

S/L 58
18.04.2023
Court. No. 12
Suwayan

WPA 5956 of 2018

**Khagendra Barik
Vs.
Union of India & Ors.**

*Mr. Arup Kumar Lahiri
Mr. Udayan Dutta*

...for the petitioner.

Ms. Chandreyi Alam

...for the U.O.I.

1. Both the parties are represented by their respective learned Advocates.
2. The affidavit-in-reply as filed on behalf of the writ petitioner be taken on record.
3. Heard Mr. Arup Kumar Lahiri, learned Advocate for the writ petitioner and Ms. Chandreyi Alam, learned Advocate for the respondents/Union of India and its officials for and against the instant writ petition.
4. The present case is now taken up for passing appropriate order.
5. For effective disposal of the instant writ petition, the facts leading to filing of the instant writ petition is required to be discussed in a nutshell.
6. The writ petitioner was an employee of CRPF as Daptari/Peon and he was placed on suspension on April 25, 2007. A charge-sheet was submitted upon him on May 13, 2008 and after holding a disciplinary proceeding he was dismissed from service with effect from July 30, 2009 (A.N).

Challenging the said order of dismissal dated July 30, 2009 the writ petitioner filed WP 14804(W) of 2009 before the Hon'ble High Court at Calcutta and in the said writ petition by an order dated July 8, 2015 a co-ordinate Bench by this Hon'ble Court has been pleased to set aside the impugned order of dismissal dated July 30, 2009 with a liberty to the respondents/Union of India to revisit the enquiry report by the disciplinary authority. As directed by this Hon'ble Court in WP 14804(W) of 2009 the respondents/Union of India after revisiting the enquiry report again imposed punishment of dismissal from the service upon the writ petitioner with effect from February 22, 2016 (A.N).

7. Challenging the second order of dismissal, the present writ petitioner again approached this Hon'ble Court by filing WP 6930 (W) of 2016. In course of hearing of the second writ petition, another co-ordinate Bench of this Hon'ble Court by its order dated April 20, 2016 allowed the said writ petition and thereby set aside the impugned order of dismissal dated February 22, 2016 by leaving the disciplinary authority to continue with the disciplinary proceedings, if, he is so advised, but to begin the disciplinary action from the commencement of the enquiry stage, if he decides to peruse it.

8. From the materials as placed before this Court, it reveals that the respondents/Union of India decides not to proceed any further and accordingly the writ petitioner was reinstated into service with effect from June 22, 2016 (F.N) and while reinstating the respondent authorities passed following order amongst others:

“.....

(ii) As per provisions contained in FR-54(A)(2)(ii) that “the period interveining between the date of dismissal from service including the period of suspension proceeding such dismissal, i.e., 25/04/2007 and the date judgment of the Court, i.e., 08/07/2015 is hereby regularised as “non duty period” for all purposes in terms of FR 54(5) except for the purpose of pension under Rule 25 of CCS (Pension) Rules 1972 and the period from 09/07/2015, i.e., after the judgment dated to 21/06/2016, is hereby treated as “DUTY” in accordance with the Court judgment dated 20/04/2016.....”

9. The writ petitioner though was happy with his reinstatement but he felt prejudiced with regard to the above finding of the respondent authorities regarding the period of April 25, 2007 to July 8, 2015 as **non-duty period** which according to the writ petitioner ought to have been considered by the respondent authorities as **on duty period** so

that he must not be deprived of his due entitlement from the service.

10. Mr. Lahiri, learned Advocate for the writ petitioner in course of his submission draws attention of this Court to the judgment as passed in WP 14804 (W) of 2009 as well as the judgment as passed in WP 6930 (W) of 2016. Mr. Lahiri, learned Advocate also draws attention of this Court to the Fundamental Rules 54 and 54A on which the impugned order was relied upon. It is contended by Mr. Lahiri that while treating the period commencing from April 25, 2007 to July 8, 2015 as non-duty period, the respondent authorities have assigned no reason whatsoever as to why the said period has been treated as non-duty period within the meaning of Fundamental Rule 54A(2)(ii) read with Rule 54 Sub-Rule (5) of the said Rule. It is contended by Mr. Lahiri on perusal of the judgment as passed in WP 6930 (W) of 2016, it would reveal that the said writ petition was dismissed on merit basically on the ground of breach of principles of natural justice and, therefore, under no stretch of imagination it can be said that the case of the present writ petitioner comes under the purview of Fundamental Rule 54A(2)(ii) read with Sub-rule (5). According to Mr. Lahiri, learned Advocate for the writ petitioner since WP 6930 (W) of 2016 was dismissed on merit, the case of the writ petitioner ought to have

been considered by the respondent authorities under Rule 54A (3) of the said Rule.

