
(2011) 05 CAL CK 0075
In the Calcutta High Court
Case No : W.P.S.T. No. 1644 of 2007

Surajit Bala and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (2011) 3 CHN 329

Hon'ble Judges : Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, Arup Kumar Lahiri and Lina Majimder, for the Appellant; Pradyot Kumar Dutta and Amar Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee. J.

1. On or about September 28, 2000, Surajit Bala, Dinabandhu Sarkar and Niranjana Roy were appointed Constable. After provisional appointment being given they were directed to proceed for training. They were asked to join Darjeeling Police line after appropriate verification. On September 27, 2000, they were directed to report at S.T.C. Kasba, Raigunge for undertaking basic training under the escort of Constable No. 596 - Ranabir Talukdar, a fellow constable. Records revealed that the Petitioners, under the escort of Ranabir, hired a transport for going to Kasba. On the way to Siliguri at Pankhabari Road they noticed one gunny bag lying on the road. Ranabir, on his own accord, picked it up and assured the Petitioner that he would deposit the same to Siliguri Police Station. When the vehicles stopped near Railway Quarter, the local people, numbering about forty, surrounded the vehicle and enquired of the contents of the bag. Ultimately, they were all handed over to Police on the charge of attempting to sell smuggled goods. The authority conducted a discreet enquiry and, ultimately, served show cause notice dated November 6, 2000 upon the Petitioners. Three Petitioners gave separate reply. As per the reply of Surajit,

when they were on the way, another constable Kailash Roy of 12th Battalion, Dabgram boarded the Maruti Van by which the Petitioners were travelling. Later on it revealed, Kailash was the elder brother of Niranjan Roy, one of the recruit constables being Petitioner No. 3 above named. Ranabir and Kailash stopped the vehicle after noticing the gunny bag and loaded it on the van on the assurance that they would deposit the same to Siliguri Police Station. On reaching Mallaguri, Kailash got down from the vehicle, and came back after few minutes. After reaching Siliguri, the vehicle, without going to the Police Station, went to Tikiapara Railway Quarter and unloaded the bag with the help of one Sailen Roy, another constable, posted at Bagdogra I.C. Facts revealed that Sailen was related to Kailash and Niranjan. When they were unloading the bag, the local people surrounded the vehicle and ultimately all of them were handed over to the Police. According to Surojit, he was not involved in the incident, so were the other two constables. They were all along sitting in the vehicle and did not know what had transpired between Ranabir, Kailash and Sailen. He became the victim of circumstance.

2. Dinabandhu Sarkar, by a separate reply, almost towing in the line of Surojit, explained how he also became a victim of circumstance. These two replies were verbatim reproduction of each other save and except minor change.

3. The Enquiry Officer conducted the enquiry affording adequate opportunity to the delinquent constables to defend themselves in the said proceedings. The Petitioners could get hold of a letter from M/s. Kithania Trade Centre of Mahabirasthan, Siliguri to the effect that they were the owners of the gunny bag in question, which was lost in transit. Upon getting the information they went to the Police Station and got back the seized goods after full verification by the Police. They also thanked Sailen Roy for lifting the goods and depositing it with the Police Station. The Petitioners suffered the order of discharge from service, as they were all found guilty of the charges. The Authority invoked the power to discharge them summarily as they were under provisional appointment and were yet to be confirmed warranting a regular departmental proceeding being had.

4. Being aggrieved, the Petitioners approached the Tribunal. Tribunal vide judgment and order dated April 28, 2002 considered each and every aspect in detail and observed that the order of discharge was apt, however, could not be given effect to till it was confirmed by the next higher authority. The Tribunal directed the Respondent No. 6, being the Superintendent of Police, Darjeeling to obtain decision on merit from his next higher authority on the order of discharge within a period of two months from the date of communication of the said order. The Tribunal specifically rejected the prayer for setting aside the impugned order dated December 7, 2000.

5. Being aggrieved, the Petitioners approached this Court by filing WPST 763 of 2002. The Division Bench of this Court vide order dated July 2, 2003 directed the Respondent No. 6 to reinstate the Petitioners in service by paying back wages coupled with liberty to obtain appropriate approval from the higher authority. The

Division Bench observed:

It is however open to the Respondent No. 6 to obtain approval, if he so advises, to the order of termination of the Petitioners within a period of one months from the date of their reinstatement and if such approval is obtained, then the order which we have quashed today will be revived.

6. In terms of the order of the Division Bench, the Petitioners were reinstated in service. The matter was referred to the Deputy Inspector General of Police, Darjeeling Range. The Deputy Inspector General vide order dated September 10, 2003 upheld the order of the Superintendent of Police passed on December 7, 2000.

7. The Petitioners again challenged the said order before the Tribunal by filing O.A. No. 205 of 2004. The Tribunal vide judgment and order dated August 7, 2007 dismissed the said application finding no merit therein. Hence, this application before us.

8. On perusal of the judgment and order of the Tribunal, it appears that the Tribunal was of the view that the initial order of discharge was set aside by the High Court as it did not contain the approval of the higher authority. The Petitioners were reinstated. Subsequently the higher Authority being the Deputy Inspector General, Darjeeling Range confirmed the order of the Superintendent of Police. Hence, there was no impediment in getting the order of discharge revived. The Tribunal observed that there was no illegality in the said order of the Deputy Inspector General. No full-fledged departmental inquiry was necessary for the said purpose. The issue cannot be reopened as it would operate as constructive res judicata.

