
(2013) 02 CAL CK 0021
In the Calcutta High Court
Case No : W.P.C.T. No. 42 of 2013

Dr. Akbar Ali Khan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 CALLT 13

Hon'ble Judges : Jayanta Kumar Biswas, J;Dipak Saha Roy, J

Bench : Division Bench

Advocate : Aninda Lahiri and Syed Nasim, for the Appellant;Hiron Lal Majumdar and Mr. Arindam Sen for the Union of India, Mr. Subrata Talukdar and Mr. Abdul Momin for the State and Mr. Arun Kanti Chattopadhyay for the UPSC, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WPCT under Article 226 of the Constitution of India dated January 28, 2013 is questioning an order of the Calcutta Bench of the Central Administrative Tribunal dated January 10, 2013 refusing interim relief in his OA No. 9 of 2013. The relevant parts of the order of the Tribunal are quoted below:--

2. In view thereof, issue DASTI notice under Rule 11(1)(i) & (iii) of CAT (Procedure) Rules, 1987 returnable on 23.1.2013.

3. The party in person insists on grant of Interim Relief. The Interim Relief sought for is not to pass any order in the proceedings till the adjudication of present OA. The Interim Relief as prayed for would amount to overreaching the Hon"ble High Court, which cannot be granted. Accordingly we do not find justification in accepting such a prayer.

2. By a charge-sheet dated March 29, 2006 (WPCT p.23) disciplinary proceedings were initiated against the petitioner. At that date he was working as the Deputy

Inspector General of Police, Home Guards, West Bengal. The proceedings were initiated under the provisions of the All India Services (Discipline and Appeal) Rules, 1969. The principal allegation was that he was involved in unauthorised real estate business.

3. The petitioner participated in the proceedings. By an order dated May 16, 2012 (WPCT p.55) the penalty of dismissal from service was inflicted. Questioning the order the petitioner filed an OA No. 501 of 2012 in the Tribunal. The order was questioned, inter alia, on the grounds that the penalty was inflicted on the basis of the UPSC advice without giving him any opportunity of making representation there against.

4. By an order dated July 12, 2012 (separately produced) the Tribunal allowed the OA No. 501 of 2012 and set aside the order inflicting penalty. Accepting the order of the Tribunal, the authority concerned issued two orders both dated August 3, 2012 (WPCT pp. 55-58); while the one was for directing the petitioner's reinstatement in job, the other was for recording his deemed suspension from the date of dismissal till the date of reinstatement and directing continuance of the suspension.

5. The relevant parts of the order dated August 3, 2012 reinstating the petitioner in job are quoted below:--

6. AND WHEREAS, the Competent Authority has also decided to proceed with the disciplinary proceedings against Dr. Akbar Ali Khan under rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 from the stage of furnishing a copy of advice tendered by the UPSC;

7. NOW, THEREFORE, the Competent Authority decides that Dr. Akbar Ali Khan, IPS (WP:77) be reinstated in service with immediate effect. This will however be without prejudice to the Disciplinary Proceedings being continued against him under the relevant rules on his misconducts for which he was dismissed from service, from the stage of providing a copy of the report of UPSC. It is ordered accordingly.

The relevant parts of the order dated August 3, 2012 regarding the petitioner's suspension are quoted below:--

6. AND WHEREAS, the said Dr. Akbar Ali Khan has been reinstated in service in compliance with the order of the Hon'ble Tribunal vide Govt. of India Order of even number dated 3rd August, 2012 without prejudice to departmental proceedings being continued against him under the provisions of the All India Services (Discipline & Appeal) Rules, 1969:

7. NOW THEREFORE, the said Dr. Akbar Ali Khan, IPS (WP:77) is deemed to have been placed under suspension with effect from the date of dismissal from service i.e. 16th May, 2012 till the date of his reinstatement i.e. 3rd August, 2012. He shall continue to remain under suspension until further orders. He will be paid the Subsistence Allowance @ 50% of his pay last drawn for the first three

months from the date of his deemed suspension and @ 75% of his pay last drawn for the remaining period of his deemed suspension until further orders. It is ordered accordingly.

6. Questioning the order dated August 3, 2012 recording his deemed suspension from May 16, 2012 to August 3, 2012 and directing continuance of the suspension, the petitioner moved an OA No. 758 of 2012 in the Tribunal. The respondents contested the OA contending that in view of the provisions of sub-rule (6) of rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 the suspension was permissible.

7. Rule 3 of the rules deals with suspension, and sub-rule 6) of the rule is quoted below:--

(6) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a member of the Service is set aside or declared or rendered void in consequence of or by a decision of a Court of Law, and the disciplinary authority on a consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the member of the Service shall be deemed to have been placed under suspension by the Central Government from the date of original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

By an order dated October 5, 2012 (WPCT p.76) the Tribunal disposed of the OA No. 758 of 2012 saying as follows:--

13. In the result, the applicant is directed to furnish his representation to the UPSC advice without any further loss of time and within two weeks from the date of receipt of a copy of this order. The Union of India will thereafter take expeditious decision in the matter.

14. The OA stands disposed of with the above directions. No order as to costs. Feeling aggrieved by the order of the Tribunal dated October 5, 2012 the petitioner moved a WPCT No. 392 of 2012 in this Court under Article 226. By an order dated October 31, 2012 (WPCT p.85) the WPCT was disposed of.

