

(2016) 11 AP CK 0018
In the Andhra Pradesh High Court
Case No : Writ Petition No.1442 of 2016

Mohd. Ashfaq Ahmed Khan

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 8 (1)(c)
Fundamental Rules — Rule 54(4), Rule 54-B (3)

Citation : (2017) 1 ALT 310

Hon'ble Judges : Sri. Sanjay Kumar and Sri. M. Seetharama Murthi, JJ.

Bench : Division Bench

Advocate : None, for the Respondent No. 4; Government Pleader for Services (Telangana), for the Respondent Nos. 1 to 3 & 5; Sri J. Sudheer, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri. Sanjay Kumar, J. - Long and tortuous may it be, the history preceding this case warrants recount in some detail.

2. The petitioner is a retired police officer. He entered uniformed service as a constable in the year 1976 and after due promotions, he became a Circle Inspector of Police in the year 1999. At that stage, in the year 2003, he was embroiled in a case of national import relating to sale of fake stamps. This led to criminal and disciplinary proceedings being instituted against him. Originally, Crime No.116 of 1999 was registered on the file of Begum Bazaar Police Station, Hyderabad, on 05.08.1999. This case was transferred to the CID on 17.12.1999. At that point of time, the petitioner was not implicated. However, in the course of investigation, stocks of counterfeit stamps were found in the possession of one Ahmed Habeeb Syed @ Raiees Khan at Hyderabad. In this context, the petitioner was alleged to have paid a sum of Rs.5,00,000/- on behalf of Syed Ahmed Habeeb Syed @ Raiees Khan to an investigating officer, the Assistant Police

Inspector, Bund Garden Police Station, Maharashtra State, who was complicit in the offence.

3. In view of his involvement in the criminal case, wherein he was added as an accused, the petitioner was placed under suspension on 23.09.2003. Almost three years thereafter, aggrieved by his continued suspension, the petitioner filed O.A.No.1144 of 2006 before the Andhra Pradesh Administrative Tribunal, Hyderabad (hereinafter, "the Tribunal"), which was disposed of by order dated 27.02.2006 requiring the Government to review his suspension in the light of applicable Government orders. He was however continued under suspension even thereafter, vide G.O.Ms.No.711 dated 18.04.2006. This G.O. was challenged by him in O.A.No.3436 of 2006 before the Tribunal. The O.A. was disposed of on 08.03.2007 requiring the Government to reinstate the petitioner in service. Challenging this direction, the State filed W.P.No.15378 of 2007 before this Court. This writ petition was disposed of on 20.07.2007 setting aside the order passed by the Tribunal but requiring the State to conclude the disciplinary proceedings against the petitioner within four months.

4. It was only after passing of this order that the State issued charge memo dated 31.12.2007. However, no steps were taken even thereafter to conclude the disciplinary proceedings in terms of the time stipulation fixed by this Court.

5. It may be noted that the petitioner was added as A18 in C.C.No.2 of 2004 and R.C.No.4 of 2006 on the file of the Special Judge for CBI Cases, Hyderabad. The charges against the petitioner arose under the A.P. Control of Organized Crime Act, 2001, and the Prevention of Corruption Act, 1988. However, the A.P. Control of Organized Crime Act, 2001, did not remain on the statute book due to expiry of its life, as stipulated therein. Only the charge relatable to the Prevention of Corruption Act, 1988, therefore survived. The petitioner filed Criminal Petition No.891 of 2007 before this Court under Section 482 CrPC to quash the said proceedings. The criminal petition was allowed on 09.07.2007 taking note of the fact that the confessional statement of a co-accused, admissible under the A.P. Control of Organized Crime Act, 2001, could not be looked into after expiry of the said enactment and in the absence of such statement, there was no material against the petitioner. Following its earlier judgment in Criminal Petition No.5032 of 2006, this Court therefore allowed the case and quashed the proceedings against the petitioner.

