
(2008) 04 DEL CK 0209
In the Delhi High Court
Case No : Writ Petition (C) 4170 of 2001

Shri V. Jayapalan

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 11(1), 12

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 42, 50

Citation : (2008) 149 DLT 674

Hon'ble Judges : Manmohan, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : D.S. Chaudhary, for the Appellant; V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing and setting aside of the order dated 10th February, 1998 passed by Respondent No. 3, Deputy Commissioner of Police as well as the appellate order dated 22nd July, 1998 passed by Respondent No. 2, Addl. Commissioner of Police and the Central Administrative Tribunal's judgment and order dated 14th March, 2001 to the extent that it has declined pay and allowances to the Petitioner for the period 8th January, 1988 to 26th July, 1996. The Petitioner has further prayed for full back wages for the period 16th June, 1986 to 26th July, 1996 i.e. the period of suspension and deemed suspension together with interest at the rate of 24 per cent per annum. The Petitioner has also prayed for release of all consequential benefits like seniority, promotion, leave etc.

2. Briefly stated the material facts for this case are that the Petitioner who was a Constable in Delhi Police was arrested on 13th June, 1986 in a criminal case registered against him u/s 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide FIR No. 211 of 1986. On 11th August, 1987, the Petitioner was

convicted by the trial court and sentenced to undergo 10 years" rigorous imprisonment with a fine of rupees one lacs. Consequently, on 8th January, 1988 the Petitioner was dismissed from service by Respondent No. 3.

3. On 6th January, 1989, the Petitioner was acquitted in the above mentioned criminal case by this Court. The learned Single Judge held that it was not proved beyond shadow of doubt that the Petitioner had committed the said offence.

4. On 26th 1996, the Respondents ordered reinstatement of the petitioner in service and consequently he rejoined service on 27th July, 1996. However, a departmental inquiry was set up against the Petitioner on the same allegations for which he was tried in a criminal case and the Inquiry Officer found the Petitioner guilty of the said charges. The Respondent No. 3, on 10th February, 1998 imposed a punishment of forfeiture of five years of his approved service permanently for a period of five years and his pay was reduced from Rs. 3,125/- per month to Rs. 3,050/- per month. It was also ordered by the disciplinary authority that the period of suspension as well as the intervening period from the date of dismissal till the date of reinstatement was to be treated as "period not spent on duty".

5. On 15th November, 1999, the Petitioner challenged before the Central Administrative Tribunal the Inquiry Officer's order as well as the appellate order. The above mentioned petition being O.A. No. 2475/1999 was partly allowed by the Tribunal. While the Tribunal endorsed and upheld the order of the disciplinary authority and the appellate authority as far as forfeiture of five years approved service permanently for a period of five years was concerned, it further directed that the Petitioner shall be entitled to subsistence allowance from the date of his dismissal i.e. 8th January, 1988 to the date of his ultimate reinstatement on 27th July, 1996 as if he had been reinstated but kept on deemed suspension. The Respondents were directed to treat this period as "having been spent on duty" but without the benefit of pay and allowances, other than the subsistence allowance as per Rules. The Respondents were directed to work out the total amount of subsistence allowance and make over the said payment within a period of three months from the date of service of the said order.

6. Mr. V.K. Tandon, learned counsel appearing for the Respondents, has raised a preliminary objection contending that after filing of the present writ petition, the Petitioner had filed a contempt petition by which he sought implementation of the impugned judgment and order passed by the Central Administrative Tribunal as his grievance was that the Respondents were not honouring the Tribunal's order. Pursuant to the notice in the contempt petition, the Petitioner was paid subsistence allowance. Learned counsel for the Respondent submitted that in these circumstances it was not open for the Petitioner to agitate his grievance regarding full wages, having accepted the subsistence allowance. Mr. Tandon further submitted that neither the contempt petition mentioned the filing of the present writ petition nor was it without prejudice to the rights and contentions of the Petitioner.

