
(2012) 08 DEL CK 0089
In the Delhi High Court
Case No : Writ Petition (C) 9021 of 2011

Mahavir Singh	Vs	APPELLANT
UOI and Others		RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Arms Act, 1959 — Section 19(f)
Penal Code, 1860 (IPC) — Section 380, 411, 457

Citation : (2012) 08 DEL CK 0089

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : M.K. Bhardwaj and Ms. Minal Sehgal, for the Appellant; S.M. Arif and Mr. M.R. Junaidi, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the instant petition, the petitioner has made the following prayers:-

- (i) to quash and set aside the order dated 11.11.2011 (P-1).
- (ii) to quash and set aside the order dated 02.09.2011 to the extent the petitioner has not been paid full pay and allowances for the suspension period i.e. from 19.11.1988 till 13.05.2011.
- (iii) To issue writ of mandamus to the respondents for treating the suspension period i.e. from 19.11.1988 till 13.05.2011 of the petitioner as spent on duty and release full pay and allowances with 18% interest.
- (iv) to direct the respondents to treat the suspension period of the petitioner as spent on duty and release all consequential benefits including arrears of pay and promotion to the higher post of Manager and AGM from the date of promotion of juniors and similarly placed persons with all consequential benefits.

The petitioner has joined the respondents as Assistant Grade III (M) on

20.04.1976. Thereafter, the petitioner was allegedly implicated in two criminal cases bearing FIR No. 64/88, P.S. Nangloi, and another bearing FIR No. 103/88, both under Sections 380/457/411 IPC. Since on account of registration of the aforesaid FIRs the petitioner was arrested, he was placed under deemed suspension by the respondents vide order dated 12.01.1989.

2. The petitioner made a representation dated 01.09.1989 for increase in the amount of the subsistence allowance, but the respondents vide order dated 25.09.1990 reduced the same by 25% of the pay of the petitioner.

3. Thereafter, the petitioner was acquitted of the charges levelled against him vide FIR No. 103/88 in the year 2000. The petitioner made a representation dated 27.02.2001 stating that he has been acquitted in the FIR No. 103/88 and his suspension may be revoked immediately so that he can save his family members.

4. The respondents replied that one more case is pending against him vide FIR No. 64/88, therefore, this suspension cannot be revoked.

5. However, the court concerned acquitted the petitioner in the case bearing FIR No. 64/88 vide its order dated 15.03.2011. Thereafter, the petitioner made a representation dated 05.04.2011 seeking revocation of the suspension w.e.f. 13.05.2011.

6. The respondents vide order dated 13.05.2011 passed the following order:-

No. PF/M-299/E. II

Date: 13.05.2011

WHEREAS, an order placing Shri Mahavir Singh, the then Asstt. Grade. I (A/cs), FCI, Hqrs, Under suspension w.e.f. 19.11.1988 was made vide this Office Order of even number dated 12.01.1989.

NOW, THEREFORE, the undersigned in exercise of powers conferred by Clause (C) of Sub-Regulation 5 of Regulation 66 of FCI (Staff) Regulation, 1971 hereby revoke the said Order of Suspension of Sh. Mahavir Singh with immediate effect.

He is now directed to join the duties in FCI, Hqrs, New Delhi.

7. Thereafter, vide order dated 12/18.07.2011, the respondents passed another order as under:-

AND WHEREAS, the said Sh. Mahavir Singh, A.G.I. (A/Cs) has been acquitted from the charged by the court vide judgement dated 15.03.2011 in the court of Additional Chief Metropolitan Magistrate, New Delhi in Case No. 1071/2.

NOW, THEREFORE, the undersigned in exercise of the powers conferred under Regulation 66 (8) (a) of the FCI (Staff) Regulation, 1971, hereby orders that the obscene period of Sh. Mahavir Singh, A.G.I. (A/Cs) w.e.f. 02.05.1988 to till date he joins duty is being regularized by granting him leave of the kind due and his

suspension period to be treated as period spent on duty. He shall be paid fully pay and allowances for the period of his suspension less the subsistence grant, if any, already paid to him and no Conveyance Allowance and Lunch Allowance shall be paid to that period.

8. The petitioner made a foolish representation dated 27.07.2011 by showing his witnesses and tried to suggest the respondents to do the needful in a particular manner, which reads as under:-

The AGM (E. II) Hqurs vide memo No. PF/M 299/E. II dated 12/18.07.2011 (copy at Annex VIII) has granted me different kind of leave including 7867 days E.O.L., the pay of which will not be released. Therefore, the order dated 12/18.07.2011 (Annex. VIII) is defective one. Since in one sentence the competent authority says that "The obsence period is being regularized by granting him leave of the kind due and in the second sentence the competent authority says that "His suspension period to be treated as period spent on duty.