6. The petitioner was then reinstated in service on 15.05.2008 pursuant to G.O.Rt.No.867, Home (SC.A) Department, dated 08.05.2008. Despite his reinstatement, the petitioner was not granted any promotion owing to pendency of the disciplinary proceedings. He thereupon filed O.A.Nos.2114 of 2008 and 988 of 2009 laying a challenge to the charge memo dated 31.12.2007 and seeking promotion to the post of Deputy Superintendent of Police respectively. These O.As. were disposed of by the Tribunal by common order dated 29.01.2011. Therein, the Tribunal took note of the fact that the criminal proceedings against the petitioner were quashed as long back as in the year

2007 and that there was enormous delay on the part of the State in finalizing the disciplinary proceedings. The Tribunal therefore directed that the said disciplinary proceedings should be completed within two months and in the event no final orders were passed within the time stipulated, the disciplinary proceedings were deemed to have been dropped. The Tribunal further directed that in the event the petitioner stood exonerated in the disciplinary proceedings or if they were dropped due to the deeming clause, he would be entitled to consideration for promotion as a Deputy Superintendent of Police on par with his juniors. The State thereafter filed M.A.No.1140 of 2011 in O.A.No.2114 of 2008 seeking extension of time to complete the disciplinary proceedings. This request was denied by the Tribunal vide order dated 06.06.2011. Aggrieved thereby, the State filed W.P.No.19844 of 2011 before this Court challenging the order dated 29.01.2011 passed by the Tribunal in O.A.No.2114 of 2008 and the order dated 06.06.2011 passed in M.A.No.1140 of 2011 filed in the said O.A for extension of time. This writ petition was disposed of on 28.07.2011, directing the State to complete the departmental enquiry pending against the petitioner within four weeks from the date of receipt of a copy of the order. This Court made it clear that if the departmental enquiry was not completed within the time stipulated, the entire departmental proceedings against the petitioner were deemed to have been dropped/lapsed.

7. The enquiry proceedings were thereafter completed and enquiry report dated 11.08.2011 was submitted by the enquiring authority to the disciplinary authority. A copy of the report was furnished to the petitioner and, under notice dated 13.08.2011, he was asked to submit his representation. The petitioner submitted his response on 22.08.2011. It was, however, only in October, 2013 that the State finally closed the disciplinary proceedings against the petitioner by issuing G.O.Rt.No.1923, Home (SC.A) Department, dated 05.10.2013.

8. Therein, referring to the charge that the petitioner had given a bribe to a police officer of the State of Maharashtra in order to help one of the accused in Crime No.135 of 2002 of Hyderabad City Police, the Government opined that the conclusion of the enquiry officer in his report that the charge against the petitioner was proved was without basis or cogent/adequate evidence. The Government therefore dropped further action against the petitioner but ordered that the period of his suspension should be treated as "not on duty". This was communicated to the petitioner under separate order dated 11.10.2013, enclosing a copy of the G.O. Aggrieved thereby, the petitioner filed O.A.No.7508 of 2013 before the Tribunal challenging that part of G.O.Rt.No.1923 dated 05.10.2013 and seeking a direction to the authorities to treat the whole period of his suspension as "on duty" with all benefits, such as promotion to the posts of Deputy Superintendent of Police and Additional Superintendent of Police on par with his immediate juniors. In this context, he also challenged the Memo dated 28.08.2013 of the Commissioner of Police, Hyderabad City, refusing to recommend his name for inclusion in the adhoc panel of Inspectors of Police (Civil) fit for promotion as Deputy Superintendents of Police (Civil) for the year

2012-13. He also sought pay fixation, increments till his retirement, and consequential fixation of pension, with all arrears along with interest and costs.

9. Before institution of this O.A., the petitioner had filed O.A.No.9897 of 2012 assailing the action of the authorities in not finalizing the disciplinary proceedings pending against him and keeping the same under cold storage for no reason while denying him promotion to the posts of Deputy Superintendent of Police and Additional Superintendent of Police and sought a consequential direction to promote him to the said posts, with effect from the date his immediate junior was promoted, with all consequential benefits without reference to the charge memo dated 31.12.2007.

