

(2017) 01 DEL CK 0270

In the Delhi High Court

Case No : 8696 of 2015

GANGA PARKASH

APPELLANT

Vs

UNION OF INDIA & ANR

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, Article 311(2)(c) -
Dismissal, removal or reduction in rank of persons employed in civil capacities under
the Union or a State
Central Civil Services (Pension) Rules, 197

Citation : (2017) 01 DEL CK 0270

Hon'ble Judges : Sanjiv Khanna, Chander Shekhar

Bench : DIVISION BENCH

Advocate : R.P.S. Bhatti, Monika Arora, Kushal Kumar

Judgement

1. The petitioner-Ganga Prakash, in this writ petition, impugns the order dated 11th May, 2015, whereby OA No.162/2014 filed by him has been dismissed by the Principal Bench of the Central Administrative Tribunal.

2. The petitioner, when he was working as General Manager, India Security Press, Nashik, was arrested by the Central Bureau of Investigation (CBI) in connection with the Telgi Scam in December, 2003 (exact date cannot be ascertained from the pleadings and even the petitioner, who is present in person, cannot recall the same). He was earlier placed under suspension with effect from 16th July, 2003. By order dated 1st April, 2004, the petitioner's services were terminated invoking the power under Article 311 (2)(c) of the Constitution of India.

3. The petitioner thereupon filed OA No.1130/2004 before the Principal Bench of the Central Administrative Tribunal, challenging the order of termination, which was dismissed vide the order of the Tribunal dated 19th October, 2005.

4. The petitioner had thereupon filed W.P.(C) No. 8062/2006 which was partially allowed vide order dated 1st November, 2010 as the order of termination was set aside holding that the pre-conditions for invoking Article 311(2)(c) of the

Constitution were not satisfied. Yet, at the same time, the High Court did not direct the grant of payment of back wages, observing that the competent authority would pass an order under the Fundamental Rules pertaining to the period between 1st April, 2004 and 31st May, 2005, i.e., the date on which the petitioner would have superannuated in the normal course. It was also observed that how the period was to be reckoned would depend upon whether the departmental inquiry was contemplated or not. We have subsequently referred to and quoted this order of the High Court. Pursuant to the aforesaid liberty having been granted by the High Court, the competent authority passed the order dated 27th February, 2012 under Fundamental Rule 54A, holding that the period between 16th July, 2003, i.e., the date on which the petitioner was suspended, and 31st May, 2005, i.e. the date on which the petitioner would have retired in normal course, would be treated as not spent on duty. Pensionary and other benefits were to be settled accordingly, treating 15th July, 2003 as the petitioner's last day of work and his date of retirement for the said purpose.

5. This order dated 27th July, 2012 was made the subject matter of challenge by the petitioner in OA No. 162/2014, which has been dismissed by the impugned order.

6. The contention of the petitioner is that the Tribunal and the respondent authorities have wrongly held that clause (3) of Fundamental Rule 54A and not clause (2) of the Fundamental Rule 54A would be applicable to the case of the petitioner.

7. Clause (2) of Fundamental Rule 54A applies to cases where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court on merits of the case. In such cases, the intervening period between date of dismissal, removal or compulsory retirement, including the period of suspension preceding the said punishments and the date of reinstatement is to be treated as spent on duty for all purposes. Such reinstated employees are entitled to full pay and allowances for the period to which they would have been entitled, but which were not paid on account of dismissal, removal or compulsory retirement or suspension prior to the said orders. Sub-section (3) applies when an order of dismissal, removal or compulsory retirement of Government servant is set aside by the court solely on the ground of non-compliance of requirements of clauses (1) and (2) of Article 311 of the Constitution and where the employee is not exonerated on merits. In such cases, subject to provisions of sub-rule (7) of Rule 54, the employee is entitled to be paid such amount not being the whole of the pay and allowances, which he would have been entitled to had he not been dismissed, removed or compulsorily retired or suspended prior to the said order. The competent authority is to determine and decide the said question after giving notice to the Government of India of the quantum proposed and after considering the representation, if any, submitted by the employee within the period as stipulated.

8. The order of dismissal under Article 311(2)(c) was set aside by the High Court

in Writ Petition (C) No. 8062/2006 vide order dated 1st November, 2010, which reads as under:- "1. The services of the petitioner were terminated without an inquiry. Accordingly to the department the petitioner was instrumental in facilitating Telgi in sale of counterfeit stamp papers.

2. Challenge before the Tribunal failed necessitating filing of the instant petition in which while issuing notice to show cause on 10.5.2006 this Court had noted an office memorandum dated 26.7.1980 issued by DOPT with respect to an economic activity not being of a kind attracting Article 311(2)(c) of the Constitution of India i.e. affecting the interest and sovereignty of India.

