delinquent official was required to be proved by leading cogent evidence in the said departmental proceedings. In the absence of any evidence having been shown, even before this Court that any adverse order imposing any punishment in the departmental proceedings was ever passed, no adverse inference can be drawn against respondent No.1 qua the said departmental proceedings.

11.4 Moreover, during the trial in case FIR No.01 dated 01.01.2009, under Sections 409, 420, 467, 468 IPC, Section 13 (1)(c)(d) of the Prevention of Corruption Act and Section 7 of the Essential Commodities Act, registered at Police Station Vigilance, UT Chandigarh, no evidence was brought on record to suggest that respondent No.1 had manipulated the record while preparing the labour charges bills of labour contractor or had misappropriated any fund. For want of evidence connecting the accused with the commission of any of the offences alleged, respondent No.1 was acquitted on 01.05.2014. The prosecution failed to adduce any cogent and convincing evidence to substantiate the charge framed against the accused. It was thus concluded that the prosecution had not been able to bring home guilt of the accused, at least beyond reasonable doubt. A meticulous examination of the judgment dated 01.05.2014 passed by learned Special Judge, Chandigarh in the supra case FIR, would show that no direct evidence had been led by the prosecution to connect the accused with the alleged offence, in order to

substantiate the charge framed against the accused. Though in the concluding paragraph, the learned Special Judge has observed that providing benefit of doubt, the accused is ordered to be acquitted of the charges framed against him, but the said observation is in the light of the cardinal principle of criminal law noticed in the preceding paragraph. On a complete reading of the judgment dated 01.05.2014, finding has been recorded that there was no evidence on record which suggests implication of respondent No.1 to the extent of the charge framed against him. Thus, the acquittal is for want of evidence against respondent No.1 and not on account of having been granted the benefit of doubt. The relevant portion of the judgment dated 01.05.2014, is extracted hereunder:

> "28. Thus, there is nothing on record which suggests that any loss has been incurred during the tenure of accused Sushil Kumar Gupta at the PR Centre to the Government Exchequer. Further, it is also proved on record that no complaint from any quarter were ever received by the department of Food and Supply, U.T., Chandigarh in respect of any loss, shortcoming, or non supply of Food Grain to the depot holders or mobile vans during the tenure of accused Sushil Gupta. It is also proved on record that no pilferage of any kind of food grains has ever been committed by accused Sushil Kumar Gupta. The prosecution has failed to prove on record any entrustment of such food grains to Sushil Kumar Gupta accused which were never disbursed or supplied by him further to the depot holders or other centers under Food & Supply Department, U.T., Chandigarh."
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> "30. The another allegation levelled against Sushil Kumar Gupta, accused by the prosecution is that Labour Charges Bills of PR Centre were prepared, verified and passed by Sushil Kumar Gupta himself without any authority and has misappropriated the government funds. In order to prove the aforesaid allegation, the prosecution has examined labour

> Contractor Amar Chand as PW-12, however, this witness has admitted in his cross examination that being illiterate he used to request the Incharge, P.R. Centre or some other person like depot holder if available to prepare the bills for him and Mangal Singh, Inspector, H.R. Kalia, Ashwani Kumar etc. have also prepared his bills on his request and he has simply signed the same in token of the accuracy of the same. He further admitted that he used to receive payment from the department of loading-unloading charges, stacking, weighment of the food grains at the P.R. Centre in view of the contract approved by the department. Thus, from the above it is evident that there is no evidence on record which suggests that Sushil Kumar Gupta, accused has manipulated the record while preparing the labour charges bills of labour contractor or has misappropriated any fund."
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> "33. Thus, by now this Court has come to the conclusion that prosecution has failed to connect accused Sushil Kumar Gupta with the commission of any of the offences. It was incumbent upon the prosecution to adduce cogent and convincing evidence in order to substantiate the charge framed against the accused. It is the cardinal principle of criminal law that in criminal cases, the guilt of the accused is to be proved by indubitable evidence and the conjectures and surmises, however strong may be, cannot take place of proof. The benefit of doubt as and when the same arises, however marginal the same may be, is bound to tilt in favour of the accused.
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> 34. In the light of what is discussed above and without elaborating further, it is held that the prosecution has not been able to bring home guilt to the accused at least beyond reasonable doubt. Resultantly, providing benefit of doubt, the accused is ordered to be acquitted of the charges framed against him. File be consigned to the record room."

