



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

TA No. 6 of 2015

Reserved on -17.03.2016
Date of order: 30.03.2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Sri Ajit Kumar Dhal, son of Late Laxmindar Dhal, residing at
C/o. Sri Shaktipada Garai, Village-Bhiringi, Police Station-
Durgapur, Post Office-Durgapur-13, District-Burdwan.

.....Applicant

For the Applicant: Mr.S.Chakraborty. Counsel

-Versus-

1. The Steel Authority of India Limited, a Government of India undertaking service through its Chairman having its office at 6, Ganesh Chandra Avenue, Calcutta-700 013.
2. The Managing Director, Durgapur Steel Plant, having his office at Main Administrative Building, Ispat Bhawan, Durgapur-3, District Burdwan.
3. The Chief Personnel Manager, Durgapur Steel Plant, having his office at Main Administrative Building Ispat Bhawan, Durgapur-3, District-Burdwan.
4. The Assistant General Manager, Wheel and Axle Plant (Railway Product), Durgapur Steel Plant, Durgapur-3, Dist. Burdwan.
5. The Superintendent Wheel and Axle Plant, Durgapur Steel Plant, Durgapur-3, District-Burdwan.

.....Respondents

For the Respondents: Mr.S.Panchal, Counsel

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ORDER

JAYA DAS GUPTA, AM:

The Applicant, Shri Ajit Kumar Dhal, initially approached the Hon'ble High Court of Calcutta for redressal of his grievance in WP No. 8373 (W) of 2003 which was subsequently transferred to this Bench vide order dated 29.7.2015 and renumbered as TA No. 6 of 2015. The prayer of the applicant in this petition is as under:

"(a) A writ of and/or in the nature of Mandamus do issue commanding the respondent authorities concerned, each one of them, their men, agents and/or subordinates to forthwith rescind/cancel and/or withdraw the Final Order bearing No. WA-Per/03/01/530/64246/9 dated 5th day of November, 1984 issued by the Chief Superintendent Wheel and Axle Plant, Durgapur Steel Plant in connection with the Charge sheet bearing NO. WA/Per/03/01/530/64246/1 dated 9th day of February, 1982 issued by the self same office without any delay whatsoever.

(b) A writ of and/or in the nature of Mandamus do issue commanding the respondent authorities concerned, each one of them, their men, agents and/or subordinates to forthwith reinstate the petitioner in the service of the concerned Company along with all back wages with retrospective effect in the light of the Judgment and Order dated 11th day of September, 1985 passed by the learned court below in Waria I/C G.D.E No. 735 dated 22nd day of January, 1982 under section 4 (1) of the Bengal Criminal Law (Amendment) Act (J.N.G.R.No.349 of 1982).

(c) A writ of and/or in the nature of Certiorari do issue directing the respondent authorities concerned, each one of them, their men, agents and/or subordinates to forthwith transmit the entire records of the instant case forming the basis of the impugned Final Order bearing No. WA-Per/03/01/530/64246/9 dated 5th day of November, 1984 issued by the Chief Superintendent, Wheel & Axle Plant, Durgapur Steel

Plant in connection with the Charge sheet bearing No. WA/Per/03/01/530/64246/1 dated 9th day of February, 1982 and all the relating thereto before this Hon'ble Court and/to certify them and on being so certified quash the same so that conscionable justice may herein be administered.

(d) Rule Nisi in terms of prayers (a), (b) and (c) as above.

(e) An order do issue directing the respondent authorities concerned to re instate the petitioner in the service of the concerned Company along with all back wages with retrospective effect in the light of the Judgment and Order dated 11th day of September, 1985 passed by the learned criminal court below in the Waria I/C G.D.E. No. 735 dated 22nd day of January, 1982 under section 4 (1) of the Bengal Criminal Law (Amendment) Act (J.N.G.R.No. 349 of 1982) on temporary basis till the disposal of this application.

(f) Ad interim order in terms of prayer (e) as above.

(g) To make the Rule absolute;

(h) Costs and incidentals too;

(i) Pass such other or further order or orders and/or direction or directions as to Your Lordships may deem fit and proper."

(Extracted as such)

2. We have heard the learned counsel for both sides *in extenso* and perused the records.

3. It is the case of the applicants that he joined the service of the Durgapur Steel Plant on 01.04.1964 and was engaged in the Wheel and Axle Plant of the Durgapur Steel Plant. It has been alleged that on 26.01.1982 he was found to emerge through Tamla Gate of DSP suspiciously and on search by the the concerned authorities of the Central Industrial Security Force

on duty, he was found with a steel tool which he was carrying unauthorizedly. On being asked he could not give any satisfactory explanation for the steel tool with him at that point of time. Accordingly, the applicant was arrested under section 41 of the Code of Criminal Procedure, 1973/under section 4 (1) of the Bengal Criminal Law (Amendment) Act. The said case was numbered as Waria I/C G.D.E. No. 735 dated 27th January, 1982 under section 4 (1) of the Bengal Criminal Law (Amendment) Act (J.N.G.R. No. 349 of 1982). Subsequently, on 9th February 1982 the Superintendent of the Wheel and Axle Plant, Durgapur Steel Plant, Durgapur Dist. Burdwan issued a notice to the applicant as to why a formal charge sheet shall not be issued to him regarding such allegation of theft and on the same date a charge sheet bearing No. WA/Per/03/01/530/64246 was issued to him alleging serious act of misconduct. He was also placed under suspension which was revoked later (according to the submission of the learned counsel for the Applicant). Enquiry into the allegation was held and he was served with the penalty order dated 05.11.1984 which is extracted hereunder:

