

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11391 OF 2013

Balakrishnan Thiruvengadam Mudaliar	.. Petitioner
Vs.	
Union of India and ors.	.. Respondents

Mr.M.S.Topkar i/b Ms.Ranjana Todankar, for the Petitioner.
Mrs.Neeta V. Masurkar, for Respondents.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 15th JANUARY, 2018
PRONOUNCED ON : 25th JANUARY, 2018**

ORDER (PER M.S.KARNIK, J.) :

1. The petitioner by this Petition filed under Article 226 of the Constitution of India assails that part of the impugned order dated 21/02/2013 passed by the Central Administrative Tribunal, Mumbai not granting back wages to the petitioner and with a further grievance though the Tribunal has granted reinstatement it should have granted reinstatement from 08/01/2008.

2. The petitioner was appointed as a driver with effect from 30/03/1989. It is the petitioner's case that he was elected to the post of General Secretary of the Central Excise and Customs Commissionerate Class III Driver's Association, Mumbai and has been raising disputes and grievances on behalf of drivers. This was not liked by the respondents and he was transferred as many as on 32 occasions only to harass him. For the incident that happened on 04/06/2003, the petitioner was made to retire compulsorily. The petitioner was suspended on 05/06/2003 which came to be revoked in April 2004. A charge-sheet dated 13/09/2004 was issued to the petitioner. The incident in respect of which the petitioner came to be chargesheeted happened on 04/06/2003. The petitioner was with Shri Keer at about 17.30 hours on that day. While the petitioner was waiting in Shri Keer's cabin, a person at the counter later identified as Shri A.K. Pasha handed over money to Shri Keer and informed him that notes amounted to Rs.1,000/-. The petitioner is alleged to have counted the money. Shri Keer then handed over the said amount to Shri M.S. Kamble - Clerk in

the office. A trap was laid by Anti Corruption Bureau of CBI and 3 people in the room namely Shri Keer, Shri M.S.Kamble and the petitioner were apprehended. Criminal Proceedings were initiated against Shri Keer. The petitioner was also detained in custody. No criminal proceedings were initiated by CBI against the petitioner or against Shri M.S.Kamble. The charge-sheet dated 13/09/2004 was issued to the petitioner wherein there is no charge of either demanding or accepting the bribe amount against the petitioner. The charge-sheet however stated that the petitioner was aware that the amount received by Shri Keer was towards bribe/illegal gratification from Shri Abdul Pasha and the petitioner did not discourage Shri Keer but instead he handled the said amount. The departmental enquiry which commenced after 14/12/2005 concluded on 27/04/2006. The Disciplinary Authority passed an order imposing punishment of compulsory retirement on 08/01/2008 against the petitioner. An Appeal preferred by the petitioner to the Appellate Authority was rejected on 30/03/2009. Revision Petition filed also came to be rejected on 27/08/2010. The

petitioner thereafter approached the Tribunal by filing OA. The Tribunal by the impugned order was pleased to direct reinstatement of the petitioner with continuity of service. The Tribunal however directed that the petitioner should not be paid any arrears of salary for the period from his compulsory retirement till his reinstatement on the principle of no work no pay. The Tribunal further was pleased to impose the punishment of stoppage of one increment for a period of three years on the petitioner on similar lines to the penalty imposed on Shri M.S.Kamble, LDC. The punishment of compulsory retirement was reduced.

3. We have heard learned Counsel for the petitioner and learned Counsel for respondents. The Tribunal considered the aspect that the petitioner as well as Shri M.S.Kamble were proceeded against departmentally by holding departmental enquiry and different penalties were imposed on them. Shri M.S.Kamble was given the punishment of stoppage of one increment for three years. In the light of established Doctrine of

equality and fair play, the Tribunal was pleased to hold that there cannot be discrimination in the penalty imposed on the petitioner and Shri M.S.Kamble who were both found guilty of misconduct on almost identical charges in the departmental proceedings in a similar incident.