Due to confusing/defective orders, I am suffering mentally as well as financially, whereas provision 66 (8) (a) (b) of FCI Staff regulation is clear on this point.

9. For the convenience, Regulation 66 (8) (a) of the FCI (Staff) Regulation, 1971 is reproduced as under:-

(8) When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee has been dismissed or suspended is reinstated, the disciplinary, appellate or reviewing authority, as the case may be, whose decision shall be final, may grant to him for the period of his absence from duty:

(a) if he is honourably acquitted, the full pay and allowances other than conveyance allowance to which he would have been entitled, if he had not been dismissed or suspended, less the subsistence grant;

10. Instead of clarifying, the respondents withdrew the order of revocation of the suspension vide order dated 11.11.2011 without any notice to the petitioner and without any reasons.

11. Mr. M.K. Bhardwaj, Learned Counsel for the petitioner has submitted that it is very much clear under Regulation 66 (8) (a) of the FCI (Staff) Regulation, 1971, that if a person is acquitted from the criminal case, he shall be entitled to the benefits as mentioned therein. Since in the instant case, the petitioner has been acquitted in the aforementioned two criminal cases, therefore, the order passed for revocation of suspension, wherein the petitioner had been given the due benefits is sustainable.

12. Learned Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case of Brahma Chandra Gupta Vs. Union of India (UOI), , wherein it has been observed as under:-

2. Appellant was working as a permanent Upper Division Clerk in the Defence Accounts Department at the relevant time. It appears that one Nathu Singh was

wanted in a dacoity case. On 14.5.62 around about 4.00 the Investigating Officer received an information that Nathu Singh was present in the premises in possession of the present appellant and this information led to a search of the premises occupied by him. The search and the consequent seizure led to the prosecution of the appellant for two distinct offences, one u/s 19(f) of the Indian Arms Act and another u/s 5 of the Indian Explosive Substances Act. Pending the investigation appellant was suspended from service with effect from May 14, 1962, the order having been passed on May 5, 1962. The order of suspension simultaneously provided that appellant would be entitled to draw subsistence allowance equal to leave salary which he would have drawn had he been on leave on half pay together with admissible dearness allowance. Appellant was tried in the Court of the Magistrate, 1st class Shahjahanpur for the offence u/s 19(f) of the Indian Arms Act and was convicted and sentenced to suffer imprisonment for a period of one and half years as per the judgment dated September 15, 1964. The conviction led to the order dismissing the appellant from service effective from October 31, 1964. Appellant preferred an appeal against his conviction and sentence. The appeal was allowed as per the judgment dated October 31, 1964 and appellant was held not guilty of the offence with which he was charged and he was acquitted. On being acquitted the appellant was reinstated in service effective from September 3, 1965. While ordering reinstatement in service the concerned authority was required to decide how the period of suspension should be treated. The question was to be decided in light of the provision contained in Article 193 of the Civil Service Regulation. The concerned authority divided the period of suspension of the appellant into two parts, the first being from May 14, 1962 to October 31, 1964 when appellant was acquitted and the second being from October 31, 1964 to September 3, 1965 when he was reinstated in service. With regard to the latter part, the concerned authority directed the payment of full salary after giving credit for the suspension allowance that was drawn by him and there is no dispute between the parties about it. The question then remained with regard to the period from May 14, 1962 to October 31, 1964. For this period, the concerned authority was of the opinion that the appellant could not be said to be fully exonerated and, therefore, a direction was given that the appellant should be given 3/4th of his salary for the period of suspension. The consequence was that for the aforementioned period 1/4th of his salary was not paid to the appellant. The appellant filed suit No. 210 of 1968 in the Court of the 2nd Civil Judge, Kanpur against the Union of India contending that as he was never hauled up for departmental enquiry and he was suspended only on the ground that a criminal charge was laid against him and pending the trial of the offence, and therefore Article 193 would not be attracted and accordingly it was not open to the authority concerned to deny him full salary for the period of suspension. Alternatively it was contended that in the circumstances of the case he was deemed to have been fully exonerated and therefore also the order with holding 1/4th of the salary was not sustainable.

6. Keeping in view the facts of the case that the appellant was never hauled up

for departmental enquiry; that he was prosecuted and has been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority has not held that the suspension was wholly justified because 3/4th of the salary is ordered to be paid, we are of the opinion that the approach of the trial court was correct and unassailable. The learned trial Judge on appreciation of facts found that this is a case in which full amount of salary should have been paid to the appellant on his reinstatement for the entire period. We accept that as the correct approach. We accordingly allow this appeal, set aside the judgment of first appellate court as well of the High Court and restore the one of trial Court with this modification that the amount decreed shall be paid with 9% interest p.a. from the date of suit till realisation with costs throughout.

