

(2007) 10 DEL CK 0183
In the Delhi High Court
Case No : LPA No. 1214 of 2006

Dinesh Kumar Kain

APPELLANT

Vs

Assistant General Manager Personnel Admn. Divn.
Corporation Bank

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Corporation Bank Officers Employees (Discipline and Appeal) Regulations, 1982 —
Regulation 12, 14, 15, 15(1), 15(2)

Citation : (2007) 10 DEL CK 0183

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Sudhir Nandrajog and S.U. Abbas, for the Appellant; Harshvardhan Jha and Yashraj Singh Deora, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—The present appeal revolves around the issue with regard to payment of full back wages/salary to the appellant.

2. The appellant, who was working with the respondent-Corporation Bank, was arrested in connection with a criminal case and was remanded to judicial custody. The allegation made against him was that he had committed an offence under the provisions of the Prevention of Corruption Act. In view of the said arrest and his involvement in the criminal case, he was immediately put under suspension in terms of the Regulations of the respondent-bank. It is to be noticed at this stage that the bank did not conduct a separate domestic inquiry but had only placed the appellant under suspension by order dated 8th April, 1992 awaiting ultimate outcome of the trial. Thereafter, the appellant was reinstated in service under order dated 9th June, 2003. During the period of his suspension, he was paid only subsistence allowance. On his reinstatement, necessarily the issue with regard to regularisation of his service for the said period and payment of salary and allowances cropped up. It is also to be noted

at this stage that the criminal court acquitted the appellant on 18th August, 2003. There is no dispute to the fact that the aforesaid acquittal by the criminal court was on benefit of doubt. In view of the aforesaid facts, the respondent bank was required to take a decision in respect of the service of the appellant and an order to that effect was passed by the bank on 7th November, 2003 to the following effect:

In terms of letter No. PAD/IRW/ DISC/554 /2003 dated 9-6-2003, the order placing you under suspension has been revoked. While revoking the suspension order it was made clear to you that reckoning of the intervening period from the date of suspension till you report for duty for the purpose of pay and allowances, shall be decided on the basis of the final outcome of the criminal proceedings initiated against you by CBI.

In terms of our letter dated 4-09-2003 you submitted a copy of the judgment dated 18-08-2003 of the Special Judge Delhi in the matter of the Charge Sheet filed by the CBI. Quoting Regulation 15 of the Corporation Bank Officer Employees (Discipline and Appeal) Regulations 1982, you have stated that you are entitled to full pay together with all other allowances during the period of your suspension, since your acquittal is on merit.

It is observed from the judgment dated 18-08-2003 that the Hon''ble Special Judge has held that you have become entitled to extended with the benefit of doubt and accordingly acquitted you. It is Therefore clear that your acquittal is not on merits as envisaged under Regulation 15(1) of the Corporation Bank Officer Employees (Discipline and Appeal) Regulations, 1982. Accordingly after careful consideration of the matter, it has been decided not to treat the period of your suspension as on duty. It has also been decided that you are not entitled to any more pay and allowances for the period of suspension. The pay and allowances for the period of your suspension is restricted to the subsistence allowance already paid to you. The period of your suspension shall be reckoned for the limited purpose of continuity of service for gratuity and pension and not for any other purpose or benefit whatsoever.

3. The aforesaid order came to be challenged by the appellant by filing a writ petition. It was submitted that since the appellant was acquitted in the criminal case, Therefore, he should have been paid full pay and allowances and the respondent-bank could not have passed an order restricting the pay and allowances of the appellant during the period of suspension only to payment of subsistence allowance and reckoning the period of suspension for the limited purpose of continuity of service for gratuity and pension and not for any other purpose or benefit whatsoever.

4. The learned Single Judge before whom the aforesaid writ petition was filed heard the parties at length and thereafter passed order dated 21st April, 2006 upholding the order of the bank to pay salary/allowances for the period of suspension restricting it only to the subsistence allowance already paid to him.

But the learned Single Judge has also directed that his past service shall be reckoned and he shall be given continuity of service for all purposes. The said order passed by the learned Single Judge is under challenge in this appeal on which we have heard the learned Counsel appearing for the parties.

