
(2014) 08 SIK CK 0006
In the Sikkim High Court
Case No : W.P. (C). No. 45 of 2013

Milan Kumar Diyali

APPELLANT

Vs

State of Sikkim

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 365

Citation : (2014) 08 SIK CK 0006

Hon'ble Judges : Narendra Kumar Jain, C.J

Bench : Single Bench

Advocate : Zangpo Sherpa and Dewen Sharma Luitel, Advocate for the Appellant; S.K. Chettri, Asstt. Government Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Narendra Kumar Jain, C.J.—Heard learned counsel for the parties.

2. The petitioner has filed this writ petition on 19.11.2013 challenging his order of dismissal from service dated 12.07.2002. He has also challenged an order dated 14.10.2011, whereby his representation dated 01.08.2011 to reconsider his order of dismissal dated 12.07.2002, was dismissed. The petitioner has also questioned the order dated 27.06.2013, whereby his another representation dated 30.09.2012 filed on 18.11.2012 to reinstate him in service has been dismissed.

3. Briefly stated, the facts of the case are that the petitioner, vide order dated 18.12.1999, (Annexure P-1), was suspended under Rule 10 of the Sikkim Police Force (Disciplinary and Appeal) Rules, 1989 (for short, "the Rules of 1989") soon after his arrest in Gyalshing P.S. Case No. 76(12)99 dated 12.12.1999. Thereafter, respondents decided to hold departmental enquiry against the petitioner and appointed an Enquiry Officer. The statement of articles of charges framed against petitioner, was served upon him vide Memorandum dated

23.05.2000, (Annexure P-3). The articles of charges Nos. 1, 2 and 3 framed, are as under:-

"ARTICLE-1

That ASI, Milan Kumar Diyali made over the custody of his service sidearm to one Simon Bishwakarma, r/o. Pradhan Nagar, Siliguri in an intoxicated state and the aforesaid Simon Bishwakarma fled with the service revolver.

ASI Milan Kumar Diyali failed to report the loss of his service revolver which was subsequently recovered by the Crime Branch in connection with Gyalshing P.S. Case No. 76(12)99 u/s. 365 IPC subsequently converted to 302 IPC and handed over to the CID/CB.

ARTICLE-2

That in connection with Gyalshing P.S. Case No. 76(12)99 a search was conducted in the room of ASI Milan Kumar Diyali at Yuksom and 5 nos. of empty.38 cases along with 4 nos. live cartridges were recovered.

ASI Milan Kumar Diayali had discharged his revolver and failed to report the same to the competent authority for make an entry in the General Diary for record or in justification of his actions.

ARTICLE-3

The following controlled substances were also found in the room without any plausible explanation or reason.

- i. 145 gms. Ganja
- ii. 127 nos. of empty 100 ml. Phensedyle bottles.
- iii. Driving License of one Bidhan Tamang, r/o. Pradhan Nagar, Siliguri, DL/No.: WBF 3305 B 225.
- iv. 07 nos. of Oxygen Gas Cylinders.
- v. One gas pipe and blow torch set.

No record of the seizure of articles were found or case reported in the G.D. that the O.P. staff were aware of."

4. Thereafter, enquiry was conducted as per Rules. The statements of the departmental witnesses etc. were recorded. Documentary evidence was also produced. The other procedure as per rule was also followed. After conclusion of the departmental enquiry, a finding was recorded by Enquiry Officer, holding that charges against petitioner are proved. The disciplinary authority agreed with the finding of the Enquiry Officer and consequently, dismissed the petitioner from the service, vide Office Order dated 12.07.2002, (Annexure P-9).

5. It is an admitted fact between the parties that dismissal order dated

12.07.2002 was not challenged by petitioner by way of an appeal, provided under sub-rule (4) of Rule 11 of the Rules of 1989 within a period of 45 days. The said order of dismissal has been challenged by way of this writ petition, which has been preferred on 19.11.2013, almost after more than 11 years.

6. The submission of learned counsel for the petitioner is that he has been acquitted in criminal case by the Hon''ble Apex Court vide order dated 02.02.2011 and thereafter he submitted a representation dated 01.08.2011 to reinstate him, but his representation was rejected on 14.10.2011. He, thereafter, gave another representation dated 30.09.2012, on 18.11.2012 to the Hon''ble Chief Minister, which was forwarded to the Department, but the same was also rejected on 27.06.2013, and soon thereafter, the writ petition was filed, therefore, there is no delay in filing the writ petition. He also submitted that he was not afforded with proper opportunity to cross-examine the departmental witnesses, etc. and there is a violation of principles of natural justice. Therefore, impugned order of dismissal passed in the year 2002 be set aside.

7. Learned Government counsel opposed the writ petition. He submitted that as per Rule 11(4) of the Rules of 1989, a period of 45 days is prescribed for filing an appeal, but petitioner failed to avail the said statutory remedy of appeal for challenging the impugned order of dismissal. He also submitted that even if there is no period of limitation prescribed for filing the writ petition, the same can be dismissed on the ground of delay and laches. He also submitted that enquiry was conducted as per rules. The petitioner was afforded full opportunity. There is no violation of principle of natural justice. He, therefore, submitted that there is no merit in the writ petition and the same be dismissed on the ground of delay and laches and also on merits.

8. I have considered the submissions of learned counsel for both the parties. The facts are not in dispute that the impugned order of dismissal was passed way back on 12.07.2002. The petitioner did not prefer an appeal provided under Rule 11 of the Rules of 1989. The present writ petition, challenging the dismissal order passed in 2002 along with orders of dismissing his representations in 2011 and 2013, has been filed on 19.11.2013. The writ petition has been filed after a delay of more than 11 years and 4 months.

9. So far as acquittal of petitioner by Hon''ble Supreme Court is concerned, it is relevant to mention that dismissal order of petitioner is not based upon an order of conviction. The petitioner''s criminal case was decided by trial Court, much after the conclusion of the departmental enquiry and passing of dismissal order against the petitioner. The petitioner was acquitted by the trial Court, but on an appeal preferred by State, he was convicted by the High Court. However, he was given a benefit of doubt and was acquitted by the Hon''ble Apex Court. From the order of Apex Court, it is clear that the petitioner was given a benefit of doubt, while setting aside the order of High Court.

10. From the charges framed against petitioner and the findings thereon, it is

clear that the charges were of serious nature. The petitioner did not challenge the initiation and holding of enquiry in time, till conclusion of the enquiry. He did not raise any grievance against the Enquiry Officer that he has not afforded him even an opportunity to cross-examine the departmental witnesses or there is any illegality of any nature whatsoever, during enquiry. The finding of the Enquiry Officer was not challenged by him. The departmental enquiry was initiated separately. There was no need to wait for decision in criminal case for challenging the illegality in holding the enquiry, if any, and to challenge the order of dismissal. The dismissal order was challenged by him, by filing representations in the year 2011 and 2013, much after the expiry of about 9 and 11 years. The first representation of the petitioner was dismissed on 14.10.2011. The same was not challenged and again he filed another representation dated 30.09.2012 on 18.11.2012. It is the settled law that filing of repeated representation will not extend the period of limitation. So far as present case is concerned, the petitioner did not prefer statutory appeal provided under Rule 11 of the Rules of 1989. The representations were filed without any provision of law. The present writ petition has been filed after a delay of about 11 years and 4 months from the date of passing of the order of dismissal against him.

11. In these circumstances, I find no force in the submissions of learned counsel for the petitioner. The writ petition deserves to be dismissed on the ground of delay and laches of about 11 years and 4 months in filing the writ petition and the same is hereby dismissed. No costs.