

(2010) 09 OHC CK 0055

In the Orissa High Court

Case No : Writ Petition (C) No. 12470 of 2008

K. Gopal ' Khola Gopal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 29(A), 34, 35, 36, 37
Central Industrial Security Force Rules, 2001 — Rule 39
Constitution of India, 1950 — Article 311, 311(3)
Criminal Procedure Code, 1973 (CrPC) — Section 232
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304(B), 34, 498(A)

Citation : (2010) 110 CLT 876

Hon'ble Judges : S.K. Mishra, J; Pradip Mohanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—The pivotal question which arises for determination in this writ petition is whether on the acquittal of an employee, by a criminal court, from the criminal charges, he is entitled to be reinstated, when dismissal is based solely on that criminal charges without holding any departmental proceeding.

2. Petitioner was appointed as a Constable in the Central Industrial Security Force bearing No. 893440303. He was posted at Damanjodi where he was living along with his wife and daughter. On 28.06.2000, a criminal case was initiated against him for the alleged offences under Sections 498 Khola Gopal v. Union of India (S.K.MISHRA J.) A, 304-B read with Section 34 of the Indian Penal Code, 1860, hereinafter referred to as the "IPC" for brevity, and read with Section 4 of the Dowry Prohibition Act, 1961, hereinafter referred to as the "D.P. Act" for brevity. On 17.07.2000, he was arrested by the police. In such event, on 28.07.2000, the Petitioner was suspended from his service w.e.f. 17.07.2000. On 24.03.2001, the Commandant, CISF Unit, Nalco, Damanjodi dismissed the Petitioner from service in exercise of the powers under Rule -29(A) and Schedule-

II, read in conjunction with Rule 37(b) of the Central Industrial Security Force Rules, 1969, hereinafter referred to as the "CISF Rules" for brevity. The Petitioner filed an appeal before the Deputy Inspector General, CISF, North-Eastern, Patna, Bihar against his dismissal from service. The DIG rejected the appeal as time barred as per his order dated 16.10.2001. In the meantime, the trial proceeded and on 28.11.2001, on completion of trial, the learned Sessions Judge, Koraput acquitted the Petitioner of the charge under Sections 498A, 304B/34 I.P.C. read with Section 4 of the D.P. Act u/s 232 of the Code of Criminal Procedure, 1973, hereinafter referred to as the "Code" for brevity. After his release, Petitioner filed a representation before the Inspector General, Eastern Zone and prayed to reinstate him in his service on the ground that he has been acquitted by the court of competent criminal jurisdiction. The I.G. (O.P. No. 4), as per his order dated 18.06.2002, rejected the representation on the ground of bereft of merit. He held that no procedural lacuna has arisen in the case and the punishment awarded is well commensurate with the gravity of the offence. Petitioner filed a revision before the Director General of CISF, New Delhi (O.P. No. 5) and prayed for reinstatement. The Director General, CISF, as per his order dated 11.09.2002, held that he is not competent to consider the revision as the Petitioner has exhausted the remedy earlier. Thereafter, the Petitioner filed an application under Article 226 of the Constitution of India before this Court, which was registered as W.P.(C) No. 3746 of 2002. Upon hearing this Court set aside the order passed by the appellate authority on 24.03.2001 and the opposite parties were directed to condone the delay and decide the appeal on merit after affording reasonable opportunity of hearing to the Petitioner and by passing a reasoned order. The Petitioner was given liberty to file documents in support of his claims before the appellate authority. Thereafter, the Petitioner submitted a representation before the DIG of CISF, i.e. opposite party No. 3. On 08.10.2007, the DIG directed the Petitioner for personal hearing in view of the order passed by this Court. As per his order dated 10.12.2007, the opposite party No. 3 held that the punishment of dismissal from service, as inflicted upon the Petitioner, is proper and rejected the appeal. The Petitioner filed a revision before the IG Indian Law Reports, Cuttack Series [2010] of CISF but the IG also rejected the said revision and held that the Petitioner has no plausible explanation for such allegation. Therefore, the Petitioner filed this writ petition, inter alia, praying to quash the different annexures by which he was placed under suspension, and later dismissed, his appeal and representation were rejected by the authorities. Petitioner further prayed that the authorities be directed to reinstate him in service along with payment of all consequential service benefits.

3. Opposite parties filed their counter affidavit admitting the fact that the Petitioner was appointed as Constable in the CISF and was posted at Damanjodi. The fact of initiation of criminal proceeding and its subsequent acquittal is also not disputed by the opposite parties. The specific plea taken by the opposite parties is that since the Petitioner was proceeded against departmentally under Rule 37(b) of the CISF Rules on a different set of charges as that of the charges