10. O.A.Nos.9897 of 2012 and 7508 of 2013 were dismissed by the Tribunal under common order dated 10.12.2015.

11. Aggrieved by the said common order in so far as it pertains to O.A.No.7508 of 2013, the petitioner is before this Court by way of the present writ petition. He challenges G.O.Rt.No.1923 dated 05.10.2013 to the extent that it treats his period of suspension as "not on duty" and seeks a consequential direction to the authorities to treat the whole period of his suspension as "on duty" with all consequential benefits, such as promotion to the posts of Deputy Superintendent of Police, Additional Superintendent of Police and Superintendent of Police on par with his immediate juniors. He also seeks benefits such as pay fixation, increments till his retirement and consequential fixation of pension with all arrears, interest and costs.

12. Be it noted that the petitioner attained the age of superannuation on 31.09.2013 and retired as a Circle Inspector. It is however relevant to note that after institution of the subject O.As before the Tribunal, the petitioner was granted promotions by the Government with retrospective effect. The petitioner was promoted as a Deputy Superintendent of Police (Civil) with effect from 01.06.2002 and his name was shown at the appropriate position in the final combined seniority notified under G.O.Ms.No.108, Home (Ser.I) Department, dated 23.06.2014. He was further promoted as an Additional Superintendent of Police with effect from 01.10.2008 and his name was indicated in the provisional seniority list of Additional Superintendents of Police (Civil) notified under G.O.Ms.No.112, Home (Ser-I) Department, dated 14.07.2014. Again, he was promoted as a Superintendent of Police (Non-cadre) with effect from 01.08.2012 under G.O.Ms.Nos.124 and 125 dated 28.07.2014. In the light of the aforesaid developments, the plea of the petitioner for such promotions stands settled and does not call for resolution now.

13. Perusal of the common order under challenge, in so far as it relates to O.A.No.7508 of 2013, reflects that the Tribunal relied upon Fundamental Rule 54-B(3) and opined that the petitioner had not been given a clean chit, be it in the criminal proceedings or the disciplinary proceedings, and it could not therefore be said that treating the period of his suspension as "not on duty" was not

justified. The petitioner was accordingly denied relief.

14. Sri J.Sudheer, learned counsel for the petitioner, would contend that once the criminal and the disciplinary proceedings stood nullified in their entirety, the petitioner ought not to be penalized for no fault of his. Learned counsel would point out that the Government chose to "drop further action" against the petitioner as the finding recorded against him by the enquiry officer was without basis or cogent/adequate evidence. In that view of the matter, he would submit that there is no justification to treat the period of suspension undergone by him as "not on duty". He would further submit that the Tribunal completely misunderstood the scope and content of Fundamental Rule 54-B(3).

15. The Assistant Secretary, Home Department, Government of Telangana, filed a counter-affidavit. According to him, despite the finding of the enquiry officer that the charge leveled against the petitioner was proved, the Government took into account his long and clean past record and dropped further action while treating the period of suspension undergone by him as "not on duty". He stated that the disciplinary proceedings were dropped by taking a lenient view though the charge was held proved against the petitioner. He therefore justified treating the period of his suspension as "not on duty" on the ground that there was no explicit exoneration from the charge and as his suspension was not unjustified.

16. Adopting the tone and tenor of the counter-affidavit, the learned Government Pleader for Services (Telangana) contended that at the time the petitioner was placed under suspension, the disciplinary proceedings had not been initiated and it was only owing to his involvement in the criminal case that he was suspended under Rule 8(1)(c) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, "the Rules of 1991"). He would further submit that the criminal proceedings against the petitioner were quashed only in July, 2007, and the Government directed his reinstatement in service in May, 2008. He would therefore state that the period of suspension undergone by the petitioner is relatable to pendency of the criminal case and that dropping of the disciplinary proceedings did not render such suspension without justification. He would also state that acquittal of the petitioner in the criminal case was based on a technical ground and was not a clean acquittal.

17. In reply, Sri J.Sudheer, learned counsel, would again assert that neither the criminal case nor the disciplinary proceedings resulted in an adverse finding against the petitioner. He would point out that no notice was given to the petitioner by the Government that, despite dropping the disciplinary proceedings, it proposed to treat the period of his suspension as "not on duty" and that the same had stigmatic connotations, which amounted to levy of a punishment in spite of the disciplinary proceedings being dropped.

