

(2017) 01 DEL CK 0180
In the Delhi High Court
Case No : W.P.(C) No. 340 of 2007

Govt. of Nct of Delhi

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Citation : (2017) 1 LLN 670

Hon'ble Judges : Mr. G.S. Sistani and Mr. Vinod Goel, JJ.

Bench : Division Bench

Advocate : Mr. Rahul Sharma, Advocate, for the Petitioner; None, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J (Oral)—Rule DB was issued in this matter on 18.02.2009.

2. Challenge in this writ petition is to the order dated 10.10.2006 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") in OA 258/2005 filed by the respondent herein whereby the Tribunal had granted partial relief to the respondent.

3. The respondent had approached the Tribunal seeking a direction to quash and set-aside the order dated 25.02.2004 passed by the Appellate Authority whereby one year of approved service was forfeited permanently, with consequential benefits in terms of seniority, promotion, etc. A direction was also sought to treat the entire period from the date of his dismissal to the date of his reinstatement as spent on duty. The Tribunal found no reason to interfere with the order of the Appellate Authority, but allowed the second relief in respect of treating period of absence of the respondent herein.

4. Brief facts of the case are that a departmental enquiry was initiated against the respondent on the charge that while posted in 1st Bn. DAP he was detailed for duty with Govt. Vehicle No. DEG 4996 at PTS Jharoda Kalan, New Delhi for transportation of force for Ram Lila and VVIP duty at Rashtrapati Bhawan, etc. on

22.09.1990 with the direction to remain there till further orders, but he came back along with his vehicle on 23.09.1990 from PTS, Jharoda Kalan, New Delhi at his own sweet will. When CHM/MT H.C. Mukhtyar Singh reported the matter to I/C Deployment, Inspr. Balbir Singh that Const. (Dvr) has returned from duty, Inspr. Balbir Singh asked the driver as to why he had come back, the respondent replied "Maine Kya Theka Le Rakha Hai Aur Bhi Driver Hain" (Have I taken the entire responsibility, there are other drivers also). He refused to go back to PTS for duty and a report to this effect was lodged vide DD No.38-B, dated 23.09.1990 DAP, Control Room. On a previous occasion also, Const. (Dvr.) Ashok Kumar had refused to perform duty and a report to that effect was also lodged vide DD No.53-B dated 08.09.1990. Besides above, he remained absent wilfully and unauthorisedly on following two occasions:

S.No.

Absent vide DD No.

Arrived vide DD No.

Period of Absence D H M

1.

13-B dt. 09.08.90

21-A dt. 20.8.90

10 9 20

2.

42-B dt. 03.08.90

29-B dt. 04.08.90

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He also absented himself previously on 6 occasions and was awarded PDs/WP etc.

5. The Inquiry Officer submitted his findings and the Disciplinary Authority, after going through the findings of the Inquiry Officer, W.P.(C) 340/2007 Page 3 of 13 awarded the punishment of dismissal from service to the respondent vide order dated 14.05.1991. The respondent then filed an appeal, which was considered and rejected by the Appellate Authority vide order dated 05.09.1991. Thereupon, the respondent approached the Tribunal through O.A. No.2997/1991, which was also dismissed vide order dated 03.09.1997. The respondent then filed W.P. (C) No.822/1999 before this Court which was allowed by an order dated 08.08.2002. Relevant paragraph of which reads as under:

"14. Before a punishment is imposed which deprives an employee of his bread and butter, the minimum requirement of the principles of natural justice must be followed. Giving an opportunity to the delinquent employee of having an

assistance of a friend is a well settled and is a part of principles of natural justice. As in the instant cases the petitioner has been deprived of the assistance of a defence assistant the impugned order cannot be sustained which is set aside accordingly and it is directed that the petitioner be given an opportunity to cross examine the prosecution witnesses by a defence assistant of his choice, where after the disciplinary authority may take a decision afresh. Petitioner shall however continue to remain under suspension. The writ petition is disposed of without any order as to costs."

