

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

MP No. 1/2016 in SWP No. 210/2005.

Date of order: 27.02.2017.

Ashok Kumar

V/s

U. O. I. and others.

Coram:

Hon'ble Mr. Dhiraj Singh Thakur, Judge

Appearing counsel:

For the appellant(s)/petitioner(s) : Mr. M. R. Qureshi, Advocate.

For the respondent(s) : Mr. Danish Butt, CGSC.

Whether approved for reporting in press/journal/media/Digest : Yes

(Oral)

- 1) In the instant writ petition, the petitioner prays for a writ of certiorari for quashing the order of dismissal dated 20.02.1998, whereby the petitioner stands dismissed from service.
- 2) Briefly stated the material facts are as under:-
- 3) A departmental enquiry came to be initiated against the petitioner by the Commandant 90th Battalion of the CRPF in exercise of the powers vested with him under Rule 27 of CRPF Rules, 1955 read with Section 11(1) of CRPF Act, 1949, vide his communication dated 24.10.1996, on four charges, details whereof may not be absolutely necessary at this stage. The said officer appears to have conducted the enquiry and submitted his report dated 19.02.1997, whereby three out of four charges were held not proved, while one charge appeared to be quite inconsequential.

4) After submission of the report before the Commanding Officer, it appears that not being satisfied with the same, he again ordered a fresh enquiry to enquire into the charges framed against the petitioner, the reasons thereof were mentioned as under:-

a. As per Co-8/85, the preliminary enquiry report is not admissible in evidence and should not be exhibited in the departmental proceedings. Since in the D.E. proceedings against L. NK Ashok Kumar, the COI findings/ opinion have been attached, the instructions rules have been violated. Thus, it is to be corrected.

b. It is observed that the statements of PW-1 and PW-10 of C.O.I. have not been recorded by the Enquiry Officer during the course of D.E. Their statements are essential and are to be recorded to substantiate the articles of charge framed against the delinquent.

c. The findings/opinion of C.O.I. was relied upon while conducting D.E. but copies of statements recorded in the C.O.I. have not been supplied which is incorrect.

d. Statement of Shri S. D. S. Patwal, Asstt. Comdt (OC-C/9C) recorded is incomplete and statement of Dr. A. A. Agnihotri, CMO, 20 Bedded Hospital, Srinagar should also have been recorded to substantiate injury sustained by No. 830070692 L. NK M. M. Pillai, which has not been done.

5) Based upon the decision so taken, fresh departmental enquiry proceedings were initiated against the petitioner. Consequent thereupon, the DIG, CRPF Passed the order impugned dated 20.02.1998, whereby the petitioner was dismissed from service. An

appeal was also preferred against the aforesaid order before the Inspector General of Police, CRPF, which also stood dismissed. Hence the present petition.

- 6) The main ground of challenge to the order of dismissal is that the second enquiry ordered by the Commandant was illegal. Reference in this regard was made to Rule 15 of the Central Civil Services (Class, Control & Appeal) Rules, 1965 to highlight the point that the said rule did not contemplate successive enquiries.

At this stage, it is relevant to reproduce Rule 15(1) of the Central Civil Services (Class, Control & Appeal) Rules, 1965, which reads as under:-

"(1) Without prejudice to the, provisions of the Public Servants (Inquiry) Act, 1950, no order imposing on a Government servant any of the penalties specified in clauses (iv) to (vii) of rule 13 shall be passed except after an inquiry, held, as far as may be, in manner hereinafter provided."

Clause (2) of rule 15 provides for framing of charges and communication in writing to the government servant of these charges with the statement of allegations on which they are based, and it also provides for a written statement of defence. Under clause (3) the government servant is entitled to inspect and take extracts from such official records as he may specify, subject to certain exceptions. Under clause (4) on receipt of the written statement of defence the Disciplinary Authority may itself enquire into such of the charges as are not admitted, or if it considers it necessary

so to do, appoint a Board of Inquiry or an Inquiring Officer for the purpose. Clause (7) provides that at the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons therefore. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. Under clause (9) "the Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its findings on each charge."

- 7) From a reading of the aforementioned rule, it becomes clear that Rule 15 infact provides for only one enquiry and does not envisage successive enquiries. While, it may be true that in some cases further enquiry may be necessitated on account of some defect, which might have crept in while conducting the enquiry, or some witnesses which were required to be examined were not examined, but for that only further enquiry could be ordered.
- 8) The issue as to whether Rule 15 at all gives an authority a power to order successive enquiries has been considered by the Apex Court in case titled **"K. R. Deb V/s Collector of Central Excise, Shillong"** 1971(2) SCC 102, paragraph 11 of which is reproduced as under:-

“It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.”