framed against him in the criminal case, the acquittal of the Petitioner in the criminal case vide judgment dated 28.11.2000 has no bearing on the issue of imposition of penalty of dismissal from service upon him. The opposite parties further pleaded that the appellate authority found no merit in the appeal of the Petitioner and rejected the same. Thereafter, the Petitioner filed a revision before the revisional authority, who again rejected the same by issuing a speaking and reasoned order. The opposite parties further plead that the orders passed by the disciplinary authority and the revisional authority are legally valid and permissible under the CISF Act and Rules. The opposite parties plead that the revisional authority upheld the orders of disciplinary authority and appellate authority, as the Petitioner was acquitted by the court due to lack of evidence of demand of dowry and torture to his wife, on the basis of favorable statement of Mr. K. Digamber and Mr. K. Gurunath in the said proceeding, whereas Mr. K. Digamber was the first complainant of the case. The opposite parties plead that on 19.05.2000 at about 10.30 hours, it was found that the Petitioner's wife Smt. K. Babita had poured kerosene on her body and on her daughter, aged 3 1/2 years, and set themselves on fire inside the allotted quarter with an intention to commit suicide while the Petitioner was present there. Immediately thereafter, they were shifted to Nalco Damanjodi Hospital for medical assistance from where they were referred to CDR Hospital, Vizag for further treatment. While being transported the child expired and later on while undergoing treatment at CDR Hospital the wife of the Petitioner was declared dead on the same day at about 19.30 hours. In course of investigation, the Medical Officer, who conducted autopsy opined that the death occurred due to shock. There was ante-mortem burn about 65% of the total body surface. On 28.06.00, Sri K. Digamber, who happens to be the uterine brother of late K. Babita, lodged a case, vide Damanjodi P.S. Case No. 39 dated 28.06.2000 for the offences Khola Gopal v. Union of India (S.K.MISHRA J.) under Sections 498A, 304B/34 IPC and Section 4 of the D.P. Act. It was alleged by the said informant that there was a demand for dowry and torture for which the deceased committed suicide. The opposite parties further plead that Petitioner was taken into custody by Damanjodi Police on 17.07.2000 and he was remanded to custody on 18.07.2000. A criminal case was initiated against him for the aforesaid offences. Charge sheet was laid by the Investigating Officer. The Petitioner was not granted bail. The opposite parties further plead that the aforesaid facts establish that the Petitioner failed to maintain a responsible and decent standard of conduct in relation to his family members, which resulted in committing suicide by his wife and minor children by burning themselves in fire. The opposite parties admit acquittal of the Petitioner by the court due to lack of evidence of demand of dowry and torture to his wife. The opposite parties further plead that since the Petitioner was arrested by the local police in a cognizable offence and kept under judicial custody, it was not reasonably practicable to hold a full-fledged departmental enquiry as prescribed by Rules for misconduct. As such, the regular departmental proceeding was dispensed with. The misconduct, i.e. subjecting his wife to commit suicide along with her minor daughter for dowry was claimed to be very serious. The Petitioner

was expected to maintain a responsible and decent standard of conduct with his family members but he neglected them in a manner unbecoming of a Government servant, which compelled his wife to commit suicide along with her minor daughter. Since the Petitioner was in custody and the offence/misconduct were grave in nature, disciplinary authority dispensed with the enquiry and awarded the punishment of dismissal from service w.e.f. 24.03.2001 under Rule-37(b) of CISF Rules 1969, which corresponds to Rule 39(ii) of the CISF Rules, 2001. The opposite parties refuted the claim of the Petitioner that no opportunity of hearing was given resulting in denial of natural justice, in view of the fact that the disciplinary authority considered that it was not reasonably practicable to hold a departmental enquiry. On such plea, the opposite parties claim that the writ application is devoid of merit and the same should be dismissed.

4. Rule-37 of the Central Industrial Security Force Rules, 1969 provides for special procedure in certain cases. It is appropriate to quote the same.

37. Special procedure in certain cases: Notwithstanding anything contained in Rule 34, Rule 35 or Rule 36, where a penalty is imposed on a member of the force-

(a) on the ground of conduct which had led to his conviction on a criminal charge; or

INDIAN LAW REPORTS, CUTTACK SERIES [2010] (b) where the disciplinary authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules. The disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

A member of the force who has been convicted to rigorous imprisonment on a criminal charge shall be dismissed from service. In such case no evidence need be given to prove the charge. Only a notice shall be given to the party charged proposing the punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain as to why the proposed punishment of dismissal should not be imposed.

This rule corresponds to Rule 39 of CISF Rules, 2001 which reads as follows:

39. Special procedure in certain cases - Notwithstanding anything contained in Rules 36 to 38

(i) where any penalty is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these

rules.

The Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in case under Cl. (i).

Rule-39 of the CISF Rules, 2001 is similar to that of old provision of Rules-37 of CISF Rules, 1969, except for additional clause-(iii), which provides that where the President is satisfied that the interest of the security of the State, it is not expedient to hold any enquiry in the manner provided in these rules. Such provision is not attracted in this case. The last portion has also been substituted.

Rule-34 of the said Rules provides procedure for imposing major penalty. This rule provides that he should be given a notice after framing definite charges, he should be permitted to inspect and take extracts from

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such official records, he may file written statement etc. This rule provides for following the principles of natural justice. However, notwithstanding such provision, a penalty can be imposed on a member of the force on the ground of misconduct, which had led to his conviction on a criminal charge or secondly, if disciplinary authority is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in the said rules. While deciding, it is further provided that a member of the force, who has been convicted on a criminal charge, shall be dismissed from the service. In such case no evidence need be given to prove the charge, only a notice shall be given to the employee charged proposing punishment of dismissal for his having been convicted to rigorous imprisonment and asking him to explain why proposed punishment of dismissal should not be imposed.