(Emphasis Supplied)

6. The respondent was accordingly reinstated in service and remained under suspension. Departmental enquiry was re-initiated from the prosecution stage. The Inquiry Officer accordingly submitted his findings, based on which, the Disciplinary Authority passed an order dated 13.09.2003 imposing the punishment of forfeiture of three years of approved service permanently on the respondent. It also decided that the intervening period from the date of dismissal to the date of reinstatement i.e. 14.05.1991 to 02.10.2002, the period of suspension from 03.10.2002 to 09.06.2003 as well as the period of unauthorized absence for ten days from 09.08.1990 to 20.08.1990, shall be treated as period not spent on duty. The respondent then filed an appeal and the Appellate Authority in its order dated 25.02.2004 reduced the punishment to that of forfeiture of one year of approved service permanently. Aggrieved, the respondent had approached the Tribunal by filing application bearing OA No. 258/2005.

7. The OA did not find favour with the Tribunal as far as it is related to the quantum of punishment awarded to him. However, the Tribunal granted partial relief to the applicant/ respondent herein by directing payment of 50% of salary for the period 14.05.1991 to 02.10.2002. The Tribunal had further directed that the respondent would be entitled to full salary for the period from 03.10.2002 to 09.06.2003, after deducting subsistence allowance; and the period of unauthorised absence from 09.08.1990 to 20.08.1990 was to be regularized by grant of leave of the kind due. Aggrieved by the order dated 10.10.2006, the petitioners have filed the present writ petition.

8. Learned counsel for the petitioners submits that the Tribunal erred in law as well as in principle while passing the impugned order dated 10.10.2006. Counsel contends that the Tribunal has wrongly granted benefit to the respondent based on the judgment of the Apex Court in the case of UPSRTC Ltd. v. Sarada Prasad Misra and another, 2006 (V) AD (SC) 102: (2006) 4 SCC 733. It is contended that the Tribunal has failed to appreciate that in the judgment in UPSRTC Ltd. (supra), the Apex Court had only granted 50% of back-wages from the date of the Award of the Labour Court till reinstatement, while in the present case, various other benefits have also been awarded to the respondent. Learned counsel also contends that the Tribunal has failed to take into account that the respondent was dismissed from service which decision was also upheld by the

Tribunal. It is only when the respondent approached the High Court, the matter was remanded back for fresh adjudication and the respondent was immediately reinstated in service on 03.10.2002 and kept under suspension till 09.06.2003 and from 09.06.2003 his services were regularized. Thus, the petitioners herein cannot be saddled with payment of 50% of salary to the respondent from 14.05.1991 to 02.10.2002.

9. Learned counsel submits that the Tribunal has erred in granting 50% of the back-wages to the respondent for the period, i.e. from 14.05.1991 to 02.10.2002 during the period he was dismissed from service. It is contended that the respondent could not have been granted 50% of the back-wages for the entire period.

10. Counsel submits that the Tribunal has also erred and failed to take into account that the respondent had remained absent from 09.08.1990 to 20.08.1990 which was unauthorized, however, the Tribunal has directed the petitioners to regularize the said period by grant of leave of the kind due.

11. As an alternative argument, learned counsel has placed reliance on the judgment in the case of Vijay Singh v. Union of India & Ors., (2007) 9 SCC 63, where having regard to the nature of charges framed, no back-wages were allowed to the appellant therein by the Supreme Court of India. Mr. Sharma, learned counsel for the petitioners, submits that in the present case also, the respondent had shown complete indiscipline and violation of the mandatory provisions of law.

12. We have heard the learned counsel for the petitioners and narrated the facts of this case in the paragraphs foregoing. It may be noticed that the Tribunal did not find fault in the order passed by the Appellate Authority but has only varied the order with respect to payment of back-wages. Paras 13 to 15 of the impugned order read as under:-

"13. That leaves us with the issue relating to treatment of the period of absence, which has been treated as not spent on duty. In this connection, in the first place, it is to be noted that the order of the Appellate Authority, while modifying the substantive punishment of forfeiture of approved service permanently from three years to one year, has not recorded any specific decision relating to the period of dismissal, suspension, etc. In the case of ASI Sube Singh v. Union of India & Ors. (supra), the applicant therein was granted certain reliefs in this regard, as stated earlier. In that case the applicant was dismissed on account of his involvement in a criminal case. In the present OA, the charge against the applicant is of misconduct and certain amount of indiscipline. He is, therefore, entitled to no less relief than was granted to the applicant in ASI Sube Singh v. Union of India & Ors. (supra).