13. On the other hand, Mr. S.M. Arif, Learned Counsel for the respondents has filed counter-affidavit to the instant petition and stated that in earlier occasion also, the petitioner remained in Central Jail Tihar, Delhi from 10.05.1985 to 31.05.1985 and thereafter, in the year 1988, a similar situation occurred when through National daily Newspaper "Hindustan Times" dated 05.05.1985, FCI Management came to know about the involvement of the petitioner, who was absconding from duty without intimation that he was a part of a gang, which had been busted by the team of Crime Branch by arresting three members of "Bawaria Gang" and goods worth Rs. 15,00,000/- were found from them. The petitioner gave an application dated 22.12.1988 for joining the duty intimating therein that he was sick and in police custody in connection with some case from 19.11.1988 to 16.12.1988. On this information, the respondents did not allow the application and placed him under suspension w.e.f. 19.11.1988.

14. Mr. Arif, Learned Counsel for the respondents further submitted that since the petitioner was detained by the police and was in police custody exceeding 48 hours, he was suspended with effect from the date of detention i.e. 19.11.1988 in terms of Sub-Regulation 2 (a) of Regulation 66 of FCI (Staff) Regulation, 1971.

15. He further submitted that finally, on being acquitted in all the cases and on receiving letter from the Deputy Commissioner of Police (Crime & Railways), Delhi, and also on original court orders dated 15.03.2011, petitioner's suspension was revoked by the respondents vide Office Order dated 13.05.2011.

16. It is further submitted that after regularising the leave period duly pre-audited, office orders dated 12.07.2011 and 12/18.07.2011 were issued granting him kind of leave due from 02.05.1988 to till the date of his joining duty and his suspension period to be treated as spent on duty.

17. On representation of the petitioner, wherein he has stated that the above orders were confusing/defective, which led the respondents to re-examine more than twenty years's old case, the matter was reviewed and it was decided to withdraw the above said orders dated 12/18.07.2011 vide order dated

02.11.2011, as Competent Authority has also decided the issue in toto vide its order dated 07/08.06.2011 in accordance with the Rules.

18. Learned Counsel has further submitted that the petitioner remained absent from duty wilfully from 02.05.1988 to 21.12.1988, therefore, the same could not be treated as period spent on duty and the aforesaid period has to be regularized as leave of kind due. For the period from 22.12.1988 i.e. the following day of the joining (on bail) to the date of revocation of suspension i.e. 13.05.2011, the Competent Authority vide Order dated 07/08.06.2011 in exercise of the powers/discretion under Regulation 66 (8) of the FCI (Staff) Regulation, 1971 has decided not to consider the intervening period as spent on duty taking into consideration the circumstances of the case.

19. To sum up his arguments, Learned Counsel for the respondents has submitted that the case of the petitioner was examined on the same analogy, when official was found involved in criminal cases and wilfully absent from duty w.e.f. 20.02.1985 and on joining stated that he was in Tihar Jail from 10.05.1988 to 31.05.1988, his wilful absent period from duty from 02.5.1988 to 21.12.1988 is being treated as unauthorised absence and dies-non period, which is proper and in terms of Sub-Rule (a) of 66 (2) of FCI (Staff) Regulation, 1971.

20. Firstly, the respondents did not hold any departmental inquiry against the petitioner and secondly, he continued under suspension and after acquittal from both the criminal cases, mentioned above, his suspension was revoked as mentioned above by giving him all the benefits and it is mentioned therein that his suspension period be regularized by granting him the leave of kind due and his suspension period to be treated as "period spent on duty". It is further stated that he shall be paid fully pay and allowances for the period of his suspension less the subsistence grant, if any, already paid to him and no Conveyance Allowance and Lunch Allowance shall be paid for that period.

21. The criminal cases against the petitioner have been started in the year 1988 onwards, whereas the respondents have considered his another case, wherein he was earlier acquitted in the year 1985 which is not the subject matter of the present suspension and thereafter keeping his total conduct in view, decided the unauthorised absence from duty as dies-non.

22. Once the authority has taken the decision and if the same was being reversed, at least a notice should have been issued to the petitioner. Rather the petitioner sought clarification from them. But, instead of giving clarification, the orders passed earlier by the respondents have been revoked, which is not proper and sustainable in law.

23. In view of the above discussion and the legal position, the impugned order dated 11.11.2011 is set aside. Hence, the petitioner is entitled to all the benefits as per the order dated 12/18.07.2011 in its letter and spirit. Consequently, he shall also be entitled to all the consequential benefits as per the law.

24. Accordingly, the instant petition is allowed. Since the petitioner is retiring tomorrow, a copy of this order be served dasti to both the counsels appearing on behalf of the parties. No orders as to costs.