

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order Reserved on: August 18, 2011
Order Pronounced on: September 01, 2011

+ W.P.(C) 2293/2011

SARVJEET SINGH Petitioner
Through: Mr.S.P.Kalra, Senior Advocate
with Mr.Arvind Sharma,
Advocate

versus

UNION OF INDIA & ORS Respondents
Through: Mr.Jatan Singh, Advocate with
Mr.Vijay Kumar, Legal
Assistant for CISF

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. This is 4th round of litigation. Vide order dated 16.8.2010, the Appellate Authority had ordered reinstatement of the petitioner in service but had denied the consequential benefits i.e. continuity in service, back wages, etc. The grievance of the petitioner is that having made petitioner litigate for 4 times and taking an obstructive attitude on each occasion, the recalcitrant department was compelled to do justice to the petitioner and thus the time spent in obtaining justice by the petitioner cannot be discounted to the detriment of the

petitioner by denying him benefit of continuity in service and back-wages.

2. Relevant would it be to note that the foundation of the litigation was the petitioner being served with a memorandum on 30.10.1990 charging him with 3 misdemeanours i.e. of overstaying leave by 108 days, suppressing information of his being involved in a criminal case when he was on leave and lastly of being an accused in a criminal case.

3. At the departmental inquiry petitioner was found guilty of the 1st and the 2nd charge and partly pertaining to the 3rd resulting in penalty of removal from service being inflicted on 25.6.1991 against which departmental appeal was rejected. This resulted in the first round of litigation being WP(C) No.4560/1993 filed by the petitioner which was disposed of on 31.3.2008 requiring the appellate authority of the petitioner to re-decide the appeal on merits as it was noted that vital points urged in the appeal were ignored.

4. Upon remand, the Appellate Authority again dismissed the appeal on 30.06.2008 resulting in the 2nd round of litigation when said order dated 30.06.2008 was assailed by the petitioner in W.P.(C) No.7817/2008, which was disposed of relegating the petitioner to avail of the statutory remedy of revision. The petitioner filed a revision which was rejected.

5. This resulted in the 3rd round of litigation, i.e. W.P.(C) No.7717/2009, wherein a Division Bench of this Court set aside the appellate and the revisional order requiring the matter to be decided afresh in light of the directions issued by the Division Bench in its earlier order dated 31.3.2008.

6. In the aforesaid order (Annexure P-9) it was noted by the Division Bench that the petitioner's writ petition manifestly evidences a non-application of mind. The matter was yet again remanded even at the 3rd round to reconsider the evidence properly and pass an order.

7. Matter being remanded at the 3rd round, being virtually compelled by this Court to give reasons as to why the authority opined that the petitioner was guilty, realizing that the weight of evidence was in favour of the petitioner, observing that the charges are not proved, but surprisingly terminating the order by holding that the penalty levied is disproportionate, vide impugned order dated 16.8.2010, reinstating the petitioner in service it has been held:-

“(ii) His intervening period i.e. date of removal from service to re-joining into service on his reinstatement will be treated as “Non duty” for which he will not be entitled for any pay & allowances on the principle of “No work No pay”. However, his past service, i.e. service, rendered before removal from service will not be forfeited.

sd/- (T.A.A. Hakeem)
INSPECTOR GENERAL”

8. The precise stand of the petitioner is that he was constrained to remain out of service for almost 2 decades because of inept handling of his case by the respondents and the petitioner had been without livelihood during this long period and now upon exoneration of the petitioner he is entitled to all the consequential service benefits including back wages as the denial of the same has resulted into gross injustice to the petitioner.

9. Respondents in the counter claim have countered petitioner's claim for consequential benefits by relying upon Rule 54(ii) of the Fundamental Rules, by asserting that the petitioner was given benefit of doubt by the criminal court and was not fully exonerated.

10. We are mindful of the following observations of the Apex Court in Chairman-Cum-M.D., Coal India Ltd. and Ors. Vs. Ananta Saha & Ors., reported as (2011)5 SCC 142:-

“The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: U.P.S.R.T.C. v. Mitthu Singh AIR 2006 SCC 3018; Secy., Akola Taluka Education Society and Anr. v. Shivaji and Ors. (2007) 9 SCC 564; and Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale (2009) 2 SCC 288).”

11. Reliance placed by the respondents upon the decision in Sukhdeo Pandey vs. Union of India & Anr., (2007) 7 SCC 455, is

clearly out of context as the said employee on reversion had not joined the duty on the reverted post and had not worked and so was denied the back wages.

12. After hearing learned counsel for the parties and upon perusal of the material on record, we find that respondents are not justified in placing reliance upon F.R. 54(ii) to deny the consequential benefits on the plea that the petitioner has not been fully exonerated by the criminal court, because the requirement of F.R. 54 is of full exoneration in the departmental proceedings and not by the criminal court. Otherwise also, realistically speaking, criminal courts normally acquit while giving benefit of doubt. In any case, what is of relevance is that the exoneration of the delinquent has to be in the departmental proceedings to enable the delinquent to get consequential benefits in terms of F.R. 54.