- 9) In the present case, the Commandant could have ordered further enquiry for purposes of recording the statement of witness Nos. 1 & 10, however, instead of adopting that procedure, the said officer proceeded to totally nullify the enquiry report and ordered a fresh enquiry, which on the face of it, was not only contrary to Rule 15 of the Central Civil Services (Class, Control & Appeal) Rules, 1965, but even contrary to the judgment of the Apex Court (supra).
- 10) Ordering a fresh enquiry on the same set of charges, which were earlier the subject matter of the enquiry was, therefore, legally untenable. Following the ratio of the judgment (supra), it can clearly be held that no proper enquiry has been conducted in the instant case and there was a breach of Article 311, Clause 2 of the Constitution of India.

11) The next question that arises for consideration is as to whether the petitioner should be paid his salary along with all consequential benefits for the period that he had remained out of service on account of the order of dismissal.

12) In **Paluru Ramkrishnaiah & ors vs. Union of India & anr, (1989) 2 SCC 541**, the Apex Court while upholding the right of the petitioners to promotion with effect from the date on which they ought to have been promoted declined the relief as regards back wages by observing in paragraph 19 as under:

"19....."It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to re-fixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them....."

13) There was, however, a shift on this principle as can be seen in **Union of India & ors vs. K.V. Jankiraman & ors, (1991) 4 SCC 109** wherein it was held that the normal rule of

“no work no pay” was not applicable to cases where although the employee was willing to work but was kept away from work by the authorities, for no fault of his. The Apex Court in para 26 held as under:

“26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an

employee would in all circumstances be illegal.....”

- 14) In A. P SRTC & anr vs. S. Narsagoud, (2003) 2 SCC 212**, the Apex Court was dealing with a case wherein the respondent being a conductor was in the employment of the Andhra Pradesh State Road Transport Corporation and had remained absent from duty on different occasions. He was served with a chargesheet on account of such absence. In response to the chargesheet, it was urged that he remained absent because of ill health due to jaundice, chest pain and fever etc. Upon enquiry, the charges were held to be proved and the explanation tendered not found satisfactory. The respondent was then inflicted with the punishment of removal from service. Ultimately, the respondent raised a dispute under Section 2(A) (2) of the Industrial Disputes Act, 1947 in which an award was passed, directing the reinstatement of the said respondent in service with continuity of service but without back wages.

A writ petition came to be preferred by the said respondent in which a direction had been issued to the appellant-Corporation to compute the periodical increments that would have been earned by the respondent had he been in service during the period of absence

from duty and to fix the wages payable to the respondent after his reinstatement by taking into account the said increments. An intra court appeal preferred by the A.P SRTC against the said judgment was dismissed. The said order was yet again challenged before the Apex Court. The Apex Court, however, set aside the orders of the writ court as also the Division Bench, upholding the direction of the High Court, by holding that holding the employee entitled to earn increments during the period of unauthorized absence from duty would amount to putting a premium on the misconduct of the employee. It was held that a mere direction for reinstatement with benefit of continuity in service would not entitle the employee to claim the benefit of increments notionally earned during the period of unauthorized absence in the absence of a specific direction in that regard.

- 15) In **General Manager, Haryana Roadways vs. Rudhan Singh, (2005) 5 SCC 591**, the Apex Court in para 8 held as under:

“8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of [Section 25-F](#) of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment, i.e., whether after proper advertisement of the vacancy or inviting

applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment.....”

- 16) In **U.P. SRTC vs. Mitthu Singh, (2006) 7 SCC 180**, the court while taking note of various judgements of the Apex Court on the point held that entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equality and good conscience have to be kept in view by an appropriate Court/Tribunal.
- 17) In **Commissioner, Karnataka Housing Board vs. C. Muddaiah, (2007) 7 SCC 689**, the Apex Court in para 34 held as under:

“34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of

Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering as if he had worked'.....”

18) The same view was followed in **Chairman-cum-Managing Director, Coal India Ltd & ors. Vs. Anant Saha & ors, (2011)5 SCC 142.**

19) Testing the ratio of the aforementioned judgments on the facts and circumstances of the present case, it will be seen that the petitioner had been exonerated of the charges leveled against him in the first enquiry conducted by the enquiry officer. The second enquiry on the same set of charges, which were earlier the subject of enquiry, has been held by this court in the preceding paragraphs to be legally untenable. If that be so, there would be little justification for denying to the petitioner the relief of arrears of his salary along with all consequential benefits for the period he had remained out of service for no fault of his.

20) Be that as it may, this petition is allowed. Order dated 20.02.1998 is quashed. The petitioner shall be treated to be in service and shall be paid his salary along with all

consequential benefits for the period he had remained out of service.

21) Disposed of as above along with connected MP.

(Dhiraj Singh Thakur)
Judge

Jammu
27.02.2017
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