11. *Per contra*, Ms. Alam, learned Advocate for the respondents/Union of India also places her reliance upon the said Fundamental Rule, more specifically upon Rule 54A(2) read with Rule 54(5). Drawing attention of this Court to the factual aspects as involved in this case, Ms. Alam, learned Advocate for the respondents/Union of India submits before this Court that since the findings of the disciplinary proceedings which was challenged before this Hon'ble Court was not dismissed on merit in none of the aforementioned two writ petitions and since the respondent authorities have decided not to proceed with the said disciplinary proceedings from his enquiry stage, the respondent authorities are very much justified in treating the period of dispute, that is, April 25, 2007 to July 8, 2015 as non-duty period. Ms. Chandreyi Alam, learned Advocate for the respondents/Union of India, thus, submits that it is a fit case for dismissal of the instant writ petition.
12. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties, it reveals to this Court that though WP 14804 (W) of 2009 was allowed by a co-ordinate Bench of this Court but liberty was given to the respondents/Union of India to revisit the enquiry report by the disciplinary authorities.

As discussed hereinabove after revisiting the enquiry report, the delinquent was again dismissed from service with effect from February 22, 2016 (A.N) which was again challenged before this Hon'ble Court by filing WP 6930 (W) of 2016. On perusal of the order dated April 20, 2016 as passed in WP 6930 (W) of 2016 it appears to this Court that the said Court while disposing the said writ petition categorically expressed the view that the order impugned in the said writ petition is liable to be set aside on a much more fundamental ground of the breach of principles of natural justice, since the petitioner was not given a further opportunity to disabuse the disciplinary authorities of his pre-disposition in the matter.

13. It is settled principle of law that a Court in exercise of its writ jurisdiction is not supposed to act like an appellate court but a writ court certainly interfere with the finding of the disciplinary authority if it is found that in course of the disciplinary proceedings the principles of natural justice has not been followed amongst other grounds. In the reported decision of ***High Court of Judicature at Bombay vs. Shaskikant S. Patil and Anr.*** reported in **(2000) 1 SCC 416** when the Hon'ble Apex Court expressed the following view:

**“16.....
Interference with the decision of
departmental authorities can be
permitted, while exercising**

jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution..”

14. Since in WP 6930 (W) of 2016 a co-ordinate Bench of this Hon’ble Court allowed the said writ petition on the ground of breach of principles of natural justice. In considered view of this Court it cannot be said that the said writ petition was not disposed of on merit.

15. Since both the learned advocates for the contending parties have relied upon Rules 54 and 54A of the Fundamental Rules, a look to the aforesaid two Rules is necessary.

Rule 54 is reproduced hereinbelow:

“F.R. 54 (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (60, be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such

dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly, attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject

to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case failing under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be shall be converted into leave of any kind due and admissible to the Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall

be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.

(8) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

Rule 54A is reproduced herein below:-

F.R. 54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of

Clause (1) or Clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of

reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.”

16. On conjoint perusal of the Rules 54 and 54A of the Fundamental Rule it appears to this Court that since WP 6930 (W) of 2016 was allowed on merit whereby the second dismissal order of the present writ petitioner was set aside, the respondent authorities ought to have applied the provisions of

Rule 54A(3) of the Fundamental Rule in respect of the period of April 25, 2007 till July 8, 2015.

17. In view of the discussion made hereinabove, this Court is, thus, of considered view that the respondent authorities have acted in violations of statutory regulations in treating the said period April 25, 2007 to July 8, 2015 as '**non-duty period**' instead of treating the same as '**on duty period**'.
18. In view of the discussion made hereinabove, the instant writ petition succeeds.
19. As a result, the respondent No. 4 authorities' finding dated August 1, 2016 is modified to the extent herein below.
20. The respondent authorities are hereby directed to treat the period commencing from April 25, 2007 to July 8, 2015 as '**on duty period**' of the present writ petitioner and in respect of the said period the writ petitioner is entitled to get all its service benefits treating as if he was on duty for the said period.
21. Considering the date of superannuation of the present writ petitioner is not too far, the respondent authorities are hereby directed to comply with this order at the earliest.
22. With the aforementioned observation the instant writ petition being WPA 5956 of 2018 is hereby disposed of on contest.
23. Parties to act on the server copies of this order.

24. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)