
(2009) 05 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 4824 of 2006

Md. Baharul Islam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Citation : (2010) 5 GLR 254 : (2009) 4 GLT 804

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A. Rashid, for the Appellant; R. Borah, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. A. Rashid, learned Counsel for the petitioner as well as Mrs. R. Borah, learned CGSC.

2. By means of this writ petition, the petitioner, a member of the Central Police Reserve Force (CRPF), has prayed for a direction to the respondents to pay the arrear salary for the period from 20.2.1995 to 22.4.2005, alternatively for the period from 12.1.2001 to 22.4.2005. The petitioner was dismissed from service by order dated 20.2.1995 making a challenge to which he had filed a writ petition registered and numbered as C.R. No. 4289/95. The writ petition was allowed by judgment and order dated 12.1.2001 to the extent of setting aside and quashing the order of dismissal dated 20.2.1995. There was no consequential order for reinstatement in service and payment of arrear salary.

3. Being aggrieved by the aforesaid judgment and order, the Union Government preferred writ appeal No. 127/2001 and the same was disposed of by order dated 30.9.2004. Be it stated here that the order of dismissal was set aside not on merit, but on technical ground of violation of the principles of natural justice, In the appeal the order passed by the learned Single Judge was not interfered with on the, same very ground of violation of the principles of natural justice in conducting the departmental proceeding against the petitioner pursuant to which

ho was dismissed from service.

4. Since a considerable period of time had elapsed by the time the writ appeal was disposed of, the Division Bench in its order dated 30.9.2004 directed the respondents to constitute a medical board to determine the physical eligibility of the petitioner for inclusion into the force at that belated stage. It was provided that if the medical board so constituted found the petitioner physically fit to shoulder the responsibilities of a member of the combatant force, he would be reinstated in service. Alternatively, the respondents were directed to explore the possibilities to accommodate the petitioner in any other non-combatant job.

5. Pursuant to the aforesaid order passed by the Division Bench, the respondent authority passed Annexure III office order dated 16.4.2005 reinstating the petitioner in service. On perusal of the order, it appears that as per the direction of the Division Bench, a medical board was constituted to examine the medical fitness of the petitioner. The medical board categorized the petitioner in the particular category. Pursuant to such medical examination, the authority in its order dated 16.4.2005 recording the antecedent facts ordered for reinstatement of the petitioner in service. As per the order, the period of suspension w.e.f. 1.8.1991 to 19.2.1995 was to be treated as such. It was stated that the petitioner would not get anything more than what he had earned during the period of suspension.

6. As regards the intervening period from the date of dismissal to the date of reinstatement in service, the order provided that the period would not be treated as spent on duty and that the petitioner would not be entitled to any pay and allowances as per FR 54. It was also indicated in the order that the charge sheet having not been set aside by the court, appropriate decision to conduct de novo enquiry against the petitioner would be taken.

7. According to the petitioner, he having been reinstated in service pursuant to the aforesaid orders of this Court followed by the order of reinstatement dated 16.4.2003 passed by the CRPF authority, he is entitled to receive arrear salary from the date of dismissal to the date of reinstatement in service or at least from the date of judgment and order dated 12.1.2001 passed by the learned Single Judge.

8. Mr. A. Rashid, learned Counsel for the petitioner placing reliance on the provisions of RF 54(A) and the decision of the Apex Court reported in Union of India (UOI) and Others Vs. P.K. Kuttappan, submits that having regard to the facts and circumstances involved in the case, the petitioner is entitled to receive the arrear salary for the period in question. On the other hand, Mrs. R. Borah, learned C.G.S.C. referring to the order of reinstatement as well as the stand of the respondents in their affidavit, submits that having regard to the nature of the orders passed by this Court and the provision of the FR 54, the petitioner is not entitled to receive any arrear salary.

9. When the order of dismissal dated 20.2.1995 was set aside by the learned

Single Judge by judgment and order dated 12.1.2007, no direction was issued entitling the petitioner to receive the arrear salary for the intervening period. Rather, it was indicated that the writ petition was allowed to the "extent indicated" which was to the effect that the order of dismissal dated 20.2.1995 would stand set aside and quashed.

