
(1982) 09 DEL CK 0043

In the Delhi High Court

Case No : Civil Writ Appeal No. 1569 of 1973

Kartar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Citation : (1983) ILR Delhi 446

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : S.A.K. Dhar and O.P. Sharma, for the Appellant;

Judgement

M.L. Jain, J.

(1) The petitioner Kartar Singh was enlisted as a Constable on 15-2-1951 and was confirmed on 13-9-1954. He was promoted as Constable selection grade on three years probation on 1-12-1969. He passed lower school course for promotion to the rank of Head Constable in March, 1962, and was promoted officiating Head Constable on 15-8-1963. He was arrested in the Police agitation and placed under suspension on 15-4-1967 and cases under sections 18811471353 Indian Penal Code , 7/33/32 Criminal Law Amendment Act, 3133166 Police Restriction of Rights Act, section 29, of the Police Act, section 322122 of Police (Incitement to Disaffection) Act, section 7 of the Essential Services Maintenance Order, were instituted against him. But upon tendering written apology, the cases were withdrawn and he was reinstated with effect from 22-12- 1970 by an order of 28-1-1971. The period of suspension from 15-4-1967 to 21-12-1970 was treated as duty for purposes of leave, pension, increment and seniority. But the pay and allowances were restricted to the subsistence and other allowances admissible to him. He was later on confirmed as Head Constable with effect from 15-3-1972. The petitioner filed this writ petition on 31-10-1973 with-the following prayers: (1) that the period from 15-1-1967 to 21-12-1970 be treated as on duty for pay as well and full payment for this period be made and to that extent the impugned order of 28-1-1971 be

modified. (2) that he should be deemed to have been confirmed as Head Constable with effect from 16-8-1965 in terms of Rules 13.18 of Punjab Police Rules. He should be confirmed when his next below junior was confirmed. (3) that he should be promoted and confirmed as Assistant Sub-Inspector with effect from the date when the next below junior was promoted and confirmed. (4) that he should be promoted and confirmed as Sub-Inspector from the date when the next below junior was promoted as Sub-Inspector. (5) that he should be sent for upper school training if it is essential for the petitioner to undergo the said training for bringing his name on the promotion List "E" for promotion to the rank of S.I. in terms of Pp Rule 13.10.

(2) It appears that after the filing of the writ petition by the orders of this Court he was sent for undergoing upper school training course which commenced on 1-4-1978. In other respects the case of the respondents is total opposition which I answer and grant relief in the manner following.

(3) The case is not governed by Fr 53 which provides for payment during suspension. The proper rule applicable is Fr 54 which deals with reinstatement. Fr 54 as it stood in January 1971 provided that when a Government servant who has been suspended, is reinstated, if the authority competent to order the reinstatement is of the opinion that the Government servant has been fully exonerated or that his suspension was wholly unjustified, he shall be given the full pay and allowances to which he would have been entitled had he not been suspended. The sole question, Therefore, for consideration in this case will be whether the petitioner has been fully exonerated or whether the suspension was wholly unjustified in order to entitle him to full pay and allowances. It appears from the impugned order that the criminal cases ended in a withdrawn. It is true that when a police officer indulges into agitation, it may perhaps be difficult to say that his suspension was unjustified. But the withdrawal will amount to full exoneration. If that is so, then the petitioner was entitled to full pay and allowances for the period of suspension. It finds support in the Government of India, Ministry of Finance, O.M. No. Mf 15(8)-E.IV/57, dated 28-3-1959, which states that where a Government servant who is suspended when a proceeding has been taken on a criminal charge but who is not actually detained in custody, e.g. a person released on bail, is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under Fr 54, e.g. in the event of his being acquitted of blame, the case may be dealt with under Fr 54(2). It appears to me that the petitioner shall be considered to have been acquitted of blame upon the withdrawal of the cases and in that event the case will require to be dealt with under Fr 54(2), as it stood in 1971. He shall be given full pay and allowances to which he would be entitled had he not been suspended.

(4) He was promoted as officiating head constable on 15-8-1963. Therefore, in view of Rule 13.18, he shall be deemed to have been confirmed automatically not on 15-3-1972 but at the expiry of two years from 15-8-1963 vide Satpal and

others v. The Delhi Administration, Delhi 1974 (1) S.L.R. 733.

(5) The petitioner has already undergone the training courses. Therefore, he is entitled to promotion as Assistant Sub-Inspector and Sub-Inspector in due course. He should, Therefore, be considered for promotion as Assistant sub inspector from the date his next junior was promoted as Sub-Inspector when his next junior was promoted as Sub-Inspector. If he is not found fit that will be an end of the matter. If he is otherwise found fit, he shall get his pro motions with retrospective effect. The petition stands disposed of accordingly.