5. In this case, it is undisputed that a criminal case was initiated against the Petitioner and that he was arrested. He remained in judicial custody till 28.11.2001. But it is also undisputed that the competent criminal court after a regular trial has come to the conclusion that the charges have not established against the present Petitioner. In fact, the learned Assistant Sessions Judge, Koraput has held that the accused is not guilty of the charges and is acquitted there from u/s 232 of the Code provides for acquittal where there is no material on the record to hold even the accused statement.

6. It is undisputed that merely on the basis of conviction in a criminal case a member of the force can be dismissed, but in this case his dismissal order was passed pending trial in the criminal court. At this juncture, it is appropriate to take note of the ratio decided in Babu Lal Vs. The State of Haryana and others, , wherein the Supreme Court has held that it is settled position of law and the Appellant who was suspended on the ground of pendency of criminal proceeding

against him, on being acquitted of the criminal charge was entitled to be reinstated in the service. His acquittal from the criminal charge however does not bar disciplinary authorities to initiate disciplinary proceedings and after giving an opportunity of hearing to the Appellant, pass an order of termination on the basis of the terms and conditions of the order of appointment.

7. Learned Assistant Solicitor General appearing on behalf of the opposite parties submitted that the charges against the Petitioner in the criminal case and the charges against the Petitioner in the departmental proceeding were different. However, this Court finds that the charge in both the cases to be identical. The charge in the criminal case relates to dowry torture, cruelty to married woman, demand for dowry and dowry death. The Indian Law Reports, Cuttack Series (2010) departmental charge was also indicated that his conduct was unbecoming of a member of the force as he subjected his wife to cruelty that led to her suicide and there was demand for dowry also. So in essence, the charge for which criminal case was initiated and the charge against the employee in the departmental proceeding are identical. Thus, the contention of the learned Assistant Solicitor General is not acceptable.

8. Learned Assistant Solicitor General, having placed reliance on Clause (b) of Rule-37 of the CISF Rules, 1969, contended that since the authorities have dispensed with holding of enquiry, as envisaged under Rule-34, as the accused was in custody, the order of termination is not illegal. The Hon'ble Supreme Court has examined the expression "it is not reasonably practicable to hold", appearing in clause-3 of Article 311 of the Constitution of India in *Union of India and Another Vs. Tulsiram Patel and Others*, . The Hon'ble Supreme Court has come to the conclusion that in case the Government employee himself creates problem for holding of the enquiry by threatening the disciplinary authority and the witnesses, then the reasonable conclusion is that the disciplinary authority may dispense with a regular departmental enquiry. However, the Supreme Court has observed at Paragraph-133, page 1479 that the disciplinary authority is the best Judge whether a case comes under clause-3 of Article 311. However, a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or with ulterior motives or merely in order to avoid holding of enquiry or because the departmental case against the Government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned, and in such a case, the court will strike down the order dispensing with the enquiry as also the imposition of penalty.

9. Following the aforesaid principle, this Court finds that the reason given by the disciplinary authority that the Petitioner being in judicial custody it was not reasonably practicable to hold a departmental enquiry is unjustified. This is because the order of dismissal from service was passed on 24.03.2001 whereas in the same year on 28.11.2001 the competent criminal court acquitted the Petitioner of the offences and released him.

10. The residual question which requires determination in this case is whether the Petitioner is entitled to the back wages from the date of his suspension till his reinstatement. The principle "no work no pay" is applicable here in view of the fact that after his suspension he was kept under judicial custody till his acquittal by the competent criminal court. In that period, he could not have discharged his duties. Therefore, he is not entitled to recover back wages for that period. The principle laid down by the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., is also not Khola Gopal v. Union of India (S.K. Mishra, J.) applicable to this case as the ratio laid down in the said decision is regarding the rights of an employee, who has been given promotion from the back date, after completion of the departmental proceeding or criminal proceeding. Further more, the Petitioner has not pleaded that during that period he remained unemployed and had no income. However, keeping in view the facts of the case, we are of the view that the Petitioner is entitled to 50% of the back wages with all service benefits from the date of his suspension till the reinstatement minus the period undergone as an under trial prisoner.

11. In the above view of the matter, we hold that the order of dismissal passed by the disciplinary authority, the order of the appellate authority and the order of the revisional authority are unsustainable. Therefore, we quash Annexures 2, 4, 6, 8, 11 and 13 and direct the opposite parties to reinstate the Petitioner in service immediately after receipt of this order and he be paid 50% of his emoluments, i.e. pay and allowances from the date of order of his suspension, i.e., 28.07.2000 minus the suspension/subsistence allowance that has already been received by the Petitioner during the period of suspension.

The writ petition is, therefore, allowed. There will be no order as to the costs keeping in view the peculiar facts of the case.