10. After the aforesaid order, the respondents preferred writ appeal being WA No. 127/2001. Although the Division Bench did not interfere with the order passed by the learned Single Judge, but made provision for medical examination of the petitioner to find out his suitability to continue in combatant service. It was also provided that if the medical board constituted as per the direction did not find the petitioner suitable to shoulder the responsibilities as a member of the combatant force, the respondents would explore the possibility to accommodate him in any other non-combatant job. Thus, the Division Bench also made provision for reinstatement of the petitioner in service conditionally, and no direction was issued to pay the arrear salary to the petitioner.

11. It was pursuant to the aforesaid order passed by the Division Bench, the respondents authority constituted the medical board which examined the petitioner. It was only upon such examination of the petitioner regarding his medical capacity to continue in service, he was reinstated in service by Annexure 3 order dated 16.4.2005 with clear stipulation that he will not be entitled to any pay and allowance for the intervening period. In the writ petition, this order dated 16.4.2005 is also not under challenge.

12. The petitioner after accepting the appointment offered to him by the aforesaid order dated 16.4.2005 filed the writ petition making the aforesaid prayer for arrear salary. The learned Single Judge as well as the Division Bench having not provided any back wages to the petitioner in the earlier round of litigation, I am of the opinion that the petitioner by initiating another round of litigation cannot pray for any direction to the respondents to pay him arrear salary. As indicated above, the order dated 16.4.2005 by which the petitioner was reinstated in service with the aforesaid stipulation is also not under challenge.

13. FR 54(A) on which Mr. Rashid, learned Counsel for the petitioner has placed reliance, deals with the position where dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law. It makes provisions for passing appropriate order regarding entitlement of pay and allowance for the intervening period. FR 54 also makes similar provision. FR 54 provides that in the event of reinstatement of a Government employee, the authority competent to order reinstatement shall pass specific order regarding pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension. As indicated above, the order dated 16.4.2005 also speaks of the decision of starting de novo proceeding against the petitioner.

14. The aforesaid provision will have to be applied taking into account the aforesaid factual aspect of the matter. As the learned Single Judge as well as the Division Bench passed the aforesaid orders making no provision for payment of arrear salary to the petitioner, this Court entertaining the second writ petition filed by the petitioner cannot issue any direction to the respondents to pay the arrear salary to the petitioner.

15. As has been held by the Apex Court in the case of *State Bank of India v. Ram Chandra Deubey* (2001) 1 SCC 73, if the prayer is made for a particular relief and the same is not mentioned in the judgment and order, such a prayer shall be deemed to have been rejected by the court. The Division Bench also did not interfere with the order passed by the learned Single Judge, but provided for constitution of medical board to examine the physical fitness of the petitioner to continue in combatant service. It was also provided that in the event of not finding the petitioner suitable for combatant service, the respondents may explore the possibility of accommodating the petitioner in any other non-combatant job.

16. In view of such conditional reinstatement of the petitioner in service, the petitioner by initiating a second round of litigation cannot claim payment of arrear salary. He having accepted the order of reinstatement dated 16.4.2005 with the conditions imposed therein without any iota of protest, cannot how be allowed to turn round the same so as to agitate that he is entitled to receive back wages irrespective of the said order. As indicated above, the order is also not under challenge.

17. In *P.K. Kuttappan* (supra) on which the learned Counsel for the petitioner has placed reliance, the Apex Court provided for payment of 50% of the back wages. The matter was pertaining to labour law. The SLP was filed on 23.6.2005 on which notice was issued and there was no stay order operating. Noticing the particular feature of the case, it was provided that the respondent involved in the said case would be entitled to reinstatement from the particular date with salary and other perks. Same is not the situation in the present case. The petitioner was reinstated in service pursuant to the aforesaid conditional order passed by the Division Bench. Needless to say that ratio of any decision will have to be understood and applied taking into account the factual aspects of the each case. Thus, the aforesaid case is of no help to the case of the petitioner.

18. For all the foregoing reasons, I do not find any merit in this writ petition and accordingly it is dismissed.