18. Fundamental Rule 54-B deals with the issue as to whether the period of suspension undergone by a Government servant, who is reinstated or would have been reinstated but for his retirement while under suspension, should be

treated as period spent on duty.

19. Fundamental Rule 54-B, to the extent relevant, is extracted hereunder:

"F.R. 54-B. (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement while under suspension; the authority competent to order reinstatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to this regard is served in him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay [only such [amount (not being the whole) of such pay and allowances as it may determine].

Note:- For the purposes of sub-rule (2) and (3) above full pay includes special pay attached to the post which the Government servant was holding immediately before the suspension.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

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20. Fundamental Rule 54-B(3) postulates that where the authority is of the opinion that the suspension was wholly unjustified, the Government servant should be given full pay and allowances to which he would have been entitled,

had he not been suspended. In the present case, the proviso to this Rule has no application as the delay in completion of the proceedings was completely attributable to the authorities and it was the petitioner who, time and again, tried to bring pressure upon them to complete the same expeditiously. Sub-rule (4) makes it clear that when a case falls under sub-rule (3), the period of suspension should be treated as on duty for all purposes.

21. In *Greater Hyderabad Municipal Corporation v. M.Prabhakar Rao* (2011) 8 SCC 155, the Supreme Court considered Fundamental Rule 54-B(3) and concluded to the effect that discipline in administration should not be undermined and public interest should not be jeopardized but it would not be possible to lay down an inflexible rule that in every case where an employee was exonerated in disciplinary/criminal proceedings, he is entitled to full salary during the period of suspension and that the decision may have to be taken on the individual facts and circumstances of each case.

22. The question before us presently is whether the suspension of the petitioner from 2003 to 2008 can be said to be justified.

23. Rule 8(1)(c) of the Rules of 1991 states to the effect that a member of a service may be placed under suspension from service where a case against him in respect of any criminal offence is under investigation, inquiry or trial. In the present case, when the petitioner was placed under suspension on 23.09.2003, the only basis to do so was his involvement in the criminal case. Though the exact details thereof are not forthcoming, it is evident that his alleged involvement in the said case came to light only during 2003 when he was added as A18 therein. His efforts to get the suspension set aside ultimately came to naught, be it before the Tribunal or this Court. It was only on 09.07.2007 that the criminal proceedings against him were quashed. The basis for his suspension in relation to the said criminal case therefore stood wiped out on that date. Despite the same, it was only on 08.05.2008, that the State issued an order directing his reinstatement. No explanation is forthcoming for the delay in effecting reinstatement of the petitioner when his suspension was only on the basis of the said criminal proceedings. Initiation of disciplinary proceedings against the petitioner was only in the year 2007. It is however not the case of the State that as the charge memo was issued on 31.12.2007, a conscious decision was taken by the authorities to continue the petitioner under suspension and that the said decision was revoked only on 08.05.2008.

24. Thus, the petitioner's suspension was relatable only to the criminal case and even after initiation of the disciplinary proceedings, the same situation continued. The action of the State in continuing his suspension after 09.07.2007, till his reinstatement on 15.05.2008, was therefore not justified. Ergo, he is fully covered by Fundamental Rule 54-B(3) so far as this period is concerned and is entitled to not only his full pay and allowances for this period but also to have same treated as "on duty" for all purposes.

25. The question that remains is as to the status of his suspension period from 23.09.2003 upto 09.07.2007.

26. Such suspension cannot be said to be wholly unjustified as it was traceable to Rule 8(1)(c) of the Rules of 1991. It may be noticed that the allegation against the petitioner, a police officer, was that he had bribed another police officer to help an accused in a criminal case. On the face of it, this was a serious allegation and was made in the context of the sale of counterfeit stamps on a large scale across the country. The nature of the allegation and the seriousness of the case therefore warranted stringent steps being taken against all who stood accused of having a role in this unholy imbroglio. Suspension of the petitioner pending the said criminal proceedings was therefore sanctioned by Rule 8(1)(c) of the Rules of 1991.

