

(2014) 12 CAL CK 0101
In the Calcutta High Court

Case No : W.P.S.T. No. 109 of 2013 and CAN No. 8104 of 2013

Maya Rani Das

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 419, 420, 494, 498A

Citation : (2014) 12 CAL CK 0101

Hon'ble Judges : J.K. Biswas, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Amitava Das and Shamba Chakraborty, Advocate for the Appellant;
Joytosh Majumder and Manas Kumar Sadhu, Advocate for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The three petitioners in the WPST under Article 226 of the Constitution of India dated February 5, 2013 are questioning an order of the West Bengal Administrative Tribunal dated September 10, 2012 dismissing an OA No. 748 of 2012 filed by one Kamal Krishna Das.

2. Kamal was a constable in the Kolkata Police Force. His disciplinary authority initiated a disciplinary proceeding against him by issuing a charge memo dated February 7, 2001. The allegation was that he had been unauthorisedly absenting himself from office from December 15, 2000. It was mentioned that he had been granted 164 days EOL and awarded as many as 16 punishments, and that in the final order passed in the proceeding No. 25 dated March 16, 1995 he was given last chance to rectify his conduct.

3. Kamal responded to the charge memo in writing. He clearly wrote that he was pleading guilty. He, however, said that he was ill. The inquiring officer submitted his report dated March 18, 2001 that Kamal had pleaded guilty. He also referred to the testimony of the prosecution witness and recorded that the testimony

proved the charge. The disciplinary authority gave Kamal opportunity of representation and personal hearing. Kamal did not avail himself of the opportunity.

4. Under the circumstances, the disciplinary authority passed the final order dated April 9, 2001 in the proceeding. The authority held Kamal guilty and inflicted the punishment of dismissal from service with effect from April 6, 2001. The authority specifically considered Kamal's past service records revealing as many as 16 punishments and 164 EOLs, and concluded that dismissal was the appropriate punishment.

5. Questioning the final order of the disciplinary authority dated April 9, 2001, Kamal moved the Tribunal by filing an OA No. 652 of 2001. By an order dated August 22, 2001 the Tribunal dismissed the OA on the grounds that Kamal's remedy, if any, was before the departmental appellate authority.

6. Under the circumstances, Kamal filed an appeal to the departmental appellate authority. It is understood that the appellate authority dismissed the appeal by an order dated August 20, 2003. Kamal did not take any further step in the matter. By a letter dated May 20, 2005 the authority asked him to receive his GPF final payment, etc., if he was willing to receive them.

7. In 2012 Kamal filed the OA contending that though a decision of a criminal court dated December 29, 2011 ordering his acquittal in a criminal case had created his employer's obligation to review the punishment imposed by the disciplinary authority and affirmed by the appellate authority; in spite of request for the purpose, his employer did not review the thing, rescind the orders and direct his reinstatement in employment with all benefits.

8. During pendency of the OA Kamal died. The three petitioners applied for their substitution for Kamal; and by the same order dated September 10, 2012 the Tribunal allowed their prayer for substitution.

9. Before the Tribunal it was argued that since Kamal's involvement in the criminal case was one of the charges in the disciplinary proceeding in which the disciplinary authority inflicted the punishment of dismissal from service, his acquittal in the criminal case ordered by the criminal court had entitled him to ask his employer to rescind the punishment order and reinstate him in employment with all benefits.

10. The Tribunal heard the OA ex parte. It found that the OA was hopelessly time-barred; and that neither the delay was explained in the OA nor was there any separate application for condonation of delay. It, however, condoned the delay and dismissed the OA on merits on the grounds that Kamal's involvement in the criminal case had nothing to do with the disciplinary proceeding initiated against him.

11. Mr. Das appearing for the petitioners has submitted as follows. Since the Tribunal condoned the unexplained delay in the absence of any request for

condonation and the respondents have not questioned the order of the Tribunal, now the OA cannot be dismissed on the grounds of limitation. On merits the petitioners have two legal contentions:--(i) there was no law that provided that Kamal's unauthorised absence from office might lead to any major penalty; and (ii) the punishment was grossly disproportionate to the gravity of the misconduct.

12. Mr. Majumder appearing for the State has submitted as follows. Although the respondents have not filed a cross-objection or a petition under Article 226, they are entitled to question the correctness of the Tribunal order on the question of limitation. Kamal having pleaded guilty and having regard to his past service records, the disciplinary authority was justified in inflicting the penalty of dismissal from service. The criminal case had nothing to do with Kamal's disciplinary proceeding.