3. On 27.8.2009 it was noted by this Court and after a detailed investigation, CBI has filed a closure report.

4. In that view of the matter, as conceded hereinabove while penning down our order pertaining to CM No. 14641/2010, the writ petition has to be allowed but with a clarificatory note. The clarification to be issued has to be with respect to how has the period interregnum the dismissal of the petitioner till his reinstatement to be reckoned with, more so for the reason learned counsel for the respondent states that had it been in service, petitioner would have superannuated on 31.5.2005.

5. We dispose of the writ petition quashing the order dated 1.4.2004 imposing penalty of dismissal from service upon the petitioner in exercise of the power under Article 311(2)(c) of the Constitution of India.

6. With respect to the period 1.4.2004 till 31.5.2005 necessary orders would be passed by the Competent Authority under the Fundamental Rules pertaining to as to how has the period has to be reckoned and needless to state the order would depend upon whether a departmental inquiry is contemplated or is not contemplated.

7. Needful would be done by the respondents within 8 weeks from today.

8. No costs."

The aforesaid order records that the CBI had filed a closure report in the case of the petitioner, which had been accepted by the special court. Thus, even after full-fledged inquiry, the CBI was unable to find sufficient incriminating evidence to sustain conviction. Reference was also made to the Office Memorandum dated 26th July, 1980 issued by DoP&T with respect to economic activity not being of the kind attracting Article 311(2)(c) of the Constitution, affecting the interest and sovereignty of India. Thus, the High Court found that there was fault in exercise of power under Article 311(2)(c) of the Constitution for the provision was wrongly invoked. At the same time, the High Court was conscious of the fact that the charges against the petitioner were grave. The question of payment of back wages was left open. No direction or order was passed for payment of back wages. The High Court had left it to the competent authority to pass an order under the Fundamental Rules. Paragraph 6 of the said order makes specific

reference to departmental enquiry. In other words, it was for the respondents to decide where or not to initiate departmental enquiry. It was not an adjudication deciding on the merits of the charge.

9. It is an undisputed and accepted legal position that standard of proof required for conviction is different from the standard of proof required in departmental proceedings, the preponderance of probability principle being applicable in the latter. Noticeably, the petitioner in the writ petition himself has accepted that in the middle of 1998 he had come in contact with A.K. Telgi pursuant to his representation dated 30th April, 1998 addressed to the Joint Secretary, Government of India, Ministry of Finance.

10. It transpires that the order imposing penalty of dismissal from service was passed on 1st April, 2004. The High Court had set aside the order vide judgment/order dated 1st November, 2010, i.e., after more than six years from the date power under Article 311(2)(c) of the Constitution was exercised. The petitioner in the meanwhile had retired from service on 31st May, 2005. Departmental proceedings could not have been initiated against the petitioner after the order of the High Court dated 1st November, 2010 as there was gap of more than four years. The limitation period of four years, as stipulated in Rule 9(2)(b)(ii) of the Central Civil Services Pension Rules came in the way and had ensured the unintended benefit to the petitioner. Thus, for technical reasons the respondents were unable to initiate departmental proceedings in view of the time gap and the delay. It is, therefore, clear to us that the petitioner was never exonerated on merits.

11. Counsel for the petitioner, during the course of hearing, had submitted that the petitioner was promoted from Deputy General Manager to General Manager on 15th January, 2002. The involvement and misconduct of the petitioner, as alleged, pertains to the period 1998. It is submitted that the effect of the promotion would be that the misconduct was condoned and overlooked. We would not accept the said submission for the reason that in the present case, the petitioner was arrested (as per his own case) sometime in December, 2003 i.e. after he had been promoted as General Manager in 2002. The petitioner was suspended on 16th July, 2003. It is apparent no departmental proceedings were pending against the petitioner in January 2002. At that time, the petitioner was not arrested and was also not under suspension.

12. Counsel for the petitioner has placed reliance on Lal Audhraj Singh Vs. State of Madhya Pradesh, AIR 1967 Madhya Pradesh 284 in support of his contention. We are afraid that this judgment does not help or assist the petitioner as the law thereafter has undergone a change vide pronouncement in Union of India Vs. Jankiraman, (1991) 4 SCC 109. The petitioner could not have been denied a promotion, nor could the sealed cover procedure have been followed, unless the three conditions stipulated in OM dated 14th September, 1992 were satisfied. In fact, the counsel for the petitioner tried to go into the factual matrix and had drawn our attention to paragraph 4.22 of the reply given by the respondents to

the OA. In this paragraph the respondents have stated that investigations had revealed the complicity of some of the staff of the India Security Press, Nashik in the forged stamp paper scam. As recorded above, the petitioner himself in this writ petition has stated that he had come in contact with A.K.L. Telgi in 1998 in connection with his representation dated 30th April, 1998, addressed to the Joint Secretary, Government of India, Ministry of Finance, New Delhi. Thereupon, certain instructions were issued by the Central Government (Ministry of Finance) vide letter dated 12th August, 1998, addressed to the General Manager, India Security Press, Nashik.

13. In view of the aforesaid factual position, we do not find any merit in the present writ petition and the same is dismissed without any order as to costs.