"Further to the Charge sheet bearing No. WA/Per/03/01/530/64246/1 dt. 9.2.82 issued to you and your explanation thereto, an enquiry was held into the charge levelled against you. After carefully going through the records of the enquiry proceedings, connected papers, documents and the findings of the Inquiring Authority, I have come to the conclusion that the following charge levelled against you in the above mentioned charge sheet has been sufficiently proved.

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"Theft in connection with the Company's Property."

Accordingly, with the approval of your Appointing Authority, I impose on you the following punishment in accordance with the Certified Standing Orders of the Company applicable to you after having given due consideration to your past records and conduct.

"Removal from the services of the Company with immediate effect."

In this connection, please note that during the period of your suspension, you will be entitled to subsistence allowance only."

4. Subsequently, in the Criminal Case No. J.N.G.R. 349 of 1982 which was instituted against him before the Learned 2nd Court of Judicial Magistrate at Durgapur District Burdwan, resulted in acquittal vide order dated 11.09.1985. Relevant portion of it would run thus:

"Point No.1.

Prosecution could examine only one witness in this case. P.W.1 security guard Prem Prakash of C.I.S.F. is the person who recovered the material in question from the possession of the accused. This witness has narrated the incident with all material particulars of the facts. But there is no second witness to corroborate him though it is evident from the evidence of P.W.1 that many other employees of D.S.P were going out through that gate at the material time. The Head Constable of the Crime control, D.S.P has not been examined though it is alleged that the accd was handed over to him by P.W 1 just after he (accd) was apprehended. The seized material has not been produced. The police officer, who made the seizure and submitted prosecution report, has not been examined also. As a consequence, thereof the seizure list has not been proved.

In view of the facts and circumstances stated above, the preponderance of possibility of the defence case cannot be ruled out. I am, therefore, inclined to

hold that prosecution has not been able to prove its case as regard recovery and seizure beyond all reasonable doubts. This point is, therefore, answered in negative.

Point No.2.

In view of my decision arrived at in determining point no.1, this point calls for no consideration.

Point No.3

It appears from the record that though the police officer, while forwarding the accused to court, prayed for permission of the court to investigate into this case, yet there was no permission accorded by the Court on his such prayer. The fact remains, therefore, that police investigated into this case without any permission of the court in violation of the mandatory provision of sec. 155 (2) Cr.P.C. Therefore, the whole trial has been vitiated and the instant case is not maintainable in law. This point is answered in negative.

In the totality of the circumstances stated above, the accused becomes entitled to get an order of acquittal in this case.

Hence,

Ordered

That accused Ajit Kumar Dhal is found not guilty of the charge u/s 4(1) B.C.L.A.Act and accordingly, he is acquitted u/s 255 (1) Cr.P.C. of the said charge. The accused set at liberty at once and he is discharged from bail bond.

The seized articles be confiscated to the State.

Sd/- Amitabha Das
Judicial Magistrate, 1st Class
2nd Court, Durgapur. 11.9.85"

5. After getting acquittal from the criminal court, the applicant represented to the respondent authorities on 4th October, 1985 as per record requesting for reinstatement. Such representations were made according to the applicant repeatedly

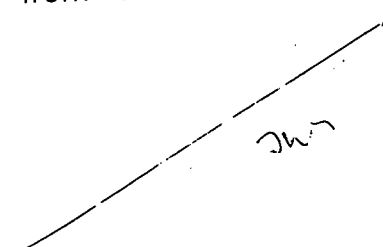
and last of such representation as annexed on record, is dated 29.10.1992.

6. It is the grievance of the applicant that as the respondent authorities did not pay any heed to his repeated representations, he was constrained to approach the Hon'ble High Court, Kolkata in the aforesaid Writ Petition which has been remanded to this Tribunal for adjudication.

7. The learned counsel for the applicant has submitted at the time of hearing that the applicant is not interested for the relief of reinstatement now. His grievance will be met, if a direction be issued to the respondent authorities to grant him the retiral benefits because of his acquittal in the criminal case.