12. A bare perusal of the above reproduction would show that though, in paragraph 34, it has been mentioned that the benefit of doubt is

being given to the accused but, in paragraph 33, the finding of the Court is that the prosecution has failed to connect the accused with the commission of any offence. Once there is a bit of confusion in paragraphs 33 and 34, the full judgment is to be seen as to what is the basis of acquittal by the court. A bare reading of the order passed by the competent Court of law shows that there was no material brought on record to connect the accused with the alleged offence. Once there is no material, it cannot be said that the benefit of doubt is to be given to acquit the accused. The benefit of doubt is only given, where the material is brought on record but the same casts some shadow of doubt, which is not the case qua the respondent herein. Therefore, for all intents and purposes, respondent No.1 was acquitted because the prosecution had failed to connect the accused with the commission of offence and did not adduce cogent evidence to substantiate the charges framed against the accused. Hence, it has to be treated as acquittal on merits for all intents and purposes.

13. It would be gainful to make a reference to the settled legal position on the subject. A coordinate bench of this Court while considering a similar proposition in ***Bhag Singh vs. Punjab and Sind Bank,*** **2005 (6) SLR 464** held that when acquittal in criminal proceedings is for want of evidence, mere mention of benefit of doubt by the criminal Court is superfluous and baseless. It was further held that the mere use of expression ‘benefit of doubt’ or ‘not proved beyond reasonable doubt’ by the trial Court or the appellate Court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. It was further held that the concepts of ‘Honourable Acquittal’, ‘fully

exonerated' or 'acquitted of blame' are all unknown to the Criminal Procedure Code, 1973. Therefore, the term 'benefit of doubt' cannot detract from the impact of the acquittal. A similar view expressed by the learned single Judge in ***Jagmohan Lal v. State of Punjab through Secy. to Punjab Govt. Irrigation and others.,*** **AIR 1967 Punjab and Haryana 422**, was relied upon by the supra Division Bench, wherein it was held that it is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused. The relevant portion of the judgment in ***Bhag Singh's case*** (supra), is reproduced hereunder:-

> "It was in view of the aforesaid findings that the Division Bench held that the employee had not been honourably acquitted. We have extracted the relevant part of the judgment given by the trial court in the present case. A perusal of the same would show the use of the expression by the learned trial court that the prosecution has failed to bring home the charge to the accused beyond any reasonable doubt, would not obliterate the earlier discussion of the trial Court which clearly established that there was no evidence against the petitioner which would tend to show that the petitioner was involved in any undesirable activities. Therefore, the observations made by the Division Bench in the case of Kerala State Handloom Development Corporation Ltd. (supra), would not be applicable to the facts and circumstances of the present case."

14. Before the Tribunal, respondent No.1 had also relied upon the division bench judgment in ***Smt. Poonam Rani vs. Uttar Haryana***

Bijli Vitran Nigam Ltd. **2008(1) SCT 819** and ***Shiv Kumar Goel vs. State of Haryana*****, 2007(1) SLR 633**, which are fully applicable to the facts of the present case.

15. In the present case, respondent No.1 was discharged in case FIR No.325 dated 05.10.2005 as the complainant could not produce any incriminating evidence against him. Learned counsel for the petitioners is not in a position to refute that the case law relied upon by her would not be applicable in the proceedings in case FIR No.325 dated 05.10.2005, whereby the cancellation report was accepted and respondent No.1 was discharged vide order dated 02.06.2014.

15.1 As noticed hereinabove, respondent No.1 was acquitted in case FIR No.01 dated 01.01.2009 vide judgment dated 01.05.2014. The department having failed to bring any incriminating evidence to connect respondent No.1 with the offences alleged, the accused was fully exonerated of the charge framed against him.

15.2 Similarly, the departmental proceedings wherein respondent No.1 had been charge-sheeted on 30.10.2007, were dropped for all intents and purposes, as on the same set of allegations, FIR No.01 dated 01.01.2009 (supra) had been registered. Respondent No.1 was allowed to rejoin duty by revoking the suspension w.e.f. 30.08.2010, when investigation/proceedings in case FIR No.01 dated 01.01.2009 were still under way.

16. It would be apposite to refer to the relevant rules of the Punjab Civil Services Rules, Volume-I, which are extracted hereunder:-

> "**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."

