

(2023) 08 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 8139, 8141 Of 2010

Ram Niwas

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Constitution of India, 1950 — Article 311(2), 311(2)(b)
Prevention of Corruption Act, 1988 — Section 7, 8, 13

Citation : (2023) 08 DEL CK 0005

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Saahila Lamba, Rishabh Sahu, Sameer Sharma, Chiranjiv Kumar, Mukesh Sachdeva

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. The two petitioners in their aforementioned respective petitions under Article 226 of the Constitution of India have challenged the validity of Order of Suspension dated 07.09.1998 and the Order of removal from service dated 08.09.1998 and the subsequent Orders dated 18.10.2004 and the Order dated 17.10.2005 dismissing the Appeal and the Review petition.

2. The petitioner Ram Niwas joined as Constable in the Railway Protection Force (hereinafter referred to as "R.P.F") in the year 1985, and petitioner Raj Singh (in the Writ Petition no. 8141/2010) was inducted in RPF on 28.11.1975. Both the petitioners were performing their duties at Tuglakabad railway station since May-June, 1997.

3. On 06.09.1998, the two petitioners along with Prem Chand were arrested in case FIR No. 35/98 under Section 7, 8 and 13 of the Prevention of Corruption Act, 1988 (PC Act) by Anti-Corruption Branch, Delhi. Ram Niwas and Raj Singh were both put under suspension on 07.09.1998. Departmental Enquiry was

conducted by Inspector, R.P.F Post Hazrat Nizamuddin, Delhi. The petitioners have claimed that no impartial Departmental Enquiry was conducted and it was not in accordance with the Rules and Regulations. The petitioners were not given any opportunity to defend themselves. Also, no evidence came against the petitioners in the Departmental Enquiry despite which penalty of removal from service was awarded under the signatures of Divisional Security Commissioner, R.P.F, Northern Railway, Panchukian Road, New Delhi vide Order dated 06.11.2003.

4. The Appeal was dismissed by the Appellate Authority on 18.10.2004. The Review Petition dated 07.06.2005 was also dismissed vide Order dated 17.10.2005.

5. The petitioners have stated that after the completion of investigations in the criminal case, Charge Sheet was filed in the Court of Special Judge, Tis Hazari Courts, Delhi against them. The trial was conducted and both the petitioners were acquitted by the learned Special Judge vide final Judgement dated 29.05.2010.

6. The petitioners gave their individual written requests dated 26.07.2010 to the Department for reinstatement since all the allegations against them were shown to be false and they had been acquitted. The respondents, however, failed to respond to the request of the petitioners. The petitioners thus filed the present writ petitions seeking reinstatement and consequential benefits.

7. The respondent Nos. 1 to 3 in their counter affidavit have contended that the acquittal of the petitioners in the criminal trial has no bearing on the outcome of the findings of the Disciplinary Enquiry where the charges against the petitioner were duly proved. Mere acquittal by the learned trial court would not ipso facto render the enquiry null and void conducted by the respondent.

8. The respondents have further contended that the petitioners have belatedly sought to invoke the extraordinary jurisdiction of this Court and it suffers from delay and laches too. Insofar as the contention of no satisfactory grounds have been established for dismissal, the respondents have explained that on 06.09.1998 at about 12.55 hrs, the Anti Corruption Branch of Delhi acting on a complaint, raided house no. C-4, Block No. 69 in Railway Colony, Tuglakabad, which was allotted to Sh. Raj Singh, Constable RPF. At the time of raid, Sh. Ram Niwas Constable RPF and another outsider namely Sh. Prem Chander were found present inside the Quarter. The police recovered 16 currency notes of Rs. 500/- denomination, i.e. Rs. 8,000/- offered as bribe by Shri Nafis Ahmed to the petitioner. Consequently, a case under Prevention for Corruption Act, 1988 was registered against them. It is claimed that the petitioners are not entitled to reinstatement.

9. The petitioners in their rejoinder has challenged the counter affidavit filed on behalf of the respondents on the ground that designation and other necessary particulars of the person swearing the affidavit have not been specified. It is also

claimed that the affidavit has not been filed by a person legally competent to swear the affidavit and the same cannot be taken into consideration as it has no legal value.

10. It is further asserted that the High Court is in superintendence of subordinate courts, has powers to entertain the writ petitions and the Order of acquittal has bearing on the proof of allegations against the petitioners. The Disciplinary Enquiry was not conducted properly, in accordance with the mandatory Rules and Regulations. The subject matter before the Disciplinary Enquiry and the Trial Court was the same and the findings of the Trial Court that no offence was committed by the petitioners, has a direct bearing on the reinstatement of the petitioners.

11. Submissions heard.

12. The admitted facts are that the petitioners who were working as Constables in RPF, Tuglakabad were arrested on 06.09.1998 under the Prevention for Corruption Act, 1988 for accepting bribery. They were put under suspension on 07.09.1998. On the basis of the Report of the Departmental Enquiry they were dismissed from service on 06.11.2003. It is also not in dispute that the petitioner faced trial in the criminal case under the Prevention for Corruption Act, 1988 in which they were finally acquitted by the Special Judge, Anti Corruption Branch on 29.05.2010. The petitioners vide their written requests dated 26.07.2010 sought reinstatement which was not heeded to by the respondents.