7. However, in our view, this preliminary objection is misconceived. The Petitioner in the present proceedings has not impugned the Central Administrative Tribunal's orders to the extent it has granted him subsistence allowance for the period 8th January, 1988 to 26th July, 1996. Petitioner through the present petition wants a larger relief of full back wages for the said period. Consequently, in our view it was open to the Petitioner to file a contempt petition and yet maintain the present writ petition.

8. On merits, learned counsel for the Petitioner submitted that the order removing the Petitioner from service on 8th January, 1988, could not have been passed till the result of the first appeal that may have been filed by the Petitioner was known. In this connection, learned counsel for the Petitioner relied upon Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980.

9. In our opinion, the Petitioner by way of an O.A. filed in 1999 before the Central Administrative Tribunal cannot challenge his dismissal order dated 8th January, 1988 as the same would be barred by limitation. Further, perusal of the order dated 8th January, 1988 shows that the Petitioner was given the right to file a departmental appeal against the order, but the Petitioner failed to do so. In our view, at this belated stage it is not open to the Petitioner to challenge his dismissal order which today, in any event, does not survive as he had been reinstated in service on 26th July, 1996, pursuant to orders passed in OA No. 1207/1996 by the Central Administrative Tribunal.

10. The second submission of learned counsel for the Petitioner was that the departmental proceedings on the same charge which had been leveled against the Petitioner in the criminal trial could not have been initiated against the Petitioner. Mr. V.K. Tandon, learned counsel appearing for the respondent drew our attention to Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980. The said Rule is reproduced hereinbelow for ready reference:

12. Action following judicial acquittal-When a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not unless:

- (a) the criminal charge has failed on technical grounds, or
- (b) in the opinion of the court, or on the Deputy Commissioner of Police the prosecution witnesses have been won over; or
- (c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
- (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
- (e) additional evidence for departmental proceedings is available.

11. We are of the opinion that the said Rule permits the respondent-Police to initiate departmental even action on the same charge even after the Police Officer has been tried and acquitted by a criminal court. Departmental action can be initiated if any of the circumstances specified in Clauses (a) to (e) above exist. The Tribunal in the instant case reached a conclusion that the case had been decided on merits. The Tribunal noted that the independent witness produced was in fact a tainted witness and it was thus failure to lead other evidence, which resulted in the acquittal. Curiously, the Tribunal in para 25 of the impugned order also found on a perusal of the judgment of the High Court in Criminal Appeal No. 242/97 that acquittal was based on technical grounds, inasmuch as there was non-compliance with Sections 42 and 50 of the NDPS Act. The matter did not rest here. The Tribunal further went on to observe based on the judgment of the High Court in appeal that the prosecution had failed to prove the case beyond a shadow of doubt. In these circumstances, it would be seen that the Tribunal holds the case of acquittal to be one on merits as well as on technical grounds. In these circumstances, the Tribunal took an equitable position of allowing subsistence allowance for this period from the date of his dismissal i.e. 8th January, 1998 to the date of ultimate reinstatement treating the said period to be one of deemed suspension.

12. Having perused the judgment of the learned Single Judge of this Court in Criminal Appeal No. 242/97 as well as the judgment of the Tribunal, we are of the view that in the present case Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980 would get attracted. We have also noted the observations of the Tribunal with regard to the acquittal being based also on technical grounds due to non-compliance with Sections 42 and 50 of NDPS Act. The learned Single Judge while deciding Criminal Appeal No. 242/97 had observed that the prosecution had failed to prove the case beyond shadow of doubt. In our view, this itself could well bring the case within Sub-clause (C) of Rule 12, where the suspicion could rest on the concerned official. Thus the departmental proceeding initiated, in our view, cannot be said to be without jurisdiction. After due initiation of the departmental proceedings the Tribunal had upheld the order of the disciplinary authority regarding forfeiture of service but had provided for payment of subsistence allowance, we are of the view that the order passed by the Tribunal subserves the ends of justice and does not call for any interference in the exercise of writ jurisdiction.

13. In view of the foregoing discussion, the present writ petition wherein the petitioner seeks inter alias to challenge the order of forfeiture of service as also claims full back wages, is devoid of merit. The writ petition is accordingly dismissed. Parties are left to bear their own costs.