8. The contention of the respondent authorities is that the acquittal is not honourable acquittal but is based on benefit of doubt and therefore, he cannot be reinstated automatically/paid any retiral benefits including pension. He has also pointed out that this case is grossly barred by limitation as the acquittal order in criminal case is dated 11.9.1985 and it is only in the year 2003, after 18 years the applicant approached the Hon'ble High Court in the aforesaid writ petition praying for his reinstatement. Hence it has been contended that this matter is liable to be dismissed being grossly barred by limitation.

9. Heard both. We note that the Applicant was served with penalty of removal from service of the company with



immediate effect vide order dated 5.11.1984. He did not take recourse to any statutory appeals or departmental remedy which was open to him. It was only long after about 19 years he has filed the writ petition for redressal of his grievance.

10. It is also a fact that the order of acquittal in the criminal case is not an **honourable acquittal** at all and it is an **acquittal on benefit of doubt**. It is the case of the respondent authorities that such **technical acquittal** on benefit of doubt does not lead to automatic reinstatement. In this context, the learned counsel for the applicant has drawn our attention to the decision of the Hon'ble Apex Court rendered in the case of **State of West Bengal and others v Sankar Ghosh** reported in (2014) 3 SCC 610 in which at paragraph 16 it has been held as under:

"16. In *Deputy Inspector General v. S. Samuthiram* [(2013) 1 SCC 598], this Court in paragraph 24, 25 and 26 of the judgment has elaborately examined the meaning and scope of the "honourable acquittal" and held as follows :-

"26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in

a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

11. The applicant though directed to submit his date of superannuation during the course of hearing he failed to do so and only on 17.3.2016 the counsel for the applicant mentioned the year of retirement being 2008 i.e. about eight years ago from today.

12. As the applicant is now not pleading for reinstatement but only for retiral benefit we have to go into the question of his conduct after he was penalized with a major penalty of removal from service.

13. After service of penalty order on him he did not take any recourse to the statutory appeal or any other departmental remedy within the statutory time limit. He had also directly approached the Hon'ble High Court of Kolkata only after about 18 years of the issuance of such penalty order on the plea that he

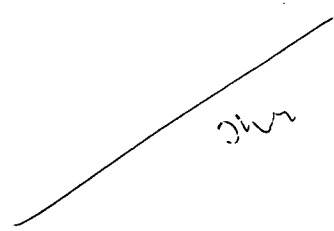
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made repeated representations for his reinstatement but they were not considered by the authorities. On such plea of repeated representations which remained unheeded to as cause of delay the Hon'ble Apex Court has repeatedly made observations some of which are set out below:

- (i) **State of Tamilnadu vs Seshachalam**, 2008 Vol. I SLJ 413 in which it has been held by the Hon'ble Apex Court that "filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."
- (ii) **C.Jacob vs Director of Geology and Ors**, 2008 Vol.2 SCC (L&S)961 in which it has been held by the Apex court that 'every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred

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by limitation, can be rejected on that ground alone, without examining the merits of the claim'.

- (iii) **S.S.Rathore vs State of MP**, 1990 SCC (L&S) 50-1990 AIR 10 in which it has been held by the Hon'ble Apex Court that 'repeated representations would not extend the period of limitation'.
- (iv) **Bhoop Singh vs UOI**, AIR 1992 SC 1414 in which it has been held by the Hon'ble Apex Court that 'It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seek within a reasonable period. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. The lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself
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a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief.'

- (v) **Chennai Metropolitan Water Supply and Sewerage Board and others Versus T.T. Murali Babu**, AIR 2014 SC 1141 in which it has been held by the Hon'ble Apex Court that 'Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix.'

14. The learned counsel for the applicant has placed reliance on the decision of the Hon'ble High Court of Kolkata in the case of **Balaram Ghosh v General Manager, Eastern Railway & Ors**, 2001 (1) CLJ 415. The counsel for the applicant referred to finding of case M.A.T. No. 3457 of 1998 and C.O. No. 714 (20) of 1996 given by the Hon'ble Calcutta High Court on 23.2.2001 (**Balaram Ghosh v General Manager, Eastern Railway & Ors.**) (supra) and prayed for similar benefit. But in that case the Hon'ble Calcutta High Court has allowed the case of the Applicant on detecting certain flaws in the Disciplinary Proceedings namely non

supply of enquiry report, absence of second show cause notice etc. The applicant in that case had approached the appellate authority. In the present case, the applicant has not approached any higher forum **on time** to adjudicate on his allegedly disproportionate penalty charge of removal. Therefore, the issues dealt with in the aforesaid case, do not apply to this case.

15. As he has not exercised his right at the statutory appeal stage against the major penalty of removal nor did he approach the Court on time when allegedly the respondents did not pay heed to his repeated pleas of reinstatement on being acquitted by the Civil Court albeit on technical reasons, it is too late in the day to approach the Courts now. His right to set aside the penalty order of removal cannot be exercised now when the penalty was imposed on 05.11.1984 and he was acquitted on 11.09.1985. Hence, he cannot now be benefitted with plea of retirement benefits.

16. This OA is accordingly dismissed. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C. Gupta)
Member (Judicial)