13. It becomes abundantly clear upon perusal of the order of 16.08.2010 reinstating the petitioner in service that reinstatement has been ordered only after finding that petitioner was justified in overstaying leave on the strength of the medical certificate furnished by him and that petitioner has not suppressed the factum of his involvement in a criminal case.

14. Upon a meaningful reading of the order dated 16.08.2010 it is clear that the petitioner has been clearly exonerated of the charges framed against him in the departmental proceedings and hence has been reinstated. Surprisingly, in the concluding paragraph it has been held that the punishment inflicted is disproportionate. If the charges are not proved, where is the question of levying a penalty?

15. Simply because of petitioner's alleged involvement in a criminal case in June, 1990, he was awarded penalty of removal from service by DIG, CRPF vide order dated 25.6.1991 without awaiting the outcome of the criminal case. Petitioner was acquitted in the criminal case on 3.9.1993. It cannot be lost sight of that during the pendency of the criminal case, petitioner was on anticipatory bail. Appeal against order of removal of petitioner from service was mechanically rejected on 10.12.1991. Though revision petition against rejection of petitioner's appeal was disposed of on 10.5.1992 being not in proper format but no opportunity was granted to the petitioner to file fresh revision petition, thereby compelling the petitioner to file writ petition No.4560/1993 which was allowed on 31.3.2008 and respondents were directed to decide appeal of petitioner on merits, particularly keeping in view of the infirmities as pointed out and by passing a speaking order after hearing the petitioner.

16. Again the Appellate Authority disclosed utter non application of mind by rejecting petitioner's appeal on 20th June, 2008 by ignoring that petitioner's case was not of absence from duty but was of extension of leave on the basis of the medical certificate which has been ultimately accepted now by the respondents. The order of 30th June, 2008 of the Appellate Authority does not take into consideration the factum of acquittal of the petitioner in the criminal case and proceeds to examine the facts which were subject of consideration before the criminal court. Respondents could not have possibly held a departmental enquiry on the subject matter of the criminal case as the incident had taken place

outside its domain. Be that as it may. Appellate order of 30th June, 2008, discloses that the appellate authority had blatantly dealt with this matter with a closed mind despite the categorical directions issued by a Division Bench of this court vide order of 31st March, 2008. Once again the petitioner was compelled to file writ petition No.7817/2008 and vide order of 5th November, 2008 the petitioner was relegated to avail of the statutory revisional remedy which the petitioner had unsuccessfully availed of.

17. Order of 12.1.2009 of the Revisional Authority was challenged by the petitioner in W.P.(C) No. 7717/2009 and the said order was set aside by a Division Bench of this Court while observing as under:-

“Our attention is also drawn to the order dated 12th January, 2009 whereby the revision of the petitioner has been dismissed. It is pointed out that revisional authority has returned a finding that on 21st April, 2008, the appellate authority had heard the petitioner in person. In our view, this finding is erroneous and is not sustainable.”

18. With specific directions this matter was again remanded back on 15.7.2010 and it is only thereafter vide order of 16.8.2010 respondents have ordered reinstatement of the petitioner in service but have denied the consequential benefits, thereby again compelling the petitioner to approach this Court to now seek the consequential benefits which ought to have been granted to the petitioner at least from the day when he was acquitted in the criminal case i.e. w.e.f. 3.9.1993 as the gravamen of charge against the petitioner in Departmental proceedings was essentially subject matter of the criminal matter.

19. The contumacious conduct of the respondents in not complying with the specific directions issued on 31.3.2008 in petitioner's writ petition No. 4560/1993 persuades this Court to exercise the discretion in favour of the petitioner in granting 50% of the back wages from the date of his acquittal in the criminal case i.e. from 3.9.1993 till reinstatement, for the reason that the impugned order gives no justification for denial of the consequential benefits and because we find that the reliance placed upon F.R.54 is entirely misplaced. While taking notice of the fact that the petitioner must have done something to survive and make his both ends meet during this period i.e. from the date of his suspension till his reinstatement, it is deemed appropriate to grant 50% of the back wages to the petitioner. It is no body's case that the petitioner was called upon to work and he had abstained from doing so. Infact, the equity tilts in favour of the petitioner as despite acquittal in criminal case, he has been unjustifiably kept out of the employment for long by the respondents and due to callousness of the respondents, petitioner was made to shuttle from one forum to the other.

20. In the facts and circumstances of this case, we find that the principle 'No work. No pay' would not apply. We are of the firm opinion that the petitioner on his acquittal by a criminal court on 3.9.1993 became eligible for reinstatement and because of the obstinate stand of the respondents, petitioner had to suffer for no fault of his and thus, we direct the respondents to grant 50% of the back wages to the petitioner, w.e.f. 3.9.1993 till reinstatement with consequential benefits i.e. continuity in service, etc. within twelve weeks.

21. The writ petition stands disposed of with directions as aforesaid.

22. No costs.

(SUNIL GAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

August 01, 2011
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