
(2001) 04 DEL CK 0145
In the Delhi High Court
Case No : C.W. No. 5572 of 1998

Shri Sat Pal

APPELLANT

Vs

The Chief of The Army Staff

RESPONDENT

Date of Decision : 19-04-2001

Acts Referred:

Arms Act, 1959 — Section 25
Constitution of India, 1950 — Article 226, 310, 310(1), 311, 311(2)
Penal Code, 1860 (IPC) — Section 302
Terrorist and Disruptive Activities (Prevention) Act, 1985 — Section 6

Citation : (2001) 94 DLT 521

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Ms. Amita Gupta, for the Appellant; Mr. Jayant Bhushan, for the Respondent

Final Decision : Allowed

Judgement

Dr. Mukundakam Sharma, J.—In this petition the petitioner has prayed for issuance of a writ of mandamus directing the respondent to reinstate the petitioner in service with a further relief that the petitioner should be paid all arrears of pay, benefits and other consequential reliefs arising out of his reinstatement.

2. While the petitioner was working in the Indian Army a criminal case was registered against him on the allegation that on or about 2nd and 3rd January, 1986 the petitioner committed murder of his sister-in-law. The designated court, Rohtak, Haryana conducted the trial in the aforesaid criminal case registered u/s 302 IPC and numbered as Sessions Case No.109/1986. By a judgment/order dated 25.9.1987 the designated court convicted the petitioner u/s 302 of the Indian Penal Code read with section 25 of the Arms Act and section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985. The petitioner filed, a criminal Appeal No.420/1988 in the Supreme Court of India as against the aforesaid judgment and order. In the said appeal the petitioner was released on

bail. On being so released on bail when the petitioner went to report for his duties he was informed that he was dismissed from service by the Competent Authority namely - Formation Commander, 39 Mechanised Brigade on 12th December, 1987 exercising powers under regulation 423 of the Regulations which reads thus:

"The disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on a Government servant on the ground of conduct which have led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal or, if an appeal has been filed without waiting for the decision in the first court of appeal."

3. Subsequently, the aforesaid appeal filed by the petitioner before the Supreme Court came up for hearing and by judgment/order dated 8.8.1996 the Supreme Court allowed the appeal and set aside the order of conviction passed against the petitioner holding that in the absence of motive for the murder it is trite that suspicion however, strong cannot take the place of proof. Consequently the conviction of the the petitioner u/s 302 of the Indian Penal Code was held not sustainable and the petitioner was discharged from the bail bonds. On 4.10.1996 the petitioner submitted a letter enclosing therewith a certified copy of the Supreme Court to his Commandant Officer. However, since no action was taken on the basis of the said letter for reinstatement of the petitioner by a registered A.D.letter dated 16.12.1997 sent the papers to the Chief of Army Staff, New Delhi and the Commandant Officer for necessary action. As no action was forthcoming from the respondent the present petition was filed in this court seeking for the aforesaid reliefs.

4. The respondent has filed a counter affidavit contending inter alias that the dismissal order made by the Competent Authority is correct and valid and continues to be so even inspire of setting aside of the order of conviction by the Supreme Court of India. It is also stated therein that the case of the petitioner was forwarded to the Army Staff is still awaited.

5. I have heard the counsel appearing for the petitioner as also the counsel appearing for the respondent who have taken me through the relevant records. Counsel appearing for the petitioner submitted before me that as the order of conviction passed against the petitioner has been set aside by the Supreme Court the petitioner is entitled to be reinstated in service with full back wages, and accordingly a writ of mandamus is required to be issued to the respondent in the terms of the reliefs sought for in the writ petition.

6. Mr. Jayant Bhushan appearing for the respondent however, submitted that the acquittal of the petitioner in the criminal case did not amount to automatic reinstatement of the petitioner in service and a power is vested on the respondent to revise the order and to hold that the order of dismissal passed by the Competent Authority is correct, valid and continues to be so inspire of the order of acquittal passed by the Supreme Court of India. In support of his

submission the counsel drew my attention to the provisions of the aforesaid Army Regulation namely - Regulation 423 which is extracted above. He submitted that the said provision when read with the provisions of clause (a) of the second proviso to Article 311(2) would make it apparent that in case a Government servant accused is acquitted on appeal or other proceedings the order of dismissal could be revised by the Competent Authority and an order could be passed by the said authority that even in spite of the order of acquittal the order of dismissal is valid and that the said Government Servant/accused is not entitled to any consequential benefits like reinstatement in service and back wages. In support of his contention the counsel relied upon a decision of the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, . He also relied upon a decision of the Supreme Court in Union of India (UOI) Vs. V.K. Bhaskar, .

