
charges as contained in the charge-sheet. It is well settled that in cases where the allegations of misconduct are contested by an employee then even for inflicting minor penalty an inquiry may have to be held by following the procedure contemplated by Regulation 8(3) to 8(24) of the Regulation as has been provided by Regulation 10(1)(b) of the Regulations. Therefore, the impugned order does not meet the requirement of Regulation 8(5) of the Regulations and, thus, the same is liable to be quashed.

(10) In view of the above, the writ petition succeeds. The impugned order dated 1st August, 2005 (P—3) is quashed. Consequently, the legal heirs of the petitioner are held entitled to all the benefits. The Board is directed to calculate the same and pay to the legal heirs of Sarupinder Singh (since deceased) within a period of two months from the date a certified copy of the order is received.

R.N.R.

Before M. M. Kumar and Rajesh Bindal, JJ.

TOTA SINGH—*Petitioners*

versus

PUNJAB STATE ELECTRICITY BOARD AND
OTHERS—*Respondents*

C.W.P. No. 187999 of 2005

17th May, 2007

Constitution of India, 1950—Art. 226—Main Service Regulations, 1972, Volume I, Part I—Reg. 7.3—Suspension—Charge-sheet issued to petitioner dropped—Whether entitled to full pay and allowances in respect of suspension period—Held, yes. In case where an employee is either exonerated or charges are withdrawn then it has to be assumed that suspension of such an employee was not justified.

Held, that a perusal of sub-regulation (2) and (4) of Regulation 7.3 of the 1972 Regulations makes it patent that when the suspension of an employee is found to be wholly unjustified then such an employee becomes entitled to full pay and allowances in respect of the aforementioned period. Such a period of suspension is required to be treated as duty period for all intents and purposes.

(Para 6)

Further held, that the charge-sheet dated 29th April, 2002 was dropped by order dated 7th March, 2003. Thereafter, there was no reason for the Chief Engineer to pass a confiscatory order treating the period of suspension as leave of the kind due. On the bare language of Regulation 7.3 (2)(4) of the 1972 Regulations, it has to be concluded that the period has to be treated as period spent on duty for all intents and purposes. That being so, impugned orders are liable to be set aside.

(Para 8)

V.K. Shukla, Advocate, *for the petitioner*.

Brijeshwar S. Kanwar, Advocate, *for the respondents*.

JUDGMENT

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 7th May, 2003 (P-4), passed by respondent No. 3, namely, the Chief Engineer/Operations (Central Zone), Punjab State Electricity Board, Ludhiana. The period of suspension of the petitioner has been treated as leave of the kind due instead of treating the same as period spent on duty. A further prayer has also been made for setting aside the order dated 20th January, 2005 (P-6), rejecting the appeal of the petitioner by the appellate authority (Deputy Secretary of the Board).

(2) Brief facts of the case are that the petitioner, who has been working on the post of Junior Engineer, was placed under suspension on 11th April, 2002 (P-2) and thereafter he was served with a charge-sheet, dated 29th April, 2002 (P-1). He filed his reply contesting the charges levelled against him. The competent authority after considering the reply filed by the petitioner passed an order on 7th March, 2003 and it is claimed that the charge-sheet was dropped. On 7th May, 2003, an order was passed by respondent No. 3 treating the suspension period of the petitioner as leave of the kind due (P-4). The appellate authority rejected the appeal filed by the petitioner,—*vide* order dated 20th January, 2005 (P-6) thereby upholding the order of respondent No. 3, dated 7th May, 2003 (P-4) treating the period of suspension of the petitioner as leave of the kind

due instead of treating the same as duty period for all intent and purposes.

(3) After hearing learned counsel for the parties and perusing the paper book with the assistance of their learned counsel, we are of the view that the order dated 7th May, 2003 (P-4) and also the appellate order dated 20th January, 2005 (P-6), passed by respondent Nos. 3 and 2 respectively, are liable to be set aside. It would be appropriate to make a reference to the order dated 7th March, 2003 (P-3) dropping the charges against the petitioner and the same reads as under :—

“Office Order No. 202

Dated : 7-3-2003

Whereas Shri Tota Singh, J.E., S/o Shri Ujjagar Singh, while working in under Additional Superintending Engineer/ Operation, Agar Nagar Division (Khas), Ludhiana, Unit No. I, Ludhiana. He was issued charge-sheet,—*vide* this office letter No. C-264, dated 20th April, 2002 for the omissions/commissions committed by him.

Whereas reply of the employee (23rd October, 2002) was considered by Chief Engineer/Operation (Central), Ludhiana (Competent Authority) and after consideration, directions were made to file charge-sheet issued to the employee having regard to his retirement.

