
(2010) 08 CAL CK 0106
In the Calcutta High Court
Case No : W.P.C.T. No. 1109 of 2010

R. Sasidharan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 128 FLR 53

Hon'ble Judges : Subhro Kamal Mukherjee, J; Dipankar Datta, J

Bench : Division Bench

Advocate : Anjili Nag, for the Appellant; Santosh Kumar Mandal, for the Respondent

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India against judgment and order dated February 10, 2010 passed by the Central Administrative Tribunal in O.A. No. 121 /AN/2008.

2. By the order impugned the Tribunal set aside the order of punishment of removal from service, but directed that notional benefits would be extended to this Petitioner in respect of his period of absence from the date of his removal till the date of reinstatement although the said period would be treated as period on duty.

3. The writ Petitioner is a driver of light vehicles in the police department of Andaman and Nicobar Administration. He was placed under suspension in contemplation of a disciplinary proceeding. A charge-sheet was issued on June 23, 2003. It was alleged that the writ Petitioner being a driver of the police vehicle bearing registration No. AN-367 tried to escape with the said vehicle as the vehicle was carrying illegal consignment of Indian made foreign liquor bottles; the writ Petitioner did not listen to the lawful direction of the Wharf Superintendent. The attempt to escape was foiled by the said Wharf Superintendent by closing the main gate of jetty. Subsequently, on checking gunny bags/card board boxes were found from the said vehicle containing 137

bottles of Indian made foreign liquor. It was alleged that the motive was to take the said illegal consignment to some unknown destination to acquire unlawful gain.

4. The inquiry officer enquired into the charges framed against the writ Petitioner and submitted his report holding, *inter alia*, that the charge framed against this writ Petitioner was proved. The disciplinary authority accepted the report of the inquiry officer and imposed the penalty of removal from service. The appeal preferred by the Petitioner before the appellate authority proved abortive inasmuch as the Director General of Police affirmed the order passed by the Disciplinary Authority.

5. The writ Petitioner approached the Central Administrative Tribunal. The Central Administrative Tribunal noted that the enquiry officer himself observed that "in view of the points discussed above, any part of the lone charge framed against CO is not proved" while in the conclusion it was held that the charge was proved. Thus, the findings of the enquiry officer were inconsistent and arbitrary. The Tribunal held that involvement of this writ Petitioner was doubtful. Therefore, the extreme punishment of removal from service was too harsh and unwarranted under the circumstances of the case. The order of punishment of removal from service was set aside and the Administration was directed to reinstate the Petitioner in service forthwith. However, it was directed that the period of absence of the writ Petitioner from the date of removal till the date of reinstatement be treated as duty, but notional benefit would be extended to him. The disciplinary authority was directed to decide as to how the period of suspension would be treated.

6. Being aggrieved the writ Petitioner has come up with this application under Article 226 of the Constitution of India before this Court.

7. In the meantime, however, the Deputy Inspector General of Police by order dated May 21, 2010 reinstated the Petitioner in service with immediate effect.

8. Mrs. Anjili Nag, learned advocate appearing for the Petitioner submits that the writ Petitioner is entitled to full back wages as he has been reinstated in service, Mrs. Nag draws our attention to Rule 54-A(3) of the Fundamental Rules and submits that according to such Rules the writ Petitioner is entitled to get full pay and allowances for the period between the date of removal from service and the date of reinstatement including the period of suspension preceding such removal as a matter of right.

9. Mr. Santosh Kumar Mandal, learned advocate appearing for the Administration, however, submits that this writ application is not maintainable as the writ Petitioner has filed this writ petition after he was reinstated in service. In other words, Mr. Mandal submits that once the writ Petitioner has accepted the reinstatement in terms of the order of the Central Administrative Tribunal, he is not entitled to challenge the decision of the Central Administrative Tribunal.

10. We are not impressed with the submission of Mrs. Nag that the writ Petitioner is entitled, as a matter of course, full pay and allowances for the aforementioned period. There is a complete answer to the submission of Mrs. Nag in 54-A (1), which runs as under:

F.R. 54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of law and such Government Servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of Sub-rule (2) or (3) subject to the directions, if any, of the Court.

11. The removal of the Government Servant was set aside by the Central Administrative Tribunal and he was reinstated without holding any further enquiry. Therefore, the Government Servant should be paid pay and allowances in accordance with the provisions of Sub-rules (2) and (3) of Rule 54-A subject to the directions, if any, of the Court (Emphasis supplied).

12. We are equally not impressed with the submission of Mr. Mandal that as the writ Petitioner is moving this writ petition after his reinstatement, the writ petition is not maintainable. We feel that he is entitled to ventilate his lawful grievance before this Court. There is no indication that by accepting reinstatement, he abandoned his right to challenge the order of the Tribunal. The writ Petitioner is only a driver and he was without any income for some time because of his removal from service. We are to consider each case according to its background; social and economic background of the writ Petitioner persuades us to consider his grievance on merits.

In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, the Supreme Court of India holds that although direction to pay full back wages on a declaration that the order of termination, was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation, which prevailed many years ago, namely, when the workman was retrenched. No precise formula can be laid as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon facts and circumstances of each case. It would, however, not be correct to contend that it is automatic.

13. In Metropolitan Transport Corporation v. V. Venkatesan 2009 (122) FLR 939 (SC). the Apex Court observed that in the seventies and eighties, the directions for reinstatement and the payment of full back wages on dismissal order having been found invalid would ordinarily follow as a matter of course. But, there is change in the legal approach now. In the recent past there has been a shift in the legal position and in a long line of cases, the Supreme Court of India has

consistently taken the view that the relief of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is held to be in contravention of the prescribed procedure.

In *C.N. Malta v. State of J&K* 2009 (122) FLR 939 (SC). the Supreme Court of India holds that the legal position is fairly settled by a catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is inbuilt in such exercise. The Court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case.

Supreme Court of India in the case of *Roop Singh Negi Vs. Punjab National Bank and Others*, relied on by *Mrs. Nag*, directed reinstatement with full back wages as the employee concerned was dismissed from service without proper enquiry and the report of the inquiring officer, the disciplinary authority and the appellate authority were not sustainable.

14. It appears to us there is no rule of thumb that in each and every case where it is declared that the imposition of dismissal or removal from service is illegal, the employee concerned is entitled to full back wages as a matter of course. The Tribunal directed reinstatement giving the writ Petitioner a benefit of doubt and the extreme punishment of removal from service was too harsh and not warranted under the circumstances of the case. While directing payment of back wages several factors need to be noted. It is a well settled position in law that when the finding of removal is not lawful, there is no automatic entitlement of full back wages. Merely because the Administration did not challenge the order of reinstatement that does not lead to the conclusion that it accepted any illegality in the departmental proceeding. Nevertheless, in the absence of definite conclusion and when the order of removal was unsustainable, the Tribunal was unjustified in not granting any back wages to the writ Petitioner at all.

15. In our view, since the writ Petitioner has, already, been reinstated in service and considering the fact that there was neither any plea nor any evidence or proof to show that the writ Petitioner was in gainful employment, the order of the Tribunal may be modified to the extent that the writ Petitioner shall be entitled to one-third of his pay and allowances.

16. Therefore, this writ petition is allowed in part. The order impugned passed by the Central Administrative Tribunal stands modified. We direct that the writ Petitioner shall, also, be entitled to one-third of his back pay and allowances from the date of removal till the date of reinstatement in service. The Administration is directed to calculate the arrears and release such payment to the writ Petitioner within a month from the date of communication of this order.

We make no order as to costs.

Dipankar Datta, J.

I agree.