7.3-B. (1) When a Government employee who has been suspended is reinstated 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 allowance 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) Notwithstanding anything contained in rule 7.3 or rule 7.3-A, where a Government employee under suspension dies before the disciplinary or court proceedings instituted against him, are concluded, the period between the date of suspension and the date of death shall be treated as spent on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of 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.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government employee shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, 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.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government employee shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose: Provided that if the Government employee so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government employee. Note.–The order of the competent authority under the preceding proviso shall be absolute and no sanction of the higher authority shall be necessary for the grant of– (a) extraordinary leave in excess of three months in the case of

> temporary Government employee; and (b) leave of any kind in excess of five years in the case of permanent Government employee.
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> (8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible. (9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 7.2"

17. On a conspectus of the aforesaid, it is well settled that a Government employee who had been dismissed, removed or compulsorily retired, or having been fully exonerated, is to be paid his full pay and allowances to which he would have been entitled but for the aforesaid, and the period of suspension is to be treated as period spent on duty for all purposes. As per the rules reproduced hereinbefore, it is clear that where an employee who has been dismissed from service and remains out of service but after the exoneration is brought back into the service, then also, he/she is entitled for full salary, whereas, respondent No.1 here is on a much better footing as, he was never dismissed from service but was only suspended and his suspension was also revoked so as to be reinstated into service and has already been exonerated of all the allegations alleged against him in the criminal proceedings and the allegations alleged against the departmental proceedings were never taken to the logical end so as to impose any punishment upon him prior to the date he is superannuated from service in the year 2012. Hence, if the consequential benefit of the service for which an employee remained out from the job is to be treated as a duty period with consequential benefits upon exoneration, respondent

No.1 could not have been denied the benefit of treating his suspension period as a duty period with consequential benefits as no allegations alleged against him in the criminal proceedings stood proved, and the departmental proceedings never got concluded so as to impose any punishment.

18. In all fairness to learned counsel for the petitioners, the judgments relied upon by her are being individually discussed and the same are distinguishable on facts and in law; hence, the same are not applicable in the present case.

19. In ***Iqbal Singh's*** case (supra), the Government employee was suspended on account of registration of murder case and his arrest by the police. In the said case, the said employee was acquitted on benefit of doubt and thereafter, was permitted to rejoin. Back wages to the said employee were denied as it was held that the department cannot be at fault for having kept him out of service whereas in the facts and circumstances of the present case as held earlier, the acquittal of the respondent herein, was on the ground that the evidence was not brought connect the respondent with the allegations alleged.

20. In ***Suraj Bhan's*** case (supra), the employee was dismissed due to conviction and was subsequently acquitted on benefit of doubt. It is also noticed that the allegations against the employee were levelled by a third person, relating to cheating, wherein he was held guilty and upon his conviction, he was dismissed from service. In the said circumstances, it could not be said that the department had any role to play either in initiating criminal proceedings or in the conviction thereafter. Applying the settled principle of law by the Hon'ble Supreme

Court in Civil Appeal No.8565 of 2003 titled as ***Union of India vs. Jaipal Singh***, decided on 03.11.2003, reported in **(2004) 1 SCC 121**, the Government employee was denied the benefit of back wages upon his reinstatement. However, the factual position is very different in the present case, wherein respondent No.1 stands fully exonerated of the charge against him, as the prosecution miserably failed to bring on record incriminating evidence against him.

21. Similar was the factual and legal position in ***Dnyaneshwar Kashinath Shingane's*** case (supra), wherein the Government employee was suspended due to the FIR filed against him for offences under Sections 498-A, 307, 494 read with Section 34 of the Indian Penal Code. It was further held in the said case that the employee faced criminal prosecution arising out of his private affairs unconnected with performance of his duties. However, the same is not so in the present case.

22. In ***Baldev Singh's*** case (supra), the employee was convicted in the criminal case and thereafter, dismissed from service. On being acquitted in appeal and thereafter, being reinstated, it was held that merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period under the relevant provisions of the Army Act, 1950. The Punjab Civil Services Rules were not involved or discussed in that decision and thus, the said judgment is not applicable, as such.

23. No other argument has been raised.

24. Accordingly, keeping in view the aforesaid discussion and that the petitioners have not been able to make out a case that the impugned judgment passed by the Central Administrative Tribunal suffers

from any perversity either on facts or on law or any jurisdictional error warranting interference, the instant writ petitions being devoid of merit, are dismissed.

25. A photocopy of this order be placed on the connected file.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

21.08.2025
sumit.k

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No