5. Since the learned Single Judge had already passed an order that appellant's period of suspension shall be reckoned and he shall be given continuity of service, the only grievance of the appellant which survives for our consideration in this appeal is the issue with regard to payment of salary and allowances to the appellant for the period of suspension, restricting it only to payment of subsistence allowance already paid to him.

6. Counsel appearing for the appellant submitted before us that the appellant was acquitted in the criminal case and, Therefore, he was entitled to the entire pay and allowances for the period of his suspension and that the same cannot be restricted only to the aforesaid extent as stated in the impugned letter dated 7th November, 2003. The next submission of the counsel for the appellant was that the decisions which are referred to by the learned Single Judge for coming to the conclusion that the appellant should not be paid full pay and allowances for the aforesaid period of suspension are distinguishable on facts as in all these cases the concerned persons were dismissed from service and thereafter they were reinstated and Therefore in that context and in the said background facts which are dissimilar to the present case the said decisions were rendered upholding the power of the authority to pay salary and allowances during the period of suspension restricting it to subsistence allowance only. Another submission that was raised was that the appellant has been acquitted of the criminal case registered against him and that by passing the impugned order, eleven years of service benefit is being denied to the appellant and, Therefore, the said order should be set aside and quashed. Next it was argued that the respondent-bank denied the appellant the benefit of pay revisions dated 1st November, 1993, 1st July, 1998 and 1st November, 2002 inasmuch as the consequent increase in the subsistence allowance was not paid to him.

7. The aforesaid submissions of the counsel for the appellant were refuted by the counsel for the respondent-bank. So far as the submission with regard to quantum and enhanced payment of subsistence allowance taking into consideration the increments given in the pay revisions is concerned, it was submitted that if an application is filed by the appellant the said aspect can be considered by the respondent-bank. We, Therefore, now proceed to discuss the other issues and pleas raised before us.

8. There is no dispute with regard to the fact that the appellant was arrested in connection with a case registered against him under the provisions of the Prevention of Corruption Act. The appellant was placed under suspension immediately on his arrest in the criminal case. Legality of the said order of suspension was never challenged and, Therefore, the said order of suspension is legal and valid. The appellant however came to be reinstated in service on 9th

June, 2003 and eventually the criminal court acquitted the appellant of the charges on 18th August, 2003. A copy of the order whereby the appellant was acquitted of the criminal charges is placed on record. Paragraphs 22 and 23 of the judgment delivered by the criminal court are relevant for our purpose. In paragraph 22 the learned Special Judge Delhi while acquitting the appellant held that the Prosecution could not establish the allegations against the appellant beyond reasonable doubt. After recording the said finding it was also recorded that the appellant Therefore has become entitled to be released on benefit of doubt. It was, Therefore, not a case of full exoneration but an acquittal on benefit of doubt.

9. Regulation 12 of the Corporation Bank Officer Employees (Discipline and Appeal) Regulations, 1982 provides and empowers the competent authority to place an officer under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. As to how and under what mode subsistence allowance is to be paid during suspension is also enumerated in Regulation 12. The learned Single Judge has also referred to and extracted Regulation 15 which deals with pay and allowances and treatment of service on termination of suspension. The said provision, which is relevant for the purpose of deciding the present case, is as under:

15. Pay, allowance and treatment of service on termination of suspension:

(I) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in Sub-regulation (I) the officer employee shall be granted such proportion of pay and allowances as the competent authority may direct.

Provided that the payment of allowance under this Sub-regulation shall be subject to all other conditions to which such allowances are admissible.

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under Regulation 14.

(3) (a) In cases falling under Sub-regulation (I), the period of absence from duty shall , for all purposes, be treated as a period spent on duty.

(b) In the case falling under Sub-regulation (2) the period of absence from duty shall not be treated as a period spent on duty unless the competent authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

10. Under the aforesaid Regulation, power is vested in the competent authority to decide the nature of pay and allowances to be paid to an employee on his reinstatement and also to pass an order as to how his service during the period of suspension is to be treated. It provides that where the competent authority is of the opinion that the officer employee has been fully exonerated or that his suspension is unjustified, in that event the concerned employee would be granted full pay to which he would have been entitled to had he not been suspended, together with any allowance which he was in receipt immediately prior to his suspension. It was also provided therein that in all other cases the officer employee would be granted such proportion of pay and allowances as the competent authority may direct. Similar provisions came to be interpreted by the Supreme Court in various decisions which are referred to and cited by the learned Single Judge. In this connection we may refer to the following cases: Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, , Transocean Shipping Agency P. Ltd. Vs. Black Sea Shipping and Others, , Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar, (Gujarat) and another, and Union of India (UOI) and Others Vs. Jaipal Singh, .