7. In order to appreciate the contention of the counsel appearing for the parties it would be appropriate to consider the ambit of the power vested with the disciplinary authority under Article 311(2). Under clause (1) of the said Article it is provided that a Government Servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Clause (2) of the said Article also provides that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Clauses (1) & (2) of Article 311 Therefore impose restriction upon the exercise of the pleasure doctrine under Article 310(1) by the President or the Governor of a State. It is settled by the decision of the Supreme Court that Article 311 is an exception to Article 310. The aforesaid two clauses of Article 311 expressly restrict the manner in which a government can be dismissed, removed or reduced in rank. The restrictions placed are two fold - one with regard to the authority empowered to dismiss or remove a government servant provided for in clause (1) of the said Article 311 and the other with regard to the procedure to be followed for imposition of such penalty as provided in clause (2) thereof. The second proviso thereof seeks to lift the said restrictions on fulfillment of any of the three conditions as mentioned in the three clauses - (i) where a person could be dismissed or removed in rank even without holding an enquiry on the ground of conduct which has led to his conviction on criminal charge; or (ii) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or (iii) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry.

8. In the present case we are concerned with the first clause in the aforesaid second proviso. On a comparative reading of the aforesaid first clause and regulation 423 of the Army Regulations it is crystal clear that an Army personnel could also be imposed a punishment without going through the procedure of an enquiry on the ground of conduct which has led to his conviction on a criminal

charge. As the petitioner was convicted in a criminal case, the respondent proceeded to dismiss him from service by exercising the powers vested in the said authority in terms of regulation 423 which is almost similar to that of clause (a) of the second proviso to Article 311(2). There is no dispute in the present case with regard to the aforesaid power of the respondent. The question however, which arises for my consideration is whether a person who is dismissed from service on the ground of his conviction in a criminal case is entitled to be reinstated in service upon his conviction being set aside and upon his acquittal in criminal case which has become final, Along with full back wages, particularly when no other enquiry or proceeding is pending against him. The petitioner was convicted by the criminal court on 25.9.1987 and his appeal was allowed and the order of conviction was set aside by the Supreme Court by judgment/order dated 8.8.1996. Till date no other enquiry or proceeding is initiated or pending against the petitioner.

9. In Deputy Director, Collegiate Education, Madras case (supra) the question that came up for consideration before the Supreme Court was whether action under clause (a) of the second proviso to Article 311 is permissible or not until the appeal against the conviction is disposed of. The said decision was rendered as against the order of the Tribunal. It was the decision of the Tribunal that until appeal against the conviction is disposed of action under clause (a) of the second proviso to Article 311 is not permissible. While setting aside the said decision of the Tribunal the Supreme Court held that there is no basis or justification for the aforesaid view and that the appropriate course in all such cases would be to take action under clause (a) of the second proviso to article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be.

10. It Therefore, appears that the question which cropped up for consideration before the Supreme Court in the said case is distinguishable from the facts of the present case. However, one of the observations of the Supreme Court in the said case is relevant for our purpose. It had stated that when the Government Servant accused is acquitted on appeal or other proceedings the order passed against him by the Disciplinary Authority has to be revised and if the decision is taken to reinstate the government servant he would be entitled to all the benefits to which he would have been entitled to had he continued in government service. In paragraph 10 of the said judgment it is also stated that if the accused succeeds in appeal or other proceedings, the matter is to be reviewed in such a manner that he suffers no prejudice.

11. At this stage it is also relevant to refer to the decision of the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, . In paragraph 126 of the said decision it was held that the court has the power under Article 226 of the Constitution of India to consider whether the petitioner is an accused in the criminal case and if it is found by the court that the petitioner is not the person convicted the order of dismissal is to be set aside and an order is to be passed

for his reinstatement. It cannot be disputed that once an accused is convicted in a criminal case power could be exercised by the Disciplinary Authority in accordance with the provisions of the second proviso to Article 311(2)(a) read with regulation 423 of the Army Regulations but if the said order of conviction is set aside by an Appellate Court which has become final the order of dismissal is to be revised/reviewed by the Disciplinary Authority. It also cannot be disputed that in an appropriate case even after acquittal in a criminal case the disciplinary authority could be justified to institute a departmental proceeding against the concerned person in which case an appropriate order is required to be passed in that regard. In the present case even as of date no such order is passed after acquittal of the petitioner on 8.8.1996. It also may not be possible to draw up such a proceeding in the present case in the light of the facts of the case in hand.

12. In that view of the matter the stand taken by the respondent that the order of dismissal continues to be valid even in spite of the order of the Supreme Court acquitting the petitioner from the criminal charges, cannot be held to be valid and justified.

13. In view of the aforesaid conclusions the writ petition is allowed. The petitioner is directed to be reinstated in service with continuity of service and full back wages. There shall however, be no order as to costs.