13. The main ground on which reinstatement has been sought is that once the learned Trial Court after recording the evidence, has acquitted the petitioners, it has a direct bearing on the Departmental Enquiry as the charges of corruption were not proved. The dismissal was solely on the ground of corruption which has been disproved in the criminal case and thus, the petitioners are entitled to reinstatement.

14. In the case of State of Haryana Vs. Rattan Singh, (1977) 2 SCC 491, the three Judge Bench of the Apex Court set out the principles which govern the disciplinary proceedings. It was observed that in a domestic enquiry, the strict and sophisticated Rules of evidence under the Evidence Act, 1872, may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. A word of caution was added that Departmental authorities must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiates the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. The simple point is was there some evidence or was there no evidence not in the sense of the technical rules governing regular court

proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. So long as there is some evidence which has relevance to the charges levelled, the order of Departmental Enquiry cannot be invalidated.

15. Similar observations have been made by the Apex court in the case of State of Rajasthan vs. B.K Meena (1996) 6 SCC 417, Krishnakali Tea Estate vs. Akhil Bharatiya Chah Mazdoor Sangh (2004) 8 SCC 200, Ajit Kumar Nag Vs. Indian Oil Corporation Limited (2005) 7 SCC 764 and CISF vs. Abrar Ali (2017) 4 SCC 507.

16. In Karnataka Power Transmission Corporation Limited vs. C. Nagaraju, (2019) 10 SCC 367, it was observed by the Apex Court that acquittal by a criminal court would not debar an employer from exercising the power to conduct Departmental proceedings in accordance with the Rules and Regulations. The two proceedings have different objectives and the standard of proof in the two proceedings is different.

17. In the recent judgement of State of Karnataka and Another vs. Umesh (2022) 6 SCC 563, after making reference to the afore-quoted judgments, the Hon'ble Supreme Court observed that the court in exercise of judicial review, does not act as an appellate authority over the findings of Disciplinary Authority and does not reappreciate evidence on the basis of which findings of misconduct have been arrived at in the course of Departmental Enquiry. The exercise of judicial review is restricted to determine whether: (i) the rules of natural justice have been complied with, (ii) findings of misconduct are based on some evidence, (iii) statutory rules governing the conduct of disciplinary Enquiry were followed, (iv) findings of disciplinary authority do not suffer from perversity and (v) penalty imposed is not disproportionate to the proved misconduct. In the said case, while considering the impact of acquittal in a criminal case on the findings of the Disciplinary Enquiry, it was observed that the principles and rules of evidence which govern a disciplinary Enquiry are distinct from those which apply to a criminal trial. In a criminal offence, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. Till such burden is discharged, the accused is entitled to a presumption of innocence. In contradistinction, the purpose of disciplinary proceedings by an employer is to enquire into the allegation of misconduct by an employee which results in violation of the Service Rules governing the relationship of employment. The charge in disciplinary proceedings is established on preponderance of probabilities. The acquittal of an accused in a criminal case does not debar an employer from proceeding in the exercise of disciplinary jurisdiction.

18. Similar facts in hand had also been considered by the Apex court in the case Director General of Police, Railway Protection Force and Ors. vs. Rajendra Kumar Dubey (2021) 14 SCC 735, wherein after the acquittal of the petitioner, the High

Court re-appreciated the entire gambit of evidence and reduced penalty imposed by the Department Authority. It was observed that when there are no allegations of malafide against the Disciplinary Authority or lack of competence in passing the order of compulsory retirement, or of a breach of the principles of natural justice, or that the findings were based on no evidence, then the courts shall refrain from interfering with the findings of the disciplinary authority. The High Court is not justified in re-appraising the entire evidence threadbare like a court of first Appeal and substitute the Order imposing the penalty by a lesser punishment without any justifiable reason. It was held that the Order of the High Court, reducing the penalty imposed in the Departmental Enquiry by the High Court, was unwarranted.

19. In the case of Divisional Controller, Karnataka State Road Transport Corporation vs. M.G. Vittal Rao (2012) 1 SCC 442, the Supreme Court held that the question of considering of reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the Criminal Court in view of the provisions of the Article 311(2)(b) [sic Article 311(2) second proviso (a)] of the Constitution of India, or analogous provisions of the statutory Rules applicable to the given case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal case would be of no help to the petitioner. This is so as the standard of proof required in Domestic Enquiry and in a criminal case, is altogether different. The acquittal of delinquent in a criminal case cannot by itself result in reinstatement in service of the petitioner who had been punished in the Departmental proceedings with a dismissal.

20. In the present case, the punishment of Dismissal from service was not based on the outcome of the Criminal case but on the independent findings in the Departmental Proceedings. Moreover, while acquitting these two petitioners, absolute clean chit was not given to them while exonerating from any act of corruption but have been given a benefit of doubt as prosecution was unable to discharge the burden of proving its case.

21. Though the petitioners have claimed that the Departmental Enquiry suffered from various illegalities but they have failed to point out the illegalities in the Departmental Enquiry. The petitioners cannot claim the benefit of reinstatement on the sole ground of acquittal.

22. Thus, we find no merit in present petitions which are hereby dismissed.

23. The pending application, if any, is also dismissed.