

(2006) 08 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4613 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Mohd. Sharif Khan

RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21, 21(1)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 42, 8

Citation : (2006) 08 MP CK 0059

Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J

Bench : Division Bench

Advocate : Vinay Zelawat, Asstt. Solicitor General, for the Appellant; M.A. Bohra, for the Respondent

Judgement

N.K. Mody, J.—Being aggrieved by the order dated 19-8-2005 passed by Central Administrative Tribunal, Jabalpur in O.A. No. 557/04, whereby the petitioners were directed to reinstate the respondent, the present petition has been filed.

2. Short facts of the case are that respondent was initially appointed in Government Opium and Alkaloid Works Undertaking, Neemuch in the year 1972 on the post of Technician Grade-II. The services of respondent was confirmed somewhere in the year 1973-74. He was promoted as Technician Grade-I vide order dated 9-8-1982. In the year 1988, when the respondent was working as Boiler Attendant at Neemuch, a case was registered against the petitioner u/s 8/18 of the NDPS Act and in consequence thereto, the respondent was placed under suspension vide order dated 18-3-1988. The respondent faced trial for the offence mentioned above and ultimately, he was convicted vide judgment dated 24-9-1990 passed in Session Trial No. 47/89 for a sentence of R.I. for ten years and fine of Rs. 1,00,000/-. An appeal was filed by the respondent before this Court which was registered as Criminal Appeal No. 444/90 and was dismissed vide order dated 11-8-2000. The respondent approached the Apex Court by filing Criminal Appeal No. 1003/2001. Vide order dated 7-8-2002, passed in aforesaid

Cr. Appeal, the Hon''ble Apex Court allowed the appeal and acquitted the respondent.

3. During pendency of the appeal before this Court, the respondent was dismissed vide order dated 18-1-1993. After allowing the appeal by the Apex Court, respondent submitted a representation on 2-2-2003 before the petitioners with a prayer to quash the order dated 18-1-93 on the ground that suspension and dismissal of the respondent was based on the judgment of the Criminal Court and since the same is set aside by the Apex Court, hence the respondent is entitled for reinstatement with full back wages. This representation was dismissed by the petitioners vide order dated 26-8-2003 against which a Departmental Appeal was filed by the respondent. Since the appeal was not timely disposed of by the petitioners, therefore, the respondent filed a petition before the learned Administrative Tribunal somewhere in the month of May, 2004 which was registered as O.A. No. 557/2003 and contested by the petitioners.

4. Learned Tribunal vide order dated 2-11-2004, allowed the petition and quashed the order of dismissal dated 18-1-1993 directing the petitioners to reinstate the respondent in service. It was also directed that so far as back wages of respondent is concerned for the intervening period, the petitioners shall consider the matter according to rules.

5. Being aggrieved by this order passed by the Central Administrative Tribunal, the present petition has been filed. Learned Counsel for the petitioners submits that the petition filed by the respondent before the learned Administrative Tribunal is barred by limitation. It is submitted that the order of dismissal was passed on 18-1-1993 while the petition was filed somewhere in May, 2004, which could not have been entertained by the learned Central Administrative Tribunal. Learned Counsel submits that Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for entertaining any application. It is submitted that as per Sub-section (1) (a) of Section 21, the application can be filed within a period of one year from the date on which final order has been passed. It is submitted that since final order was passed before more than 10 years, therefore, petition is not tenable.

6. The contention of the petitioners is without any substance. The cause of action accrued to the respondent only after the order dated 7-8-2002 when the Hon''ble Apex Court allowed the appeal filed by the respondent. The representation submitted by the respondent was rejected by the petitioners on 26-8-2003, against which the appeal was still pending when the petition was filed before the Administrative Tribunal. Thus, in view of Section 21 of the Act, the application filed by the respondent was within time.

7. Contention of the learned Counsel for the petitioners is that the acquittal of the respondent was on technical ground, hence the representation submitted by the respondent was dismissed by the petitioner on the ground that the acquittal of the respondent was not honourable. From perusal of record, it appears that

while allowing the appeal filed by the respondent, the Hon''ble Apex Court has observed as under:

It is not in dispute that the entry in search of the premises in question took place between sun set and sun rise at 3.00 A.M. This being the position, the proviso to Section 42 of the Narcotic Drugs and Psychotropic Substances Act was applicable and it is admitted that before the entry for effecting search of the building neither any search warrant or authorization was obtained nor were the grounds for possible plea that if opportunity for obtaining search warrant or authorization is accorded the evidence will escape indicated. In other words, there has been a non-compliance with the provisions of proviso to Section 42 and therefore, the trial stood vitiated.

8. Learned Counsel for petitioners placed reliance on a decision in the matter of Union of India and others Vs. Shri Bihari Lal Sidhana, , wherein Hon''ble Apex Court has observed that mere acquittal of the Government employee does not automatically entitle the Government servant to reinstatement. It would be open to the appropriate Competent Authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available under the relevant disciplinary or temporary service rules.

9. Learned Counsel further placed reliance on a decision in the matter of Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd. and Ors. 2005(10) SLR 75, wherein Hon''ble Apex Court observed that acquittal by Criminal Court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings- criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a Criminal Court, the impugned order dismissing him from service

deserves to be quashed and set aside.

10. Shri M.A. Bohra, learned Counsel for respondent, placed reliance on a decision in the case of Brahma Chandra Gupta Vs. Union of India (UOI), , wherein the Hon"ble Apex Court has held that in a case after dismissal of conviction and reinstatement after acquittal, the employee is entitled to full amount of salary on reinstatement.

11. Further reliance was placed on a decision in the matter of Hukumchand Banerjee v. State of Chhattisgarh reported in 2006 (1) MPJR 66, wherein it was held that after honourable acquittal of charges, employee is entitled to be reinstated in service.

12. In a decision in the matter of Smt. Panna Mehta Vs. State of M.P., , this Court observed that in criminal jurisprudence, there is no difference between "clean acquittal", "honourable acquittal" or "acquittal based on giving benefit of doubt". Therefore, there was no justification on the part of the petitioners to reject the representation on the ground that acquittal of the respondent was not honourable.

13. It is true that no Departmental Enquiry was held by the petitioners when the respondent was dismissed from service. Since the respondent was dismissed only on account of conviction in a criminal case, therefore, after acquittal, the respondent is entitled for reinstatement and has rightly been reinstated by the learned Tribunal. However, since no enquiry was conducted by the petitioners, therefore, petitioners shall be at liberty to hold the enquiry and to treat the respondent as per rules. Similarly, petitioners are at liberty to pass appropriate orders regarding the payment of back wages as directed by the learned Administrative Tribunal.

14. With the aforesaid directions, the petition stands disposed of. No order as to costs. C.C. as per rules.