

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 19.04.2017

+ **W.P.(C) 1316/2017**

SUDHIR KUMAR

..... Petitioner

Through: Mr. Asish Nischal and Mr. Arun
Nischal, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through: Mr. Siddharth Dutta and Mr. Mukul
Lather, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (ORAL)

1. Vide this writ petition, the petitioner has challenged the order of Central Administrative Tribunal (CAT) dated 19.08.2016, whereby while he was ordered to be reinstated, the backwages were denied to him.

2. The brief facts of the case are that the petitioner was employed in the office of Labour Commissioner as LDC. He was charged with demand of Rs.1000/- as bribe money from Ajay Kumar Gupta, S/o Suraj Bhan for issuing a recovery certificate to him. Since he was found to have committed grave misconduct during his employment, a Departmental Enquiry ensued

under CCS (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as “the CCS (CCA) Rules”). A chargesheet containing the following charges was served upon him:-

“On 09/12/2003, Sh. Sudhir Kumar S/o Sh. Katar Singh R/o, V&PO Kasim Pur Kheri, Thana Ramala, Distt. Baghpat, U.P., while working as LDC in Labour Commissioner Office (sic) at 5-Sham Nath Marg, Delhi demanded Rs.1000/- as bribe from one Sh. Ajay Kumar Gupta S/o Sh. Suraj Bhan Gupta, R/o 62, Krishna Kunj colony, Delhi for issuing him recovery certificate who was ex-employee in Delhi Automobiles, Jhandewalan Delhi and after his removal from service had won his case from labour court.

Sh. Sudhir Kumar indulged himself in corrupt practices and abused his official position.

Therefore, the above act committed by Sh. Sudhir Kumar, S/o Sh. Katar Singh, R/o V&PO Kasim Pur, Kheri, Thana, Ramala, Distt. Bhagpat (UP) in the capacity of government servant working as UDC at Labour Commissioner Office at 5, Sham Nath Marg, Delhi amount to gross misconduct lack of integrity and conducted himself in such a manner which is unbecoming of a Government Servant while discharging of his official duties which renders him liable for departmental action in violating the provision of Rule 3(1)(ii)(iii) of CCS (Conduct) Rules, 1964.”

3. An FIR No.61/2003 was also registered against the petitioner and his co-accused Dinesh Chand Gupta for the offences punishable under Section 7/13 of the Prevention of Corruption Act, 1988 and Section 120-B of the IPC by Anti-Corruption Branch, Delhi. After completion of the investigation into the FIR, the trial in the case begun. The Enquiry Officer, after recording and

appreciating the evidence, submitted his Enquiry Report dated 18.03.2013 in the regular Departmental Enquiry (DE). Since the petitioner and his other co-accused were convicted and sentenced to undergo RI for a period of two years along with a fine of Rs.10,000/- each vide judgment of conviction and order of sentence dated 11.05.2011 by the Special Judge, the DE was kept in abeyance, however, a penalty of removal from service was imposed on the petitioner vide order dated 3/4th October, 2012 by the Disciplinary Authority in exercise of powers conferred under Rule 19(1) of CCS (CCA) Rules. The petitioner had appealed against this order and his appeal was also dismissed vide order dated 13.03.2013 by the Appellate Authority. Thereafter, the petitioner filed the OA before the Central Administrative Tribunal, challenging the order of dismissal on several grounds. The respondents contested the matter before the CAT and vide impugned order dated 19.08.2016, the dismissal order of the petitioner was set aside and the disciplinary authorities were given liberty to conclude the already initiated regular Departmental Enquiry. While all the other consequential benefits were awarded to the petitioner on setting aside the dismissal order, he was denied the backwages on the principle of no work no pay, relying on the findings in the case of ***Vijay Singh vs. Union of India***, AIR 2007 SC 1384.

The petitioner has assailed the said denial of the backwages for the period of his unemployment alleging that it was due to the act of the respondent that he remained out of the service and since that act of the respondent was found illegal, incorrect and was set aside, he ought to have been reinstated into the service along with the full backwages. It is urged that it was not his fault that he had remained unemployed. It is also urged that the findings in the case of **Vijay Singh** (*supra*) are not applicable on the facts of this case. It has been prayed by the petitioner that he be granted arrears of backwages and the impugned order be modified to this effect.

4. In the present case, notice was issued to the respondents. Arguments have been heard in the matter. During the course of arguments, the petitioner has relied in support of his contention on the judgment of the Supreme Court in **Jasbir Singh vs. Punjab and Sind Bank and Ors.** (2007) 1 SCC 566 and **Sanjay Kumar vs. Union of India and Ors.** W.P.(C) No. 14126/2004, decided on 23.04.2014 and argued that in these cases also the appellant was involved in the criminal cases and on his acquittal when he was ordered to be reinstated, he was denied the backwages.

