SUPREME COURT OF INDIA

Kanailal Bera

Vs.

Union of India

C.A.No.4493 of 2007

(S. B. Sinha and H. S. Bedi, JJ.)

24.09.2007

JUDGEMENT

S. B. SINHA, J.:-

Leave granted.

1. Appellant herein was appointed as a Constable in the Central Reserve Police Force. He allegedly proceeded on medical leave on 17.2.1992. He reported for duty on 1.4.1992. He was found medically fit and declared as such on 6.4.1992. He again ap plied for medical leave and without such leave being sanctioned he unauthorisedly left his place of posting on 9.4.1992. He re mained unauthorisedly absent for a period of 67 days. He returned back to his duty only on 12.7.1992. On the charges of hav ing remained unauthorisedly absent, he was sentenced to seven days confinement to Civil Lines. As against the said order, he made a representation. The said representation, however, was not routed through proper channel, whereupon a proceeding was again initiated against him. He was directed to be confined for ten days in the Civil Lines and on the premise that he refused to comply with the requirements of such confinement to Civil Lines, another disciplinary

proceed ing was initiated against him. In the said proceedings the charges against him were held to be partially proved. He was dismissed from service but then another disciplinary proceeding was directed to be initiated.

2. The order of dismissal was passed in the year 1994. He preferred an appeal there against. The appeal filed by him was also dismissed on 5.4.1995.

3. He filed a writ petition before the Calcutta High Court questioning the said order of dismissal in the year 1997 which was marked as W.P. 85/1997. On the premise that the said writ petition was filed after a lapse of two years, a learned Single Judge of the High Court refused to exercise his discretionary jurisdiction under Article 226 of the Constitution of India. Aggrieved by and dissatisfied therewith an intra Court appeal was preferred thereagainst. By rea son of the impugned judgment dated 9.11.2006, the said appeal has also been dismissed stating :

"..The appeal was dismissed on 5.4.95 but the writ petition was filed on 9.5.97. Within the four corners of the writ petition the writ petitioner/appellant has not assigned any reason for this long delay for moving this Court in writ jurisdiction.

In the case report in (2006) 4 Supreme Court at page 322 it has been laid down that the delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an ap propriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances causes prejudice to the op posite party. 2006 AIR SCW 1828

In this case the writ petitioner/appellant has prayed for invoking the power of the Court in writ jurisdiction after unexplained delay of a number of years. He by his con duct had accepted the punishment inflicted upon him. The chapter was closed. Now again after long lapse of a number of years the said closed chapter cannot be reopened. Thus, the learned Single Judge was perfectly justified in dismissing the writ petition on the ground of inordinate delay."

Appellant is, thus, before us.

4. Learned counsel appearing on behalf of the appellant in support of his appeal sub mitted that the High Court in a situation of this nature should not have refused to en tertain the writ petition as also the Letters Patent Appeal preferred by the appellant herein only on the ground of delay and laches as a result whereof manifest injus tice has been caused to him. Learned coun sel would point out that in terms of Rule 27 of the Central Reserve Police Force Rules, the respondent could not have

initiated a second inquiry after having found that the charges have been partially proved in the first inquiry. It was, furthermore, contented that in the Central Reserve Police Force Act and the Rules framed thereunder, there does not exist any provision for imposition of punishment of confinement to Civil Lines which was applicable only to the persons governed by the Army Act.

5. The question as to whether a punish ment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the dis ciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges lev elled against him or not. In a given situa tion further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.

6. In K.R. Deb v. The Collec tor of Central Excise, Shillong 1971(2) SCC 102, this Court while considering the provisions contained in Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) AIR 1971 SC 1447, Paras 13 and 14 Rules, 1957 held as under:

"12. 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 avail able at the time of the inquiry or were not examined for some other reason, the Disci plinary Authority may ask the Inquiry Of ficer to record further evidence. But there is no provision in Rule 15 for completely set ting 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.

13. In our view the rules do not contem plate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking re sponsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant".

7. The next question which arises for our consideration is as to whether we would fol low the normal rule, namely, set aside the impugned judgment and remit the matter back to the High Court or deal with the matter ourselves. One other option which is available to us was to set aside the punish ment recorded by the disciplinary authority and request the High Court to consider the matter afresh on the basis of the materials brought on record in the disciplinary pro ceedings.

8. Fifteen years, however, in the mean time have elapsed. Ordinarily, although, we would not interfere with the quantum of punishment but keeping in view the fact that the disciplinary authority must be held to have misdirected itself by not complying with Rule 27 of the Central Reserve Police Force Rules stricto sensu and having directed a further inquiry after ordering for the dis missal of services of the appellant, we are of the opinion that in the peculiar facts and circumstances of this case which may not be treated to be a precedent, we shall pass an appropriate order in exercise of our dis cretionary jurisdiction under Article 142 of the Constitution of India.

9. In our view in terms of the foregoing reasons and on the finding aforementioned, the appellant should be directed to be rein stated in service. The question, however, re mains as to whether he should be granted back wages. We think not.

10. Learned counsel vehemently submits that in a situation of this nature, where the illegality committed by the disciplinary au thority is apparent on its face the appellant should not be denied back wages.

11. It is now a trite law that back wages cannot be directed to be granted automati cally. Several factors are required to be taken into consideration therefor. Furthermore, we have not and could not have gone into the question as to whether the appellant in fact has committed any misconduct or not as we are inclined to set aside the impugned or der of punishment only on technicality.

12. The misconduct is alleged to have committed in the year 1992. He, admittedly, did not approach the High Court within a reasonable time. The High Court had refused to exercise its power of judicial review hav ing regard to delay and laches on the part of the appellant.

13. Having regard to the said fact, we are of the opinion that interest of justice would be subserved if the appellant is de nied the back wages for the said period. He, however, should be reinstated in service and be given all other consequential benefits.

14. The appeal is allowed to the afore mentioned extent. In the facts and circum stances of this case, however, there shall be no order as to costs.

Appeal allowed.