14. In view of the facts and circumstances of the case mentioned above, we find that the decision of the respondents to award the reduced punishment of forfeiture of one year approved service permanently, does not deserve to be

interfered with in the interest of maintenance of discipline in the police force. However, we see no reason why he should be denied relief in terms of treatment of period of his absence since it was, to a large extent, due to prolonged legal proceedings for which neither party could be held responsible.

15. In the result, placing reliance on the judgment of the Hon^{ble} Supreme Court in the case of U.P.S.R.T.C. Ltd. v. Sarada Prasad Misra & Anr. (supra) and the order of this Tribunal in ASI Sube Singh v. Union of India & Ors. (supra), we direct the respondents to pay 50% of the salary to the applicant for the period from 14.05.1991 to 2.10.2002. As far as the period of suspension is concerned, since the applicant has been subsequently reinstated, he shall be entitled to full salary for the period from 03.10.2002 to 09.06.2003, if not already paid, after deducting the subsistence allowance, if any, paid to the applicant. The period of unauthorized absence from 09.08.1990 to 20.08.1990 shall be regularized by grant of leave of the kind due. This exercise shall be completed within a period of 3 months from the date of receipt of a copy of this order."

(Emphasis Supplied)

13. We find no ground to interfere with the order passed by the Tribunal, as the Tribunal has taken note of all the facts and also rightly applied the law as far as payment of back-wages is concerned. The law in respect of back-wages was recently considered by us in Ajoyodha Prasad v. Union of India & Ors., 2003 (1) SLJ 317 CAT, the relevant paragraphs of which read as under:

"8. The short point which arises for consideration before this court is whether the petitioner is entitled to back wages for the period he was disengaged and did not carry out any work. The second question, which arises is that in case the petitioner is entitled to back wages, would he be entitled to full back wages or part thereof.

9. The consistent view of the Supreme Court has been that the payment of back wages is not a natural consequence of reinstatement, but it is the discretionary power at the hand of the court, which is to be exercised by the court after considering the facts and circumstances of the case. In the case of Hindustan Tin Works v. Employees, (1979) 2 SCC 80, wherein it was held that:

"11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and

fanciful but legal and regular (see *Susannah Sharp v. Wakefield* [(1891) AC 173, 179])."

10. In *P.G.I. of Medical Education & Research v. Raj Kumar*, (2001) 2 SCC 54, it was held as under:

"9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477 : (1964) 5 SCR 64].

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12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in *Hindustan Tin Works (P) Ltd.* [(1979) 2 SCC 80 : 1979 SCC (L&S) 53 : (1979) 1 SCR 563] be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only."

(Emphasis Supplied)

11. At the same time, there is no precise formula for ascertaining back wages as the same depends upon the facts and circumstances of the case. In *U.P. State Brassware Corporation Ltd. v. Udai Narain Pandey*, JT 2005 (10) SC 344, the Supreme Court held that:

"No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."

(Emphasis Supplied)"

14. The present case is to be decided on the touchstone of the law laid down by the Apex Court.

15. It may be noted that on account of indiscipline and on the respondent refusing to go back to PTS for duty, DD No.38-B dated 23.09.1990 was lodged. Based on the findings of the Inquiry Officer and Disciplinary Authority, he was awarded the punishment of dismissal from service vide order dated 14.05.1991. An appeal was filed by the respondent, which was rejected by the Appellate Authority. This had led to the filing of the first application before the Tribunal, being O.A. No.2997/1991 which was also dismissed. The respondent, thereafter, filed W.P. (C) 822/1999 which found favour with this Court and this Court held that even the minimum requirement of the principles of natural justice had not been followed as the respondent was not given assistance of a friend or assistant during the course of enquiry and set-aside the impugned orders by an order dated 08.08.2002. The respondent was not paid salary from 14.05.1991 onwards for which the respondent cannot be faulted in view of the order which was passed by the Appellate Authority at the first round before the matter was remanded by the High Court. After the matter was remanded back, in the second round the Inquiry Officer submitted his findings, based on which, the Disciplinary Authority passed an order dated 13.09.2003 imposing the punishment of forfeiture of three years of approved service permanently. It also decided that the intervening period from the date of dismissal to the date of reinstatement i.e. 14.05.1991 to 02.10.2002, the period of suspension from 03.10.2002 to 09.06.2003 as well as the period of unauthorized absence for ten days from 09.08.1990 to 20.08.1990, shall be treated as period not spent on duty. The respondent then filed an appeal and the Appellate Authority in its order dated 25.02.2004 reduced the punishment to that of forfeiture of one year of approved service permanently.

