
(2013) 05 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 4779 of 2012

Mohd. Razak

APPELLANT

Vs

Union of India, DIGP and Commandant CRPF

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 320, 326, 34

Citation : (2013) 05 GAU CK 0031

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : S. Chamaria, Mr. M. Phukan, Mrs. N. Chandak and Mr. S. Chanda, for the Appellant; J.M.A. Choudhury, CGC in Writ Petition (C) No. 4779/2012, Mrs. R. Borah, CGC in Writ Petition (C) No. 4780/2012 and Mr. J. Deka, CGC in Writ Petition (C) No. 4781/2012, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Issue raised in the three writ petitions being the same, those were heard together and are being disposed of by this common order. At the outset, a brief narration of the facts may be necessary.

WP(C) No. 4779/2012

2. Petitioner was serving as a Constable in the Central Reserve Police Force (CRPF). At the relevant point of time, the Battalion in which he was serving, was deployed in the State of Manipur.

3. An incident of firing between insurgents and CRPF personnel took place in RIMS Hospital campus at Imphal on 07-01-1995. As a result of this firing incident, there were nine civilian casualties. Thereafter, order dated 08-01-1995 was passed by the Commandant of the 79 Battalion, CRPF placing the petitioner under suspension.

4. Following a departmental enquiry, the disciplinary authority passed order dated 16-11-1997 imposing the penalty of reduction in rank for a period of six

months without cumulative effect on the petitioner. Petitioner was however re-insisted in service.

5. It may be mentioned that in connection with the same incident, a criminal case was also registered under sections 302 /507 /320 /34 IPC. Petitioner was arrested on 04-06-2001 and remained in custody for a period exceeding 48 hours. Accordingly, order dated 30-06-2001 was passed by the Commandant treating the petitioner under deemed suspension w.e.f. 04-06-2001 in terms of Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for short CCS (CCA) Rules, 1965. CBI after completion of investigation filed charge-sheet against the petitioner and others in the Court of Chief Judicial Magistrate, Imphal, Manipur. On a transfer petition filed by the Commandant, the case was transferred to the Court of Chief Judicial Magistrate, Kamrup at Guwahati, who thereafter committed the case to the Court of Sessions Judge. On committal, the case was registered as Sessions Case No. 199(K)/2001.

6. Subsequently, the petitioner was released on bail. But as noticed above, since he was in custody for more than 48 hours, order dated 30-06-2001 was passed by the Commandant declaring that petitioner was under deemed suspension w.e.f. the date of his arrest.

7. Thereafter, the Commandant passed order dated 09-10-2003 revoking the suspension of the petitioner.

8. Trial of the sessions case ended in the conviction of the petitioner under sections 302 /307 /326 /34 IPC vide the judgment and order dated 17-03-2008 passed by the learned Additional Sessions Judge (FTC) No. 4, Kamrup, Guwahati. Petitioner was sentenced to undergo imprisonment for life with fine of Rs. 5000/- and in default of payment of fine, to undergo rigorous imprisonment for another period of six months for the conviction u/s 302 IPC. He was also sentenced separately for his conviction under the other sections, all the sentences were directed to run concurrently.

9. Following his conviction, petitioner was taken into custody and while he was lodged in the Central Jail, Guwahati, the Commandant through the Jail Superintendent enquired as to whether the petitioner was willing to sign on his pension papers.

10. Against his conviction and sentence, petitioner filed appeal alongwith three others, who were also convicted and sentenced like him by the same judgment, before this Court, which was registered as Criminal Appeal No. 63/2008. This Court by judgment and order dated 23-05-2012 allowed the appeal and set aside the conviction and sentence. All the accused persons were held not guilty of the charges brought against them and they were acquitted of the same.

11. Petitioner has stated that after his acquittal by the High Court he was released from jail. Respondents were intimated about his acquittal but no decision was taken for his reinstatement in service. Aggrieved, he has filed the

writ petition seeking a direction to the respondents for his reinstatement in service.

WP(C) No. 4780/2012

12. Petitioner in this case was also one of the CRPF constables involved in the firing incident on 07-01-1995.

13. He was placed under suspension. Thereafter, a departmental enquiry was conducted against him. By order dated 30-04-1996 issued by the Commandant of the 119 Battalion CRPF, penalty of revision in rank was imposed on the petitioner.

14. As in the previous writ petition, in this case also, petitioner was convicted in the criminal trial under sections 302 /307 /326 /34 IPC vide judgment and order dated 17-03-2008 passed by the Additional Sessions Judge (FTC) No. 4, Kamrup, Guwahati and sentenced like the petitioner of W.P. (C) No. 4779/2012.

15. Following his conviction and sentence, order dated 14-09-2008 was passed by the Commandant in exercise of powers conferred under Rule 19(i) and (ii) of CCS (CCA) Rules, 1965 read with Rule 27 (CC) (i) and (ii) of CRPF Rules, 1955 dismissing the petitioner from service with immediate effect.

16. As noticed above, in Criminal Appeal No. 63/2008 where petitioner was also one of the appellants, this Court had set aside the conviction and sentence and held him not guilty of the charges framed against him.

