

10.12.2024
(D/L-17)
Ct. No.4
(Naba)

W.P.S.T. 192 of 2024

Purnendu Samanta
Vs.
The State of West Bengal & Ors.

Mr. Mahadeb Ghosh,
Mr. Nandadulal Bandyopadhyay,
Mr. Pritam Ghosh
... for the Petitioner.

Mr. Tapan Kumar Mukherjee, ld. AGP,
Mr. Somnath Naskar
... for the State Respondents.

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.
2. The petitioner has assailed the order of the West Bengal Administrative Tribunal passed in O.A. 235 of 2024 filed by him. The Original Application has been filed with the following relief :

“In view of the facts mentioned above in paragraph 6, the applicant prays for following relief(s) :-

(a) .. Direct the Director General of Police, West Bengal Police Directorate, Govt. Of West Bengal to consider and dispose of the appeal dated 12th September, 2023 before the Director General of Police, West Bengal Police Directorate, with a prayer to grant all consequential service benefit and pensionary benefit as per judgement and order

dated 29th January, 2015, passed in C.R.A. No. 310 of 2008 by the Hon'ble High Court at Calcutta and the Hon'ble Appeal Court set aside the decision of the Trial Court. The conviction of the appellant under Section 302 of the IPC is set aside. Therefore, the appellant shall be set free if not required to be detained in any other case forthwith. So the appeal should decide by the Appellate Authority forthwith.

(b).. Any other order or orders as to the Hon'ble Tribunal may seem fit and proper."

3. The O.A. having been filed belatedly a Miscellaneous Application was also filed seeking condonation of delay in filing the application before the Tribunal. M.A. 35 of 2024 filed for seeking condonation of delay was dismissed along with the O.A. 235 of 2024 on 18.07.2024.
4. The brief factual background is that when the petitioner was on duty on the Grand Trunk Road, he was assigned the duty of checking unruly bike riders etc. on the G.T. Road. He received information that a biker was approaching him. The biker refused to stop when he was asked to stop by the police posted on the Road prior to the place where petitioner was posted. He, therefore, made an endeavour to stop

the biker. The biker refused to comply and fired upon the petitioner. The petitioner thereafter fired from his service arms which injured one of the bikers who ultimately died as a result of the bullet injury. He was proceeded against in a criminal proceedings instituted for the alleged offences under Sections 341, 353, 326 and 307 of IPC and Sections 25 and 27 of the Arms Act vide FIR bearing No. 127 of 2003 registered on the basis of the statement of the victim recorded at Uttarpara Hospital. Another FIR was also raised by the police authorities. The same was numbered as Uttarpara Police Station Case No. 128 of 2003 under Section 304 IPC. The petitioner was in custody since 2008 to 2015. In the meantime a departmental proceeding was also instituted against him in relation to the same incident. The same was communicated to the petitioner at the Presidency Correctional Home in Alipore where he was in custody. The Superintendent of the Correctional Home sent an intimation that the petitioner refused to received the notice. He was thereafter dismissed from service with immediate effect by an order dated 22.09.2008 bearing D.O. No. 4009 passed by the Superintendent of Police, Hooghly. The petitioner was also convicted in the trial by the Fast Track

Court. He thereafter challenged the conviction in an appeal.

5. On the petitioner's appeal the High Court passed the following order :

"...In these circumstances, the decision of the Trial Court is set aside. The conviction of the appellant under Section 302 of the IPC is set aside. Instead, he is convicted under Section 304 para II. The appellant has been in custody from 18th April, 2008 i.e. for 6 years and 10 months. We are of the opinion that the sentence undergone by the appellant is commensurate with the crime committed by him. Therefore, the appellant shall be set free if not required to be detained in any other case."

6. Upon being set free on 29th January, 2015, he has filed an appeal before the Director General of Police against the dismissal dated 22.09.2008 passed by the Superintendent of Police. The appeal has been filed on 12.09.2023, about eight years after he was released from jail upon his acquittal from the date of his conviction and consequent release. Immediately after filing the appeal he has filed an Original Application seeking a direction for disposal of the appeal. The O.A. has been filed in 2024.

