
(1995) 11 CAL CK 0011
In the Calcutta High Court
Case No : C.O. No. 8450 (W) of 1995

Bhola Nath Roy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Bengal Police Regulations, 1943 — Regulation 865, 864, 865
Constitution of India, 1950 — Article 311(2), 371(2)
Penal Code, 1860 (IPC) — Section 376, 376(2)

Citation : (1998) 1 ILR (Cal) 116

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Prasun Kumar Dutta, for the Appellant;

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This application is directed against the orders dated November 16, 1994 and November 25, 1994 as contained in Annexure-B and C respectively whereby and whereunder the Petitioner has been dismissed from service with effect from August 31, 1990 purported to be under Rule 864 of the Bengal Police Regulation, Volume-I.

2. The Petitioner is a constable attached to the Siliguri General Railway Police. He was an accused in a case u/s 376 of the Indian Penal Code and in Sessions Trial No. 14 of 1989. He was convicted therein and was sentenced to undergo rigorous imprisonment for 3 years. The said judgment appears to have been passed on August 31, 1990. The Petitioner preferred an appeal against the said judgment of conviction and sentence before this Court which has been registered as Criminal Appeal No. 431 of 1990. The said Criminal Appeal has since been admitted and the Petitioner has been released on bail. During pendency of the aforementioned criminal case of the Petitioner he was charge sheeted on March 10, 1993. However the Superintendent of Police in view of the aforementioned order of conviction terminated his services stating:

since Criminal case vide New Jalpaiguri G.R.P.S. Case No. 2 dated 15.9.1985 u/s 376 of Indian Penal Code was started against Constable 127/409 Bholanath Roy and the said case was finally tried up in the open court of law by Additional Sessions Judge, Jalpaiguri and awarded sentence on dated 31.8.1990 convicting Constable 409 Bholanath Roy to undergo R.I. to 3 years for the offence u/s 376(2) I.P.C. (Sessions Case No. 65/88 corresponding to G.R. No. 1282) arising out of NJP GRPS Case No. 2 dated 15.9.1985).

Hence, Constable No. 127/409 Bholanath Roy of Cooch Behar DRF is dismissed from service with effect from 31.8.1990 as per Rule 864 of Police Regulation, Volume-I, 1943.

The order of conviction of Constable 127/409 Bholanath Roy was available in this office till 15.11.1994. He kept on receiving the subsistence allowance even after 31.8.1990 the date of his conviction. The overdrawal to be recovered.

3. By a further order dated November 25, 1994 the Superintendent of Police directed:

Final Order passed in c/w Cooch Behar District proceeding number 7/93 dated 10.3.1993 drawn up against C/409 Bhola Nath Roy formerly of Siliguri G.R.P. now attached to Cooch Behar District.

C/409 Bhola Nath Roy of Cooch Behar District is dismissed from service with effect from 31.8.90 vide Cooch Behar District Order No. 143(D) dated 16.11.1994 as per Rule 864 of Police Regulation Volume-I, 1943 as he is awarded a sentence on 31.8.90 convicting to undergo R.I. to 3 (three) years for the offence u/s 376(2) I.P.C. by the Additional Sessions Judge, Jalpaiguri vide New Jalpaiguri G.R.P.S. Case No. 2 dated 15.9.85 u/s 376 I.P.C. (the above papers have been received to this office on 15.11.1994).

Hence, the proceeding number 7/93 is filed which was pending against him.

However, his period of suspension with effect from 12.5.1986 A.M. to 31.8.1990 P.M. is confined. He will not get anything more than what he has already drawn and all overdrawals to be recovered from him.

4. Mr. Prasun Kumar Dutta, the learned Counsel, appearing on behalf of the Petitioner raised a short question in support of this application. It was submitted that keeping in view the provisions of Regulation 865 of the Bengal Police Regulations, the Petitioner could not have been dismissed from services on the ground that he had been convicted in a criminal case pending the criminal appeal. Learned Counsel further submits that even during pendency of the Criminal Appeal he is entitled to subsistence allowance and in support of the aforementioned contention reliance has been placed on State of Maharashtra Vs. Chandrabhan Tale,

5. Rules 864 and 865 of the Police Regulations (Bengal) provides as follows:

864.(a) Every police officer sentenced by a court for an offence implying moral

turpitude shall, unless the Inspector General otherwise orders, be dismissed.