11. Sum and substance of the aforesaid decisions of the Supreme Court is that grant of back wages depends upon the facts and circumstances of each case. The Supreme Court clearly laid down that a right of reinstatement on acquittal Therefore does not carry with it by necessary implication a right to entire back wages and that a power is vested in the competent authority to grant such proportion of the back wages depending upon the facts and circumstances of each case.

12. In the present case the bank has taken a decision that the appellant would be paid pay and allowances for the period of his suspension restricted to subsistence allowance already paid to him. The said order was passed by the bank in exercise of the powers of Sub-regulation (2) of Regulation 15. Since a power is vested in the competent authority to pass such an order, the aforesaid exercise of power under letter dated 7th November, 2003 cannot be said to be without authority. This Court only has to do judicial review of the order passed by the respondent under Regulation 15 and examine whether it is arbitrary or based on irrelevant material. The said order is also to be examined on Wednesbury principles of reasonableness.

13. The contention that the decisions which are relied upon by the learned Single Judge for coming to the conclusion are cases where the persons were dismissed from service and were reinstated and only in these cases orders were passed for payment of salary and wages restricting it to the payment of subsistence allowance, is without merit for there are decisions of the Supreme Court where in cases of only pure suspension, the Supreme Court has opined that no interference is called for where an employee remained under suspension on account of his/her involvement in criminal case and on acquittal, is denied back

wages. In Smt. K. Ponnammamma Vs. State of Kerala and others, , in paragraph 3 the Supreme Court has held that a reading of Rule 57 of the Kerala Service Rules would indicate that where an officer has been kept under suspension on account of the pendency of charges/detention for 48 hours and continued to remain under suspension pending the trial of the criminal charge, statutorily he/she is disabled to perform the duties of the post and that on reinstatement, the competent authority shall have a duty to consider whether on reinstatement the suspended officer would be entitled to the payment of full pay etc. for the period of suspension. It was also held that the nature of the order to be passed by the competent authority is discretionary depending upon the facts in that case. In the facts of the said case it was held by the Supreme Court that on account of involvement of the petitioner in a criminal charge by statutory operation she was under suspension till she was acquitted and that on acquittal the departmental inquiry was conducted as to the nature of the order to be made under Rule 56 of the Kerala Service Rules and consequently, the authority in its discretion found that the payment of the salary during the period of suspension except suspension allowance already paid, could not be granted. The Supreme Court upheld the judgment of the High Court holding that the High Court has committed no error in upholding the said order. Similarly, in Banshi Dhar Vs. State of Rajasthan and Another, , the Supreme Court, after discussing the facts of the case, held that the appellant in that case had all along remained on suspension for eleven years and that he undoubtedly received subsistence allowance during the said period. In the light of the aforesaid facts, it was held by the Supreme Court that the grant of back wages is not automatic.

14. In view of the above discussion, we find no mistake or error in the judgment and order passed by the learned Single Judge. We also do not find any error in the order passed by the respondent bank restricting payment of back wages to the extent of payment of subsistence allowance which has already been paid to the appellant.

15. So far as the question as to whether subsistence allowance was required to be revised in terms of the pay revisions undertaken on 1st November, 1993, 1st July, 1998 and 1st November, 2000 is concerned, it may be noted that no averment to this effect in the writ petition and no prayer was made before the learned Single Judge. However, in the grounds of appeal this contention is raised. In terms of the statement made by the counsel appearing for the respondent at the time of arguments, it is our considered opinion that the appellant could file a representation before the respondent-bank and it would be incumbent upon the bank to consider the merits of the said issue, provided an application to that effect is filed by the appellant, which could be filed by the appellant within four weeks from today.

16. Save and except the aforesaid modification in the order of the learned Single Judge, we find no merit in this appeal and the same is dismissed.