13. Kamal filed the OA praying for an order quashing the charge memo dated February 7, 2001; the final order of the disciplinary authority dated April 9, 2001; and the order of the appellate authority dated August 20, 2003; and he filed the OA for these purposes in 2012. His case seems to be that a decision of the criminal court dated December 29, 2011 ordering his acquittal in a criminal case was the proximate cause of his filing the OA.

14. As to limitation, in para 5 of the OA Kamal stated as follows:--

"5) Limitation:

The applicant herein further declared that the instant application is filed within the period of limitation as has been prescribed under section 21 of the Administrative Tribunal Act, 1985."

15. Kamal did not file the OA accepting a situation that the cause of action entitling him to file the OA was barred by limitation. The Tribunal, however, was of the clear view that the OA was hopelessly time-barred. It was not the petitioners' case before the Tribunal that the OA was not barred by limitation. Hence the question was whether the Tribunal was competent to condone the delay and entertain the OA.

16. We are unable to accept the argument that the respondents not appearing when the Tribunal heard the OA and passed the impugned order dismissing the OA are not entitled to question the correctness of the Tribunal order on the limitation issue.

17. First, we are hearing the WPST at the admission stage; and hence the question of the respondents' not filing a cross-objection within the permissible period does not arise. Secondly, in our opinion, the principles in the provisions of O.41, r. 22 CPC should apply to such a case as this. Hence we are of the opinion that the respondents are entitled to question the correctness of the Tribunal order on the limitation issue, in support of their case that the order dismissing the OA should be maintained.

18. It is evident from the charge memo and the statement of imputations that there was no whisper about Kamal's involvement in any criminal case. The case he was referring to had been instituted against him as back as 1994 under ss. 498A/ 494/ 419/ 420 IPC. Hence his acquittal ordered by the criminal court in 2011 could not provide him any right whatsoever to ask his employer or his disciplinary authority to rescind the punishment and reinstate him in employment.

19. The charge memo, the final order of the disciplinary authority and the order of the appellate authority, - these all happened during the period from 2001 to 2003 and Kamal filed the OA only in 2012. In view of the provisions of the Administrative Tribunals Act, 1985, s. 21, he could file the OA against the order of the appellate authority within one year from August 20, 2003, when the appellate authority had made the order.

20. In view of the provisions of sub-s. (3) of s. 21 of the Act, the Tribunal could condone the delay of around nine years only if Kamal had explained the delay and the explanation constituted a sufficient cause for not making the application within one year from August 20, 2003.

21. Kamal did not use a single word for explaining the delay; nor did he make any application for condonation of delay. Even advocate arguing the OA on behalf of the substituted petitioners did not make a prayer for condonation of the delay. The Tribunal could not examine the question of condonation of its own accord and thus assume a jurisdiction which it did not have in view of the provisions of s. 21. It ought to have held that the OA was liable to be dismissed on the grounds of limitation.

22. On merits as well, we are of the opinion that Kamal had no case. It is to be noted that the two points raised before us were not argued before the Tribunal, where the only point argued was that since Kamal's involvement in the criminal case was one of the charges, his acquittal ordered by the criminal court entitled him to reinstatement in employment with all benefits.

23. There is absolutely no merit in the submission that no rule had provided that Kamal's unauthorised absence from office might make him suffer a major penalty. Regulation 8 of ch. 19 of the Police Regulations, Calcutta, 1968 clearly provided that the competent authority would be empowered to punish a member of the Force unauthorisedly absentsing himself from office.

24. As to the proportionality of the punishment, once again, we see no merit in the argument made before us. In the charge memo itself it was mentioned that Kamal was in the habit of absentsing himself from office, and that he had been granted 164 days EOL and awarded 16 punishments on earlier occasions. In the statement of imputations it was mentioned that he had started his career on July 1, 1977.

25. Both the disciplinary authority and the appellate authority (the order of the appellate has been produced before us by the respondents) specifically examined

the question of proportionality of the punishment of dismissal; and referring to Kamal's past service records the authorities formed the opinion that dismissal from service would be the appropriate punishment. We find no reason to say that the punishment was shockingly disproportionate to the gravity of the charge.

26. For these reasons, we affirm the Tribunal order dismissing the OA and dismiss the WPST. The CAN by the petitioners for appropriate order shall be treated as disposed of. No costs. Certified xerox.