
(1995) 10 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 10262 of 1994

Jaspal Singh Kohli

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467

Citation : (1996) 2 ILR (P&H) 119 : (1997) 3 LLJ 596

Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : Naresh Prabhakar, for the Appellant; S.S. Nijar and G.S. Bajwa, for the Respondent

Final Decision : Allowed

Judgement

V. S. Aggarwal, J.—Petitioner Jaspal Singh Kohli was working as Cashier-cum-Godown Keeper with the Hindustan Commercial Bank Limited, Ludhiana. The assets and liabilities of the Hindustan Commercial Bank Limited had been taken over by the Punjab National Bank, when it merged and amalgamated with the latter Bank namely Punjab National Bank. The petitioner was suspected to be involved in a fraud of about Rs. one Lac with the Hindustan Commercial Bank Limited. Two first information reports were lodged pertaining to offences punishable under Sections 420, 408, 467, 471 and 477 Indian Penal Code. The petitioner was placed under suspension on September 22, 1984.

2. Both the cases were tried by the Judicial Magistrate, Ludhiana and on March 31, 1993 the learned trial Court acquitted the accused and Anr. person. After the petitioner was acquitted, he requested that he may be reinstated and the suspension order may be revoked. By virtue of the present writ petition, it is prayed that refusal of the respondents to reinstate the petitioner is illegal, arbitrary and discriminatory because the petitioner has since been acquitted. In any case it is alleged that there is inordinate and unexplained delay in serving the charge-sheet. It is accordingly prayed that a direction should be issued to

reinstate the petitioner and grant him all the benefits including pay, allowances, increments and promotions from September 22, 1984.

3. Needless to say that in the reply filed, Respondents 1 to 3 contested the petition. Respondents assert that an order of suspension should not be interfered by the Courts particularly when there is no violation of any statutory provision. As per the agreement even if the petitioner had been acquitted departmental proceedings can be initiated and that the petitioner had been ordered to remain under suspension in accordance with the service rules. The charge-sheet was stated to have since been served.

4. Since the petitioner only seeks his retirement with the respondent-Bank and grant of benefits including pay, allowances and increments etc., the question as to if departmental action can be initiated against the petitioner, is not in controversy before us. Perusal of the record reveals that in FIR No. 313 of 1994 with respect of offence punishable under Sections 420, 408, 407, 468, 471 and 477 Indian Penal Code, the learned Judicial Magistrate had recorded the following findings.

"There is no eye-witness to the forgery nor the forgery has been proved on the file. The testimony of single witness cannot be relied upon under these circumstances, particularly when prosecution had the opportunity to examine other witnesses. Hence prosecution has failed to prove the case beyond the shadow of reasonable doubt. Hence by giving the benefit of doubt to the accused, I acquit them from the offence charged."

5. Similarly in FIR No. 327 dated September 29, 1981 pertaining to the same offences, the learned Judicial Magistrate again recorded similar findings. Operative portion of the same is reproduced below : -

"Prosecution has failed to prove its case beyond shadow of any reasonable doubt. Even forgery is not proved. Moreover Ex. PA shows that there is no witness to the fraud and the names of the accused are mentioned nowhere in the application that they are seen committing the crime. Thus it is a case without any witness. Hence by giving benefit of doubt to the accused, I acquit both the accused from the offences charged."

6. It is, therefore, established beyond any pale of controversy that in both the cases registered against the petitioner, he was given the benefit of doubt because of lack of evidence and that the petitioner was acquitted.

7. Learned counsel for the petitioner highlighted the fact that he was suspended because of the pending investigation, in other words because of the cases those were registered against the petitioner, in his view. Even if the departmental action was to be initiated, it becomes necessary to reinstate the petitioner. Copy of the suspension order is Annexure P-1 and reads :-

"A serious offence of forgery involving a loss of Rs. one Lac to the Bank has taken place in the branch on September 11, 1984, you are suspected to be

involved in the same, pending further investigation, you are therefore placed under suspension with immediate effect. During the period of your suspension, you will be paid substantial allowance as admissible under Rules.

Further you will neither enter the branch premises nor leave the station without prior permission of the under-signed in writing.

Detailed charge-sheet shall be served upon you in due course.

This issues with the approval of competent authority."

8. The tenor of the suspension order shows that petitioner was suspended because of the suspicion that he was involved in the cases pertaining to forgery and because investigation was pending. He was not suspended because departmental action was to be initiated. Once, the petitioner as such has been acquitted, necessarily the logic and the reason for suspending the petitioner loses its significance. The basis of the suspension was pending investigation in the case and not the departmental action. Our attention was drawn to the decision of the Supreme Court in the Case of Balvantray Ratilal Patel Vs. The State of Maharashtra, Therein the facts were that suspension order indicated that "Under orders from the Surgeon-General, with the Government of Bombay conveyed in his Memorandum No. S 97/,189/A dated February 16, 1950, you are informed that you are suspended pending further orders with effect from the afternoon of 18th instant." The person concerned was acquitted. The Supreme Court held that order of suspension would not be terminated automatically. It is patently clear from the nature of suspension order in the case of Balvantrai Ratilal Patel (supra) that it was not confined to the criminal case which was pending. Therefore, the cited decision would be confined to the peculiar facts of the said case. Even the decision in the case of Mihir Das Kumar Das v. State of West Bengal and Ors. 1980 (1) S.L.R. 678 , will not come to the rescue of the respondents. Therein the Government employee was detained in a case of forgery for a period of more than 48 hours. He was ipso facto placed under suspension. It was held that the order of suspension is not revoked automatically as soon as he is released from custody of acquitted. This is not so in the present case and therefore, the cited decision is distinguishable. Close to the facts of the present case is the decision of the Calcutta High Court in the case of Jatindra Nath Mondal Vs. State of West Bengal and Others, . It was noted therein that if the Government intended to keep the delinquent under suspension pending disposal of departmental proceedings, after the termination of the criminal case, a fresh order of suspension has to be passed. Similar view prevails with the decision of the Rajasthan High Court in the case of Sunder Lal v. State of Rajasthan 1980 (3) S.L.R. 228. In paragraph 7 the order of suspension had been reproduced and reads :-

"As Shri Sunder Lal Cashier and Kapoor Chand Amin of the office of the Settlement Office, Sikar are involved in the case of embezzlement of Rs. 3,775/15/3. both are suspended from today, i.e. September 10, 1954 afternoon.

The Settlement Officer, Sikar should propose some suitable clerk of his office to work as cashier."

9. Thereupon it was concluded that if disciplinary authority wanted to initiate departmental enquiry after acquittal of the petitioner, it is necessary to pass a fresh suspension order.

10. It has already been noted above that petitioner was suspended because of the investigation in the criminal case. Once the petitioner has been acquitted in those cases, there is no ground to maintain the suspension merely because the respondents feel that they can initiate departmental action. The ratio of the decision in the case of Sunder Lal (*supra*) squarely applies to the facts of the present case.

11. In fact the petitioner was suspended in the year 1984. He was acquitted in March, 1993. After an inordinate delay charge-sheet has been served during the pendency of the present petition. The agency of the suspension in the peculiar facts in any case cannot be allowed to be perpetuated in this manner. In these circumstances therefore, the defence plea cannot be accepted to be valid.

12. For these reasons, we allow the writ petition and direct that the petitioner should be reinstated and he would be entitled to all the benefits including pay, allowances and increments from September 22, 1984.