17. Petitioner submitted a representation dated 25-08-2012 before the Commandant informing him about his acquittal in appeal and requested him for a copy of the dismissal order since he did not receive any copy of the same. Receiving no response, petitioner has filed the present writ petition seeking a direction for his reinstatement in service.

WP(C) No. 4781/2012

18. Facts in this case are identical with the facts of WP(C) No. 4780/2012.

STAND OF THE RESPONDENTS

19. Respondents have filed identical affidavits in all the three cases. It is stated that Md. Razak, petitioner in WP(C) No. 4779/2012, was compulsorily retired from service w.e.f. 05-06-2008 following his conviction. Petitioner was asked to complete his documentation for pension but he declined on the ground that his appeal was pending before the High Court. On receipt of the High Court order dated 23-05-2012, the matter was forwarded to the higher authority. Higher authority has informed that if the State has not filed further appeal against the High Court order and if the person concerned files an appeal against the order of compulsory retirement, the same can be disposed of in accordance with the service rule read with FR 54. Since the matter is sub-judice before the High Court, action will be taken only after decision of the High Court.

20. In the affidavits filed in the other two cases, respondents have stated that penalty of dismissal from service was imposed on the petitioners following their conviction in the criminal trial. It is contended that petitioners should have exhausted the departmental channel by filing appeal under the CRPF Rules, 1955 before filing writ petition. It is averred that copies of the dismissal order were communicated to the petitioners.

SUBMISSIONS

21. Mr. S. Chamaria, learned Counsel for the petitioners submits that the three petitioners were initially subjected to disciplinary proceeding following which they were punished, though retained in service. However, following their conviction in the criminal trial, petitioners were ousted from service, compulsory retirement in one case and dismissal in the other two cases. The basis of the above punishment was the conviction order of the Criminal Court. However, in appeal, a Division Bench of this Court set aside the conviction and sentence and gave the petitioners a clean acquittal. Since the very foundation of the dismissal or compulsorily retired order was removed, there would be no justification to continue with such orders of penalty. Consequently, petitioners are entitled to reinstatement. He, therefore, submits that this Court may pass appropriate direction in this regard.

22. Submissions of learned Counsel for the petitioners have been resisted by Mr. J.M.A. Choudhury, Mrs. R. Borah and Mr. J. Deka, learned Central Government Counsel appearing for the respondents in the three cases. They have referred to various provisions of the CRPF Act, 1949, CRPF Rules, 1955 and CCS (CCA) Rules, 1965 to contend that after their acquittal, petitioners should have filed appeal before the departmental authorities as provided under the statute. Without availing the alternative remedy, petitioners have sought to invoke the writ jurisdiction of this Court. According to them, this is not a case where alternative remedy can be avoided. They have referred to and relied on a decision of the Hon'ble Supreme Court in the case of Union of India (UOI) Vs. V.K. Bhaskar, .

DISCUSSIONS AND CONCLUSION

23. Submissions made have been considered.

24. As already noticed, facts are not in dispute. The three petitioners had already faced disciplinary action following departmental proceedings. After their conviction in the criminal trial, their services have been terminated, order of compulsory retirement in one case and orders of dismissal in the other two cases.

25. All the three petitioners had already suffered punishments departmentally following departmental action. By virtue of their conviction in the criminal trial, final penalty orders as indicted above were passed. Thus, the order of compulsory retirement and the orders of dismissal were based entirely on their conviction in the criminal trial. The very basis of their above punishments have

now been removed since this Court in criminal appeal had set aside the conviction and sentence of the petitioners and had given them a clean acquittal. Therefore, in the opinion of the Court, the above punishments though might have been justified when imposed, would now no longer be justified following the acquittal of the petitioners by the High Court. Therefore, petitioners have made out a case for reinstatement in service.

26. Learned Central Government Counsel have argued that both under the CRPF Rules as well as under the CCS (CCA) Rules, 1965 there is provision for appeal but without preferring appeal, the petitioners have rushed to the Court. They have referred to the decision of the Hon"ble Supreme Court in the case of VK Bhaskar (supra) to contend that in the event of acquittal in appeal, the employee can move for review of the dismissal order. They have submitted that respondent No. 2 i.e. the DIGP, CRPF Group Centre, Khanapara, Guwahati is the appellate authority and if appeals are filed by the petitioners, those will be given due consideration in accordance with law.

27. It is true that in view of the changed situation following their acquittal by the High Court, the petitioners ought to have approached the departmental authority first. But it is also a settled proposition that the bar of alternative remedy is not an absolute bar without any exception. The writ petitions are pending before this Court since October, 2012. At this stage, asking the petitioners to file appeal or revision before the departmental authority, in the contextual facts of the case, may only be a mechanical exercise. The respondents are aware of the situation and in their affidavits they have stated that since the matter is before the Court, action will be taken only after the decision by the Court. However, the Court is of the opinion that since the decision of reinstatement is an administrative one, it should be taken by the administrative authority.

28. Accordingly, respondent No. 2 is directed to take on board the cases of the three petitioners for reinstatement and pass appropriate order(s) thereon in accordance with law, keeping in view the observations made above, within a period of three months from the date of receipt of a certified copy of this order. All the writ petitions are accordingly allowed.