5. Learned counsel for the respondent has submitted that both these cases are distinguishable on the facts.

6. We have given our thoughtful consideration to the arguments of the parties. The short issue involved in the present case is whether the petitioner is entitled to the backwages on his reinstatement in the facts and circumstances of this case. The Supreme Court has held in various pronouncements, while considering the entitlement for backwages, that even after punishment imposed on the employee is quashed by the Court or the Tribunal, grant of backwages still remains discretionary. The entitlement for the backwages on reinstatement, therefore, is not granted automatically and depends on the facts and circumstances of each case and the Court has to exercise its power to grant backwages keeping in view the facts of the case in their entirety, and no straightjacket formula can be evolved for universal application. Reliance is placed on ***P.G.I. of Medical Education and Research, Chandigarh vs. Raj Kumar*** 2000 (8) SCALE 469 and ***Chairman-cum-Managing Director, Coal India Ltd. & Ors. vs. Ananta Saha & Ors.*** (2011) 5 SCC 142.

7. The short question for consideration, therefore, is whether the Tribunal has exercised its discretion properly and judicially while refusing to grant backwages while ordering the petitioners reinstatement. As discussed above, the petitioner was involved in a bribery case and was convicted by the Trial

Court. On the basis of this conviction, although the departmental enquiry was pending, the same was kept in abeyance and in exercise of powers conferred under Rule 19(1) of CCS (CCA) Rules, the respondents terminated his services. His services were ordered to be reinstated on the plea of the petitioner before the Tribunal that his dismissal under Rule 19(1) of CCS (CCA) Rules does not survive, in view of the fact that he had been acquitted of the charges by the High Court vide its order dated 23.05.2016 in Crl. A.No.656/2011. Taking note of this acquittal, the Tribunal passed the impugned order. It was in these circumstances of the case that the Tribunal denied the backwages to the petitioner, applying the principle of no work no pay, as enunciated by the High Court in **Vijay Singh** (*supra*). The petitioner has relied on **Jasbir Singh** (*supra*) in support of his claim for backwages. The facts of **Jasbir Singh** (*supra*) are that Jasbir Singh was found to have forged the signature of a depositor Rattan Singh and fraudulently withdrawing a sum of Rs.25,000/- from the account of Rattan Singh. A criminal case under Section 409/201 IPC was registered against him and he was acquitted in the criminal case and his confession was also found to be under coercion. The bank had also filed a suit for recovery of Rs.25,000/- in the Civil Court and the Civil Court, after noticing the evidences brought on

record, held that the bank had failed to prove that the appellant had withdrawn a sum of Rs.25,000/-. Allegations of embezzlement of the said sum against the delinquent were not proved and, therefore, the bank was not entitled to recover the said amount. The correctness of the said judgment was not questioned by the bank, and the judgment attained finality. In the light of the fact that the Civil Court found exonerated Jasbir Singh completely of the commission of the offences of embezzlement, the Court found it fit to grant him backwages. In the present case, the petitioner was convicted by the Trial Court for the offences under Section 7/13 of the Prevention of Corruption Act, 1988 and Section 120-B of the IPC and was only acquitted by the High Court.

8. In ***Sanjay Kumar (supra)***, the backwages were given to the petitioner in the facts and circumstances of that case. In that case, Sanjay Kumar was dismissed on account of overstay of his leave which he was able to explain reasonably. The Court while reinstating him found that he sufficiently explained reasons of his overstay of leave. The backwages in this case were given on entirely different set of facts and circumstances.

9. The case of the petitioner is, however, squarely covered by the facts in the case of ***Ranchhodji Chaturji Thakore vs. Superintendent Engineer,***

Gujarat Electricity Board, Himmatnagar, (Gujarat) and another (1996) 11 SCC 603. The facts of ***Ranchhodji Chaturji Thakore (supra)*** are akin to the facts of this case in the sense that in ***Ranchhodji Chaturji Thakore (supra)***, the petitioner was charged of a criminal case of a serious nature. He was convicted by the Sessions Judge. After his conviction, his employer dismissed him from service on the basis of the said conviction. He challenged the said dismissal order by way of Special Leave Application filed under Article 226 of the Constitution. Subsequently, the petitioner was acquitted by the order of the High Court and the learned Single Judge directed the respondent to reinstate him into service with continuity of the service, but denied the backwages. The petitioner challenged the denial of the backwages and took the same plea which the petitioner before us has taken. The relevant paragraph of the said judgment is reproduced as under:-

“3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is: whether he is entitled to back wages? It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceeding and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes

relevant. Each case requires to be considered in its own backdrops. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned single judge and the Division Bench have not committed any error of law warranting interference.”

10. The registration of the case against the petitioner under Section 7/13 of Prevention of Corruption Act and Section 120 B of the IPC was not baseless. In fact, he was not only charge sheeted, but also convicted by the Trial Court. Thus, the dismissal of the petitioner from service was justified under Rule 19(1) of the CCS (CCA) Rules when it was taken.

11. From the above discussion, it is apparent that the Tribunal has exercised its discretion judicially while denying the backwages to the petitioner. The order needs no interference.

The writ petition has no merit and the same is dismissed.

**DEEPA SHARMA
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

**APRIL 19, 2017
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