4. No doubt, the Enquiry Officer has found that though there was no charge of demand of bribe against the petitioner and Shri M.S.Kamble, but their nexus cannot be ruled out as both of them have handled the bribe amount. As indicated earlier, the Tribunal on the Doctrine of equality and fair play held that there cannot be discrimination in the penalty imposed on the petitioner and Shri M.S.Kamble who were both found guilty of misconduct on almost identical charges in the departmental proceedings in a similar incident. The Tribunal also found that justification given by the respondents for imposing different penalties on the petitioner and Shri Kamble was not convincing.

5. The petitioner has approached this Court only against that part of the order of the Tribunal denying him back-wages and that though the Tribunal has directed reinstatement of the petitioner, according to the learned Counsel for the petitioner, reinstatement should have been with effect from 08/01/2008 with continuity of service as the reduction in penalty would obviously be effective from 08/01/2008 on which date the petitioner came to be compulsorily retired by the respondents.

6. It is not in dispute that the challenge by the respondents – Union of India in this Court to the order passed by the Tribunal has failed. The respondents filed Writ Petition No. 6368 of 2013 challenging the order passed by the Tribunal in this Court. This Court was pleased to dismiss the Petition by the judgment and order dated 21/06/2017. Learned Counsel for the respondents submitted that the respondents are in the process of challenging the order dated 21/06/2017 passed in Writ Petition No. 6368 of 2013 before the Hon'ble Supreme Court.

7. Thus, as of today the order of reinstatement passed by the Tribunal stands. The petitioner has filed this Petition seeking relief that he be reinstated with effect from 08/01/2008 with continuity in service, full back-wages and all other consequential benefits.

8. In respect of the incident which took place on 04/06/2003, the petitioner was proceeded with departmentally and by order dated 08/01/2008, the penalty of compulsory retirement was imposed on him. The Appeal came to be rejected on 30/03/2009. Revision Petition was rejected on 27/08/2010. The Tribunal granted reinstatement by order dated 21/02/2013. The Tribunal while granting reinstatement has observed that there cannot be any discrimination in the penalty imposed on the petitioner and Shri M.S.Kamble who were both found guilty of misconduct on almost identical charges in the departmental proceedings in a similar incident. Shri M.S. Kamble was imposed with the penalty of stoppage of one increment for a period of three years. The petitioner thus had to

wait till 21/02/2013 for order of reinstatement whereas Shri M.S.Kamble continued in service and draw salary as a result of differential treatment given to him in the matter of penalty.

9. Learned Counsel for the petitioner points out that even as on today the petitioner has not been reinstated. According to him, aspect of back-wages ought to have been considered in the context of Shri M.S. Kamble being imposed with punishment of stoppage one increment for a period of three years and Shri M.S.Kamble allowed to discharge duties whereas the petitioner was virtually kept out of employment till his reinstatement. Learned Counsel submits that even as of today order passed by the Tribunal has not been complied with and he has not been reinstated. In the interest of justice, we feel that the issue of back-wages needs to be reconsidered by the Tribunal afresh. As the challenge of the petitioner is limited to the grant of back-wages & determining the date from which the petitioner is entitled for reinstatement, the matter needs to be remitted back to the Tribunal to the limited extent of deciding the issue of

back-wages and arrears of salary. It is the specific contention of the learned Counsel that the petitioner is entitled to be reinstated from 08/01/2008. This aspect needs to be considered by the Tribunal. Hence, the following order.

ORDER

- i) The O.A. is remitted back to a limited extent. The judgment and order dated 21/02/2013 passed by the Tribunal in OA No. 787 of 2010 only to the extent of 'the petitioner should not be paid any arrears of salary for the period from his compulsory retirement till his reinstatement' is set aside. The Tribunal to also determine the date from which the petitioner is entitled for reinstatement.
- ii) The Tribunal to hear and decide the issue of payment of arrears of salary on its own merits.
- iii) The Tribunal is requested to hear and decide OA on this limited aspect as expeditiously as possible, preferably within a period of 16 weeks from today.
- iv) All contentions as regards the issues remitted are kept open to be decided on its own merits without being

influenced by any observations made by us.

10. Writ Petition is partly allowed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)