

(1993) 01 CAL CK 0038
In the Calcutta High Court
In Re: Om Prakash Kapoor

Date of Decision : 20-01-1993

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1994) 2 ILR (Cal) 186 : (1993) 2 LLJ 844

Hon'ble Judges : Paritosh Kumar Mukherjee, J

Bench : Single Bench

Advocate : S.K. Kapoor and Sukla Banerjee, for the Appellant; R.M. Chatterjee and Archana Sengupta, for the Respondent

Judgement

Paritosh Kumar Mukherjee, J.

The present writ petition was moved challenging the order of suspension dated December 18, 1980, being Annexure "G" to the petition, on behalf of Om Prakash Kapoor, Deputy Manager (Administration), Braithwaite & Co. Limited.

2. It appears that in view of the report submitted by the Central Bureau of Investigation, Government of India, that a criminal case has been instituted against the Deputy Manager (Administration) of the Company, the petitioner was suspended with immediate effect and he was directed to be paid 50% of the salary by the said order of suspension dated December 18, 1980.

3. When this writ petition was moved before me by Mr. S.K. Kapoor, learned Advocate appearing on behalf of the petitioner, in presence of Mr. R.M. Chatterjee, learned Advocate for the respondent Company and Mrs. Archana Sengupta, learned Advocate for the Union of India, this Court after passing a reasoned order, inter alia, directed the Managing Director of the respondent Company to dispose of the representation dated July 14, 1992 and pass appropriate order in terms of the Judgment in the case of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, which has been followed by D. Basu, J. (as His Lordship then was) in the case of Jatindra Nath Mondal v. State of West Bengal, reported in AIR 1968 Cal. 461.

4. In the case of Jatindra Nath Mondal (supra) , D. Basu J. (as His Lordship then

was) observed as follows:

"Suspension of delinquent in consequence of pending criminal case against the delinquent, discharge of delinquent in criminal case, the delinquent is deemed to have been reinstated and is entitled to recover full salary and allowances. Initiation or continuance of departmental proceedings on some allegations cannot revive old order of suspension."

5. In paragraph 10 of the said judgment, the learned single Judge observed as follows:

"The answer has been clearly given by the Supreme Court in cases such as *Om Prakash Gupta Vs. The State of Uttar Pradesh*, and other cases, as follows:

(a) Where a Government servant has been suspended pending a criminal investigation or trial, the order of suspension automatically ceases to be operative as soon as the criminal proceedings terminate by an acquittal or discharge of the Government servant.

(b) Immediately after such acquittal or discharge in the criminal case, therefore, the delinquent should be deemed to have been reinstated and is accordingly entitled to recover his full salary and allowances since the date of suspension. In such a case, no question of application of F.R. 54 of the Fundamental Rules (or any other similar Rule) also does arise because that Rule applies when a Government servant is acquitted in a Departmental proceedings *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*,

(c) Of course, notwithstanding the acquittal or discharge of the delinquent Government may initiate or continue departmental proceedings against the delinquent on the same charges upon which the criminal case had been brought *S. Pratap Singh Vs. The State of Punjab*,

(d) But the initiation or continuance of the departmental proceedings on the same allegations cannot revive the old order of suspension which had expired by operation of law with the termination of the criminal proceedings, hence if the Government intend to keep the delinquent under suspension pending the disposal of the departmental proceedings, after the termination of the criminal case, a fresh order of suspension has to be made by the Government *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, except where there are statutory Rules providing for an automatic revival and continuance of the old order of suspension *Khem Chand Vs. Union of India (UOI)*, .

6. This Court on the date of resumed hearing of the writ petition on August 3, 1992 without staying the operation of the order of suspension directed the Chariman and the Managing Director of the respondent Company to dispose of the representation dated July 14, 1992 accordingly,

7. Unfortunately, although this Court had given liberty to the respondent authorities to pass appropriate order on the basis of the aforesaid two

judgments, it appears that the Managing Director in disposing of the representation observed that since the Company does not maintain law books, the judgments referred to in the order by the Hon''ble Court could not be made readily available to the said Managing Director and he has obtained instruction from the learned Advocate of the Company that the said two judgments are concerned with regard to the cases under Article 311 of the Constitution of India where the Hon''ble Court observed that if a suspension order is based on the ground that a criminal investigation is going on and if ultimately the criminal proceeding holds that the accused is not guilty and he is acquitted, then the suspension order passed against the incumbent shall automatically lose its force and the employee concerned shall be deemed to be in employment.

8. To the mind of the Managing Director, firstly, CBI did not adduce all the evidences against the accused Shri Kapoor secondly, Shri Kapoor was discharged from the CBI proceedings on technical grounds without being acquitted on merit and thirdly, the service condition of an employee of Braithwaite & Co. Ltd. is governed by the Braithwaite & Co. Ltd. Conduct, Discipline & Appeal Rules and service conditions and as such to the humble opinion of the said Managing Director the said cases and the decision are not "ipso facto" applicable in the instant case of Shri Kapoor.

9. The said Managing Director, however, was of the view that although no departmental proceeding has yet been initiated against the petitioner, the order of suspension should not be lifted and the representation dated July 14, 1992 was disposed of accordingly.

10. At the resumed hearing of the writ petition on January 20, 1993, Mr. S.K. Kapoor, learned Advocate appearing on behalf of the petitioner having placed the judgments in the case of Devendra Pratap Narain Rai Sharma (supra) and Jatindra Nath Mandal (supra) submits that the respondent Managing Director of the Company has not actually committed perversity in disposing of the representation dated July 14, 1992 but he wanted to overreach the Court although this Court had indicated in the order that the representation should be disposed of in terms of the judgments, one delivered by the Hon''ble Supreme Court and another by the learned single Judge of this Court.

11. Mr. Kapoor, learned Advocate, accordingly submits that this Court might not express any opinion about the initiation of a fresh departmental proceeding against the petitioner on the basis of the independent charge, if any, after discharge by the Special Court as no evidence could be produced by the CBI authority, this Court set aside the order of suspension dated December 18, 1980 accordingly and direct the reinstatement of the petitioner to the post of Deputy Director (Administration) in the office of the respondent Company.

12. Mr. R.M. Chatterjee, learned Advocate appearing on behalf of the respondent company, submits that the draft charge has already been prepared by the respondent Company but could not be served as it might be construed that it

would interfere with the justice in a pending writ petition.

13. This Court at this stage does not express any opinion about the validity and/or propriety of the draft charge but observes that the respondent authorities will be at liberty to proceed against the petitioner in accordance with law.

14. The writ petition is allowed.

15. The impugned order of suspension dated December 18, 1980 is set aside.

16. The respondent authorities are directed to pay full salary including all arrears to the petitioner after deduction of the relevant subsistence allowances paid to the petitioner in the meantime.

17. Since the affidavit-in-opposition could not be filed, the allegations made in the writ petition are not admitted by the respondents.

18. The prayer for stay of operation of this order is considered and refused.

There will be no order as to costs.

Let a xerox copy of this order be given to the learned Advocate of both sides on observing usual formalities.