8. The order of this Court dated October 31, 2012 is quoted below:--

In this proceeding, the petitioner in substance seeks appropriate direction for conclusion of an enquiry initiated against him under the provisions of the All India Services (Disciplinary and Appeal) Rules, 1969 within a month. The enquiry was initiated subsequent to an order passed by the Central Administrative Tribunal on 5th October, 2012. The petitioner has not challenged before us the legality of such enquiry, but wants such enquiry to be concluded within a

timeframe. No other prayer has been made before us in course of hearing. Prior to this order of the Tribunal, there have been several proceedings between the petitioner and the respondents. But having regard to the scope of the prayer of the petitioner, who appears in person before us, we do not consider it necessary to reproduce in this order in detail the particulars of such proceedings. On behalf of the respondents, point taken on behalf of the State as regards the stage from which such enquiry shall commence, we are of the view that aspect of the matter may be raised before the authority concerned only, who shall deal with such issue as per law.

Having regard to the limited scope of prayer of the petitioner we choose to dispose of this writ petition without calling for any affidavit with a direction upon the concerned authority to conclude the enquiry within a period of six weeks from the date of communication of this. Such decision shall be communicated in turn to the petitioner within a further period of one week. The said enquiry, needless to add, shall be conducted in accordance with law.

The application stands disposed of in the above terms.

There shall be no order as to costs.

Since this application is being disposed of without calling for any affidavits, the allegations contained in this application shall be deemed to have not been admitted.

Let photostat plain copies of this order, duly countersigned by Assistant Registrar (Court) be given to the parties on usual undertakings.

9. Then in January 2013 (WPCT p. 102) the petitioner filed the OA No. 9 of 2013 stating the following cause of action:--

1. Particulars of the order against which this application is made: Non supply of a copy of the preliminary enquiry report which is the basis and foundation for starting the disciplinary proceeding dated 29.3.2006 against the applicant, thus preventing the applicant from effectively cross examining the prosecution witnesses in the regular Inquiry in the charge sheet and thereby committing a grave breach of the rules of natural justice. The said preliminary enquiry report has now been received by the applicant from the State Public Information Officer of the Vigilance Commission through the Right to Information Act, 2005.

10. By the impugned order dated January 10, 2013 the Tribunal, while directing service of notice of the OA on the respondents therein, refused interim relief. It refused interim relief on the grounds that an order asking the respondents not to proceed further with the pending disciplinary proceeding would amount to overreaching this Court that had passed the order dated October 31, 2012 directing conclusion of the proceedings within the period mentioned in the order.

11. It is, therefore, evident that this WPCT has been filed seeking an interim relief that the Tribunal has refused.

12. Advocate for the petitioner has argued as follows. In the OA filed questioning the order dated August 3, 2012 regarding suspension the petitioner made out a case that the authority concerned decided to hold a further inquiry. Since the Tribunal directed the petitioner to react to the UPSC advice, he filed the WPCT in which this Court passed the order dated August 31, 2012 directing conclusion of the further inquiry within the period mentioned in the order. The authority consciously deciding to hold a further inquiry could not deny the petitioner opportunity of cross-examining certain witnesses.

13. The final order passed in the disciplinary proceedings inflicting penalty was set aside on the grounds that non-service of the UPSC advice in advance amounted to a violation of the principles of natural justice. In the first order dated August 3, 2012 reinstating the petitioner in job it was clearly mentioned that the proceedings would continue from the stage of giving the petitioner a copy of the UPSC advice. The second order dated August 3, 2012 regarding suspension was issued in this context.

14. By the order dated October 5, 2012 the Tribunal disposed of the OA that was filed questioning the order dated August 3, 2012 regarding suspension. The Tribunal granted the petitioner time to submit representation, if any, to the UPSC advice. It did not fix any time for conclusion of the proceedings. Against this order of the Tribunal dated October 5, 2012 the petitioner moved the WPCT No. 392 of 2012 that was disposed of by the order dated October 31, 2012.

15. In our opinion, the order of this Court dated October 31, 2012 is to be read, interpreted and understood keeping all these in mind.

16. We are unable to accept that by the order this Court accepted the petitioner's contention that the suspension order created an obligation of the disciplinary authority to hold a further inquiry. The inquiry report was not set aside by the Tribunal, or by this Court, or by any other authority. In the order directing the petitioner's reinstatement in job it was clearly mentioned that the proceedings would continue from the stage of giving the petitioner a copy of the UPSC advice.

17. We are, therefore, of the considered view that the petitioner is suffering from a misconception that the suspension order dated August 3, 2012 and the order of this Court dated October 31, 2012 together created an obligation of the disciplinary authority to hold a further inquiry. In the order dated October 31, 2012 it was mentioned that the inquiry was initiated after the order of the Tribunal dated October 5, 2012, and that the commencement stage aspect should be raised before the authority. We need to resolve the confusion. Neither any decision was taken to hold a further inquiry, nor was any inquiry initiated after the order of the Tribunal dated October 5, 2012; and the stage was specified in the order dated August 3, 2012 for reinstatement.

For these reasons, we dismiss the WPCT. No costs. Certified xerox.

Dipak Saha Roy, J.

I agree.