7. The learned Counsel for the petitioner submits that the petitioner was given no opportunity in the Departmental Proceedings as he was in jail at the relevant point of time. He has been released from jail in the year 2015 and therefore, only after his release he could have taken steps against the order of dismissal dated 22.09.2008. Even after release, he was otherwise busy in view of the fact that his wife was suffering with a terminal disease. It is under such circumstances that he made his appeal against the dismissal order for the first time on 12.09.2023. He, therefore, submits that merely based on the length of time between the order of dismissal and the appeal the authority cannot refuse to exercise the jurisdiction of appeal when the petitioner had sufficient cause for not preferring the appeal for eight years. It is therefore submitted that the Tribunal also ought to have considered these mitigating circumstances and not rejected the petitioner's O.A. merely on the ground of length of time as a ground of delay.
8. The learned State Counsel on the other hand submits that there is no dispute that the departmental appeal as well as the Original Application was both filed years after the limitation had lapsed. For the purpose of filing

an appeal, the limitation is 37 (thirty seven) days from the date of receipt of the order and for filing an Original Application before the Tribunal also there is a limitation of one year. The petitioner has breached the limitation by about eight years in filing the appeal, there was no question therefore for directing disposal of the appeal. The Tribunal has rightly refused to exercise jurisdiction in the matter. The petitioner remains a convict. The dismissal has not been challenged even for about eight years after he was released from jail. The conviction in terms of the order passed by the High Court also has not been challenged by the petitioner. In the circumstances refusal by the Tribunal to direct disposal of his appeal merits no interference.

9. We have considered the rival submissions. The facts are very much not in dispute. The petition was dismissed on 22.09.2008 and it is also an admitted position that his conviction attained finality in the year 2015. It is also not in dispute that in the year 2015 itself he was released from jail as the High Court was of the view that the time spent in jail is sufficient punishment in view of the conviction having been converted into a conviction under Section 304 (2) IPC. The conduct of the petitioner thereafter is clear that

he has not taken any steps whatsoever and therefore, there was no occasion for the Tribunal to exercise jurisdiction for disposal of the appeal.

10. Having regard to the circumstances under which the petitioner was proceeded against, i.e. while in discharge of his duties, we have asked the learned Counsel for the petitioner to show us the appeal filed by the petitioner.
11. We have gone through the appeal which has been filed about eight years after his release from jail and about 15 years after the dismissal order. Even in this appeal, there is not a whisper as to under what circumstances, the petitioner has taken 15 years to challenge the dismissal order. In fact the prayer of the petitioner in the appeal reads as follows:

“In this circumstances, I humbly pray to your Honour to allow me to grant all my consequential service benefits and pensionary benefit as per order of the Hon’ble Appeal Court, the Judgement and Order dated 29.01.2015 passed by Their Lordships the Hon’ble Justice Nishita Mhatre and the Hon’ble Justice Samapti Chatterjee in C.R.A. No. 310 of 2008. “We are of the opinion that the sentence undergone by the appellant is commensurate with the crime committed by him.

Therefore, the appellant shall be set free if not required to be detained in any other case” by modifying the punishment order being D.O. No. 409 dated 22/09/2009 passed by the Superintendent of Police, Hooghly dismissed from service.”

12. Relying upon the order passed by the High Court in appeal arising out of the criminal trial, the petitioner has sought grant of all consequential benefits in respect of the service which he did not discharge since 2008 till the date of filing the appeal in September, 2023. In between filing of the appeal and the O.A., the petitioner has attained the age of superannuation on 31.10.2023.
13. From a bare perusal of the appeal, we find that there is no challenge to the dismissal order by raising any procedural lapse or any infirmity in the proceedings before the Superintendent of Police who passed the order of dismissal. The petitioner has merely relied upon the order passed by the High Court which is an order of petitioner's conviction. Petitioner being a convict even otherwise would not be entitled to any service benefits.

14. In the circumstances any direction for disposing of the petitioner's appeal by the Tribunal would be an exercising futility.
15. We find no infirmity in the decision of the Tribunal.
16. The Writ Petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)