
(2014) 01 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9728-CAT of 2000

Ramesh Chander

APPELLANT

Vs

The Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 409

Citation : (2014) 01 P&H CK 0058

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Sanjeev Bansal, Advocates for the Appellant

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner suffered a conviction by the trial court vide judgment dated 16.12.1987 under Section 409 IPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of R.300/-. The petitioner, at the relevant time, was working as EDPM (Extra Departmental Sub Post Master), Varpal Sub Post Office and was alleged to have extracted currency notes amounting to Rs. 3,300/- from insured parcels.

2. The conviction was set aside by the Appellate Court on 05.10.1988, remanding the case for re-trial. However, once again the trial court convicted the petitioner and this time, sentenced him to undergo rigorous imprisonment for six months with a fine of Rs. 300/-. The petitioner once again preferred an appeal, which was accepted on 04.10.1993 setting aside the conviction and sentence.

3. Shri R.K. Gupta, Assistant Post Officer, Amritsar, who earlier lodged FIR No. 350 of 1983, lodged another FIR No. 236 of 1986, but in this case also, the petitioner was acquitted, this time by the trial court itself on 23.05.1994.

4. The petitioner claims to have, thereafter, submitted a first representation dated 19.09.1994, seeking reinstatement on the basis that no departmental proceedings had ever been held against him. This representation dated 19.09.1994 was followed with a reminder dated 03.04.1995, at which stage, he

received information that the case of the petitioner was under consideration, the result of which would be intimated after receipt of information from the Circle Office. Further reminder elicited no response, including a legal notice. A request to inspect records so as to file appropriate petition in the Court also met the same fate and thus, Original Application bearing O.A. No. 747-PB-1996 was filed seeking reinstatement with consequential benefits.

5. In the written statement filed by the respondents, it was disclosed to the petitioner that he had been removed from service vide memo dated 11.02.1988, consequent to his conviction in the criminal case, which order had not been assailed. During the period the petitioner was out of service, the post, on which the petitioner was working, was abolished by way of down-gradation vide memo dated 25.03.1985. This was so as the order of removal dated 11.02.1988 had been made effective from the date of conviction i.e. 24.12.1984. It was also stated that the respondents were trying to look for a post of ED in Amritsar Division and as and when the post becomes available in the Amritsar Division, the petitioner would be taken back in service.

6. The aforesaid OA was disposed of by order dated 19.03.1997 of the Central Administrative Tribunal, Chandigarh Bench, recording the statement of learned counsel for the respondents that the adjustment of the petitioner would take place within six months. On this statement being made, learned counsel for the petitioner stated (as recorded in the order) that the petitioner would be satisfied with this relief, in addition to the request for protection of pay as revised from time to time. The respondents were directed to take this into consideration and pay the petitioner emoluments, in accordance with rules.

7. The petitioner was appointed to the post of EDR (Extra Departmental Runner) w.e.f. 08.05.1997. The petitioner applied for promotion to the cadre of Village Postman, on a circular being issued by the respondents for the said post on 06.08.1997. The petitioner was, however, denied the opportunity for consideration on the ground that he did not complete the pre-requisite of five years of regular service.

8. The petitioner thus filed O.A. No. 1127-PB-1998 seeking directions against the respondents to grant continuity of service from the date he was put out of service till he was reinstated. This petition was contested by the respondents on the plea that the petitioner was actually reappointed in service on 08.05.1997 and thus was not entitled to any further relief, except protection of pay.

9. The Tribunal granted the relief to the petitioner regarding fixation of pay in terms of order dated 30.05.2000, as revised from time to time, but did not accept the prayer for continuity of service. The order of the Central Administrative Tribunal is predicated on the reasoning that since the post, on which the petitioner was working, was abolished, the subsequent appointment of the petitioner was not of reinstatement, but a fresh appointment.

10. We have heard learned counsel for the parties.

11. Counsel for the petitioner submits that there was, in fact, no departmental proceedings against the petitioner, neither any finding was reached against him, but the termination was based solely on the ground of his conviction in the criminal case. Thus, the petitioner is entitled to not only protection of his pay, but all the consequential benefits, except the salary for the period he has not worked. In this behalf, learned counsel has relied on a judgment of Hon''ble Supreme Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , which while recognizing that the scope of departmental proceedings and criminal proceedings is different and they can continue independently observed that once the proceedings are based on the same set of facts, sought to be proved through the same witnesses and the criminal court has acquitted the accused by rejecting the prosecution story, the finding recorded against the employee in ex-parte disciplinary proceedings could not be sustained. In Sulekh Chand and Salek Chand Vs. Commissioner of Police and Others, , it was held that where both criminal and departmental proceedings are based on same charge and are resulted in acquittal on merits of the criminal case, the need for departmental inquiry stood obviated.

12. The facts of the present case, in view of law enunciated as aforesaid, show that on acquittal of the petitioner, the order of removal from service could not stand and the petitioner was entitled to reinstatement in service forthwith. The complication was, however, created on account of the post, on which the petitioner was working, being down-graded. However, this down-grading was post the actual termination of the petitioner but after the date from which termination was made effective (the date of conviction). Since the respondents stated in the OA that they were looking out for an appropriate post for the petitioner to be reinstated, the counsel for the petitioner expressed willingness to accept the same to bring the dispute to an end. This, in no way, can become a legal impediment for the petitioner to be reinstated. We are unable to accept the plea that the petitioner could not have been accommodated, but for a fresh appointment. The petitioner, in fact, was entitled to be reinstated in service. The aforesaid judicial pronouncements support this view. We may add that in Gurpal Singh Vs. High Court of Judicature for Rajasthan, where even the suspension continued during departmental proceedings post acquittal in the criminal case, the petitioner was held entitled to have been wrongly denied the revocation of suspension from the date of acquittal and was also held entitled to be considered for promotion notionally from the date when an officer junior to him was promoted with consequential benefits.

13. We are, thus, of the view that the petitioner is entitled to the relief of continuity in service, as also fixation of pay being the only reliefs claimed and placed before us as learned counsel for the petitioner does not press the relief of actual monetary benefits for the period the petitioner was not working for the respondents.

14. The petition is accordingly allowed. The parties to bear their own costs.

15. The respondents to take necessary action in pursuance to this judgment within one month from today.