Therefore, charge-sheet No. C-264, dated 29th April, 2002 issued to Shri Tota Singh, J.E., S/o Shri Ujjagar Singh (Retd.) is hereby filed.

This is being issued with the approval of Chief Engineer/ Operation (Central), Ludhiana.”

(4) A perusal of the aforementioned order shows that the charge-sheet issued to the petitioner has been dropped for the reason that he has already retired. In other words, no fault can be found with the petitioner or his conduct.

(5) The question that requires consideration is whether in such a situation the whole period of suspension is required to be considered as period spent on duty or it can be considered as a period of leave of the kind due. The situation has been dealt with by

Regulation 7.3 of the Main Service Regulations, 1972, Volume-I, Part-I (for brevity, 'the 1972 Regulations') and the same reads as under :—

“7.3(1) When a Board employee, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation while under suspension, the authority competent to order the reinstatement shall consider and make a specific order —

(a) regarding the pay and allowances to be paid to the Board employee for the period of his absence from duty, or for the period of suspension ending with 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) **Whether the authority mentioned in sub-regulation (1) is of opinion that the Board employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Board employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.**

(3) In other cases, the Board employee shall be given such proportion of such pay and allowances as the Board may prescribe :

Provided that the payment of allowances under clause (2) or clause (3) shall be subject to all other conditions under which such allowances are admissible :

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Regulation 7.2.

(4) **In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.**

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- (5) In a case falling under clause (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose :

Provided that if the Board employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of kind due as admissible to the Board employee." (Emphasis added)

(6) A perusal of sub-regulation (2) and (4) of Regulation 7.3 of the 1972 Regulations makes it patent that when the suspension of an employee is found to be wholly unjustified then such an employee becomes entitle to full pay and allowances in respect of the aforementioned period. Such a period of suspension is required to be treated as duty period for all intent and purposes. The matter is not *resintegra* and reliance in that regard may be placed on a judgment of Hon'ble the Supreme Court in the case of **B.D. Gupta versus State of Haryana**, (1) Rejecting a contention based on a judgment of Hon'ble the Supreme Court in the case of **State of Assam versus Raghava Rajagopalachari** (Civil Appeal Nos. 1561 and 1562 of 1966, decided on 6th October, 1967) and on Fundamental Rule 54, which was similar to Regulation 7.3 of the 1972 Regulations, their Lordships' in para 19 has observed as under :—

"19. This Court held that Cl. (b) of the Fundamental Rule 54 would be applicable in all cases where the officer concerned is not honourably acquitted. Since in that case the Government Servant had clearly not been fully exonerated of the charges levelled against him it was open to Government to decide what period of absence from duty during the period of suspension should be treated as period spent on duty and, also what proportion of pay and allowances should be given to him **This decision cannot apply to the instant case for the simple reason that Government, by withdrawing the proceedings initiated against the appellant in respect of Charge 1(b) made it impossible for the appellant to get himself fully exonerated. Since the appellant had been exonerated of Charge 1(a) and since Charge**

(1) 1972 S.L.R. 845

1(b) was withdrawn, it is impossible for Government to proceed on the basis as if the appellant has not been fully exonerated or to assume that the order of suspension was one which was not wholly unjustified. In that view of the matter, we do not think that the case of the *State of Assam and another versus Raghava Rajagopalachari (2)* can be of any assistance to the respondent.” (Emphasis added).

(7) It is, thus, obvious that in cases where an employee is either exonerated or the charges are withdrawn then it has to be assumed that the suspension in the case of such an employee was not justified.

(8) When the aforementioned Regulation 7.3 of the 1972 Regulations and the principles laid down B.D. Gupta’s case (*supra*) are applied to the facts of the present case then it becomes evident that the charge-sheet dated 29th April, 2002 (P-1) was dropped by order dated 7th March, 2003 (P-3). Thereafter, there was no reason for the Chief Engineer—respondent No. 3 to pass a confiscatory order treating the period of suspension as leave of the kind due. On the bare language of Regulation 7.3 (2) (4) of the 1972 Regulations, it has to be concluded that the period has to be treated as period spent on duty for all intent and purposes. That being so, impugned orders are liable to be set aside.

(9) For the reasons aforementioned, this petition succeeds. The orders dated 7th May, 2003 (P-4) and 20th January, 2005 (P-6) are hereby set aside. Consequently, the period of suspension, which has been treated as a period of leave of the kind due has to be considered as period spent on duty. The petitioner shall be entitled to all consequential benefits, which may be calculated within a period of two months from the date of receipt of certified copy of this order.

(10) The writ petition stands disposed of in the above terms.

R.N.R.