9. Mr. Kashi Kanta Moitra, learned senior counsel appearing for the Petitioners, contended before us that once the Petitioners were under provisional appointment they could be discharged summarily provided no stigma was attached to the order of discharge. Once the Petitioners were charge-sheeted by issuance of show cause notice a regular departmental inquiry must be had before they could be discharged from service. To support his contention Mr. Moitra relied on the following decisions:

i) Supreme Court Labour judgment Page-783 (Kulwant Singh Gill v. State of Punjab)

ii) 1984 SCC (L&S) 256 (Anoop Jaiswal v. Government of India and Anr.)

iii) 1997 2 CLJ 497 (Sujit Das v. The West Bengal Board of Secondary Education and Ors.

iv) All India Reporter 1997 SC 1628 (Ashwani Kumar and Ors. v. State of Bihar and Ors.)

v) AIR 1999 SCC 983 (Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Others)

vi) 1999 I Cal HCN 521 (Arun Kumar Hait v. State of West Bengal and Ors.)

vii) AIR 2008 SC 81 (Man Singh v. State of Haryana and Ors.)

10. Opposing the application, Mr. Pradyut Dutta, learned Counsel appearing for the State contended that when the Petitioners were within their training period and were not confirmed in the post, they could be discharged at any time as their job was not found satisfactory. In this regard, he relied on the decision of the Apex Court in the case of Chaitanya Prakash and Another Vs. H. Omkarappa,

11. Considering the rival contentions, we are of the view that once the Petitioners were under provisional appointment they could be summarily discharged at any time without holding a regular departmental enquiry. Being a provisional appointee, they did not enjoy the protection under Article 311 of the Constitution of India. The decisions cited by Mr. Moitra would denote the well-settled principle of law that when a person was discharged from service with stigma attached to it he should be given adequate opportunity to defend himself in the said proceeding so that he could come out of the said charge honourably. In the instant case, the Petitioners were served with a proper show cause notice. Adequate opportunity was given to them. The Enquiry Officer during enquiry heard them. Ultimately the Superintendent of Police passed the order. If we look to the order of the Division Bench dated July 2, 2003, we would find that the challenge to the said order was gone into by the Division Bench and the Division Bench categorically observed that the Tribunal did not quash the order dated December 7, 2000 and directed the Superintendent of Police to obtain appropriate approval from his higher authority. The Division Bench observed that even after passing of the order of the Tribunal the authority did not obtain approval from its higher authority. Hence, the order was inoperative having no consequence. The Division Bench set aside the order and at the same time granted leave to obtain approval of the self-same order from the higher authority. The Division Bench also observed that, in case, such approval was obtained, the order of discharge would stand "revived". After the order of the Division Bench the Deputy Inspector General passed a reasoned order approving the order of discharge. The Petitioner miserably failed to show as to how the said order was bad. Hence, the order of the Division Bench would automatically come into play and would automatically stand revived in view of the approval the order of discharge. The Tribunal, in our view, approached the problem in a right direction that does not deserve any interference by this Court.

12. The Apex Court decision in the case of Dipti Prakash Banerjee (Supra), was relied upon by Mr. Moitra. Paragraph 35 was relied upon wherein the Apex Court observed that the words amounting to stigma need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination.

13. In the case of Kulwant Singh Gill (Supra), the Apex Court observed that in case of major penalty a regular enquiry must be had.

14. In the case of Man Singh (Supra), the Apex Court discussed the concept of equality as enshrined in Article 14 of the Constitution.

15. In the case of Anoop Jaiswal (Supra), the Apex Court was of the view that where the form of the order is merely a camouflage for an order of dismissal for mistake it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order.

16. In the case of Sujit Das (Supra), the Division Bench of this Court observed that the delinquent must be given reasonable opportunity to defend himself in the said proceeding, otherwise there would be violation of principle of natural justice.

17. In the case of Arun Kumar Hait (Supra), the Division Bench observed that the managing committee had the power to appoint an enquiry officer and presenting officer for the purpose of holding an enquiry under Rule 28 of the management rules.

18. In the case of Chaitanya Prakash and Anr. (Supra), the Apex Court observed that the order terminating service could not be said to be stigmatic when it was an order of discharge simplicitor due to unsuitability of the Respondent.

19. From the decisions discussed above, we are of the view that in case of stigma being attached to the order of discharge the delinquent must be given adequate opportunity to defend himself in the said proceeding through a regular departmental enquiry. In the instant case, the Petitioners were on probation. They were given appropriate show cause notice. They were heard before the enquiry officer. The Superintendent of Police passed a reasoned order of discharge. The Tribunal refused to set aside the same and gave liberty to the Superintendent of Police to obtain approval. The Division Bench did not go into the question as to whether the order of discharge could be assailed or not and set aside the same only on the ground that the authority failed to obtain necessary approval from the higher authority. The Division Bench also made it clear that as soon as such approval would be obtained the order of discharge would stand revived. The Petitioners did not challenge the said order of the Division Bench. Hence, they were not entitled to raise such issue once again. The issue could be limited for the Tribunal for consideration as to whether the order of Deputy Inspector General approving the order of discharge suffered any illegality. In absence of any definite challenge to the said order the Tribunal was right in dismissing the application.

20. The application fails and, is, hereby dismissed.

21. There would be no order as to costs.

22. Urgent Photostat copy will be given to the parties, if applied for.

Mrinal Kanti Chaudhuri, J.

23. I agree.