16. In this backdrop, the respondent, in our view, cannot be deprived of his back-wages once having succeeded in the matter. The Tribunal has already taken a conservative view in the matter by granting 50% of back-wages. No interest has been awarded, which in our view, requires no interference.

17. Mr. Sharma, learned counsel for the petitioners has placed reliance on the Ground "D" of the writ petition stating that the Apex Court in UPSRTC Ltd. (supra), had granted the respondent therein 50% of the back-wages only from the date of the Award of the Labour Tribunal till the date of reinstatement. Accordingly, it has been contended that the respondent would be entitled to 50% back-wages from the date 03.10.2002, when he was reinstated by the order this Court.

18. We find no force in the submission made by Mr. Sharma, learned counsel for the petitioners, for the reason that the sequence of events as having narrated by us in foregoing paragraphs would show that the first punishment awarded to the respondent was dismissal from service. The respondent thereafter filed an appeal, which was rejected and OA filed before the Tribunal was dismissed; but

the High Court allowed the writ petition filed by the respondent, finding that the petitioners herein had not complied with the principles of natural justice and the matter was remanded back and the respondent was given an opportunity to cross-examine the witnesses. The same would show that there was no lapse or delay on the part of the respondent herein who has been regularly pursuing the matter. In UPSRTC Ltd. (supra), the respondent workman was found to be responsible for a delay of seven years from the date of termination to approaching the Conciliation Officer. This reason had prevailed upon the Supreme Court in denying back-wages for the said period, which is not applicable in the present case. The relevant paragraphs of the judgment of the Supreme Court read as under:

"12. In our opinion, however, the limited grievance of the learned counsel for the Corporation is well founded. Admittedly, the order of termination was passed on 6-9-1975. Admittedly, an application was made to the Conciliation Officer, Allahabad by the workman on 17-7-1982, that is, after about seven years from the date of termination. In the circumstances, therefore, the Corporation is justified in raising legitimate objection as regards payment of wages for the said period. Since the respondent had invoked jurisdiction of the labour forum after seven years, it would not be appropriate to direct the appellant Corporation to pay wages for the intervening period.

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17. Considering the case-law on the point and applying the principles laid down therein to the facts of the present appeal, we are of the view that the respondent workman is not entitled to back wages from 1975 when his services were terminated. The award was passed in the instant case on 17-9-1984 but was stayed by the High Court vide interim order dated 25-3-1985. The interim order was modified on 4-2-1988 and the first respondent was reinstated immediately on 9-2-1988. In our opinion, therefore, ends of justice would be met if the workman is allowed back wages to the extent of 50% from the date of the award till he was reinstated in service."

(Emphasis Supplied)

19. We find this submission to be unacceptable also for the reason that after the matter was remanded back, the petitioners passed an order of forfeiture of three years of service, which was thereafter reduced to one year by the Appellate Authority. The fact that even the first order passed by the petitioners, did not find favour after the matter was remanded back and in these circumstances, the respondent herein cannot be deprived of at least 50% of back-wages especially when the fault lay with the petitioners herein and not with the respondent.

20. We are also unable to accept the submission of the learned counsel that the Tribunal had erred in not considering the gravity of charges as in the case of Vijay Singh (supra)an FIR was lodged against the petitioner under Section 325 read with Section 34 of the Indian Penal Code; while in the present case, the

allegations against the respondent was showing lack of discipline and not following orders. As the nature of misconduct in the said case was substantially graver than the present case; accordingly the judgment, in our view, does not come to the aid of the petitioners.

21. As far as the observation of the Tribunal by which unauthorized absence from 09.08.1990 to 20.08.1990 is to be regularized, we find no justification for the same and the order is modified to this extent.

22. The writ petition is disposed of in above terms.

23. By an interim order dated 16.01.2007, this Court has directed the petitioners to deposit 50% of the amount due along with Rs. 5,000 towards litigation expenses of the respondent herein. The respondent would be entitled to the entire amount so deposited together with interest accrued thereon. The balance amount be released in favour of the respondent within six weeks from the receipt of this order. In case the amount is not released by the petitioners within six weeks, the respondent would be entitled to interest @ 6% per annum.