27. However, the only basis to support the charge against the petitioner in the criminal proceedings was the confessional statement of a co-accused and this Court quashed the criminal proceedings against the petitioner on the ground that the said statement did not warrant merit after repeal of the A.P. Control of Organized Crime Act, 2001. The criminal proceedings therefore came to naught. Once the criminal proceedings against the petitioner stood wiped out, the question of his not securing a "clean acquittal" did not arise. The case against him, in its very inception, stood extinguished. This being the status of the criminal case, the disciplinary proceedings culminated in an enquiry report holding that the charge against the petitioner was proved, but the State in its wisdom chose to disagree and unequivocally stated that the finding of the enquiry officer that the charge against the petitioner was proved was without basis or cogent/adequate evidence. The State further made it clear that it "dropped further action" against him. Be it noted, there is no mention in G.O.Rt.No.1923 dated 05.10.2013 of any lenience being shown to the petitioner or that the period of his suspension was to be treated as "not on duty" owing to the fact that there was no "clean exoneration from the charge".

28. In the light of the law laid down in *Mohinder Singh Gill v. The Chief Election Commissioner* AIR 1978 SC 851 : 1978 SCR (3) 272, it is not open to the State to now supplement reasons by way of a counter-affidavit which are not forthcoming from the order itself. It may also be noticed that disciplinary proceedings against the petitioner were completely dropped and therefore, the question of a "clean chit not being given to him in the disciplinary proceedings" did not arise. Therefore, the justification for treating the period of suspension undergone by the petitioner as "not on duty" cannot be traced to the disciplinary proceedings.

29. The only justification which can sustain the said suspension is the pendency of the criminal case which was ultimately quashed. However, it is to be noticed that the State itself granted him promotions with retrospective effect taking note of the fact that he had a long and unblemished record of service and as the criminal proceedings against him stood quashed. These factors therefore

warranted consideration while dealing with his suspension period under Fundamental Rule 54-B(3). In effect, though the suspension of the petitioner from 23.09.2003 to 09.07.2007 cannot be said to be wholly unjustified in the light of Rule 8(1)(c) of the Rules of 1991, this Court is of the opinion that denying him all benefits for the said period, given the peculiar facts of the case, resulted in grave injustice. The petitioner was already made to suffer sufficiently for his misfortune in getting implicated in the criminal case as he had to 2 retire from service as a mere Circle Inspector. The very fact that the State chose to grant him retrospective promotions thereafter speaks in his favour and against the stand now sought to be taken that only lenience was shown to him.

30. Reliance is placed by the learned Government Pleader on Krishnakant Raghunath Bibhavnekar v. State Of Maharashtra (1997) 3 SCC 636, wherein the Supreme Court observed that it would be deleterious to the maintenance of discipline if a person who was suspended on valid considerations is given full back wages as matter of course on his acquittal. This case however dealt with a fact situation where the acquittal in the criminal case was based on insufficient evidence, unlike the present case, and would therefore have to be viewed accordingly.

31. In Sharda Singh v. State Of Uttar Pradesh (2009) 11 SCC 683, the Supreme Court observed that a Government servant after exoneration of the charges framed against him cannot be deprived of his pay for the period of suspension only on the ground that he had not rendered any work during such suspension period. The case on hand is however distinguishable as we are of the opinion that the petitioner's suspension from service cannot be said to be wholly unjustified.

32. Given the totality of the aforestated circumstances, this Court is of the opinion that as the petitioner did not render actual service to the State from 23.09.2003 to 09.07.2007, albeit through no fault of his, he would not be entitled to actual monetary benefits for the said period. This would suffice to give effect to the finding of this Court that his suspension was not wholly without justification and to avoid mulcting the exchequer with this burden. However, the said period shall be treated as "on duty" for all other purposes, viz., reckoning of notional benefits, including increments, and pensionary benefits, duly keeping in mind the retrospective promotion given to him with effect from 01.06.2002. The petitioner is held entitled to full pay and allowances for the suspension period from 09.07.2007 to 15.05.2008 and the said period shall be treated as "on duty" for all purposes.

33. The writ petition is therefore allowed to the extent indicated above. In consequence, the order dated 10.12.2015 passed by the Andhra Pradesh Administrative Tribunal in O.A.No.7508 of 2013 shall stand set aside. Pending miscellaneous petitions shall stand closed. No order as to costs.