(b) A Police officer sentenced by a court for an offence not implying moral turpitude, shall ordinarily be dismissed; but, in trial cases, some more lenient form of punishment than dismissal may be awarded or the offender may not be punished. In such cases the departmental proceedings shall contain a record of the reasons for dismissing or not dismissing the offender.

865. When a police officer is to be dismissed or some departmental punishment is intended to be awarded to him on the basis of a charge for which the officer has already been tried and convicted in a court or found guilty by a commission whose finding has been accepted by the Provincial Government, it shall be sufficient in the departmental proceedings to supply a copy of the judgment of the court, or findings of the commission, the reasons for dismissal or punishment and the record of the previous character of the offender. Such proceedings shall, not be instituted until the final appeal, if any, against the order of conviction has been heard, or the period of limitation for such appeal has expired.

6. A perusal of the aforementioned provisions clearly demonstrates that the Petitioner could have been dismissed from services pending the appeal against the order of conviction. Admittedly he has been convicted in an offence involving moral turpitude. The impugned order passed by the Superintendent of Police, Cooch Behar District shown that the order of conviction passed against the Petitioner came to his knowledge only on November 15, 1994.

7. However, although in the meanwhile the Petitioner has preferred an appeal and the said appeal is pending in this Court, but the same in my opinion is not relevant. However, the order of dismissal could not have been passed with a retrospective effect. Rules 864 and 865 of the Bengal Police Regulations stand on different footings. Rule 864 applies when the Delinquent Officer has been convicted. Rule 865 merely lays down the requirements for dismissal upon holding a departmental proceeding after a delinquent officer is convicted. Rule 865 has to be read independent of Rule 864. The said rules operate in different fields. The Petitioner has not been imposed with any punishment in the disciplinary proceedings.

8. It is relevant to note Clause (a) of the Second proviso, appended to Article 311(2) of the Constitution of India speaks of conduct which has led his conviction on a criminal charge and, thus, in terms thereof the Disciplinary Authority is entitled to dismiss him even during pendency of the appeal.

9. In the Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, the Apex Court has held:

The appropriate course in all such cases is to take action under Clause (a) of the Second proviso to Article 371(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other

proceeding, the order can always be revised and if the government servant is reinstated, he would be entitled to all the benefits to which he would have been entitled to hold he continued in service.

10. In this case, the provisions for passing such order as laid down in Police Regulation Bengal 1943 must be understood in the light of the aforementioned constitutional mandate and the decision of the Supreme Court of India. The Petitioner has been convicted for commission of a heinous offence.

11. The Superintendent of Police, therefore, could have issued the impugned order but the said order could not have been given a retrospective effect.

12. For the reasons aforementioned it must be held that the Petitioner would be deemed to be continuing in service and would also be entitled the subsistence allowance in accordance with law only till the impugned orders were communicated to him.

13. In *State of Maharashtra v. Chandrabhan Supra*, the Apex Court has held:

If the civil servant under suspension, pending a departmental enquiry of a criminal trial started against him, is entitled to subsistence allowance at the normal rate which is bare minimum required for the maintenance of the civil servant and his family, he should undoubtedly get it even pending his appeal filed against his conviction by the trial court and his right to get the normal subsistence allowance pending consideration of his appeal against his conviction should not depend upon the chance of his being release on bail and not being lodged in prison on conviction by the trial court. Whether he is lodged in prison or released on bail on his conviction pending consideration of his appeal, his family requires the bare minimum by way of subsistence allowance.

14. This application is, therefore, allowed in part and to the extent mentioned hereinbefore. The impugned orders as contained in Annexures-B and C are set aside so far as they were given retrospective effect and the alleged excess amount of subsistence allowance have been directed to be recovered from him and the Respondents are hereby directed to pay unto him his due subsistence allowance in accordance with law.

15. However, the order of dismissal is upheld but the same shall be subject to the result of the criminal appeal.