

Sanjay Kumar Vs. Uoi and ors.

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Court : Delhi

Decided On : Apr-23-2014

Judge : Pradeep Nandrajog

Appellant : Sanjay Kumar

Respondent : Uoi and ors.

Judgement :

\$~25 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: April 23, 2014 + W.P.(C) 14126/2004 SANJAY KUMAR Represented by: Petitioner Mr.Abhishek Nischal, Advocate versus UOI & ORS. Represented by: Respondents Mr.Neeraj Chaudhari, Advocate with Mr.Saqib and Mr.Arjun Narayan, Advocates. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE PRADEEP NANDRAJOG CHIEF JUSTICE (ORAL) 1. Petitioner was granted five days leave, and since he was granted time to proceed to his home town and return, the leave period was from April 02, 2001 till April 10, 2001. The petitioner was to join back on April 11, 2001. He joined back on June 12, 2001. The department treated the period interregnum April 01, 2001 to June 11, 2001 as unauthorized absence. What had happened was that an FIR No.43/2001 was registered at Police Station J.P.Kalan, Delhi for offences punishable under Section 498A/304B/34 IPC, naming the petitioner, his mother and sister as accused. Petitioners wife Kavita died with history of poisoning at 1.30 P.M. on April 02, 2001. The death was unnatural and within seven years of the marriage.

2. A charge memo was served upon the petitioner proposing to hold an inquiry and the two charges framed against the petitioner were as under:

Article-1 That the said No.962296033 Constable Sanjay Kumar while functioning as Constable in CISF during the period failed to rejoin duty on 11.04.2001 after expiry of 5 days casual leave from 02.04.2001 to 10.04.2001 and overstayed leave from 11.04.2001 to 11.06.2001 unauthorisedly. The act on the part of Constable Sanjay Kumar amounts to gross misconduct and indiscipline. Hence the charge.

Article-II No.962296033 Constable Sanjay Kumar, during the period of OSL was arrested by the J.P.Kalam, Police Station, South West Delhi on 29.04.2001 in connection with a criminal offence under Section 498-A and 304-B IPC and was detained in judicial custody from 29.04.2001 to 18.05.2001. This act on the part of Constable Sanjay Kumar amounts to gross misconduct. Hence the charge.

3. We need not note the evidence led at the inquiry for the reason petitioner concedes to the fact that he did not join back on April 11, 2001 and did so on June 12, 2001. As is evident from Article-II of the charge the reason was that the petitioner was arrested by the police of P.S.J.P.Kalan, Delhi when he reached home probably on April 03, 2001. We have used the expression probably for the reason there is no evidence that the petitioner reached home on April 03, 2001. We have probalitized the date for the reason the petitioner, working as a Constable in CISF, was on duty at RCFL Complex, Chembur (Mumbai). Sanctioned leave from April 02, 2001, proceedings by train from Mumbai on April 02, 2001, he would be reaching Delhi the next day. It is apparent that the day when petitioners wife died i.e. April 02, 2001, the time being 1.30 P.M., the petitioner was not in his house. And this explains the fact that he was arrested on April 29, 2001 but admitted to bail on May 18, 2001. The witnesses of the department proved leave being sanctioned to the petitioner, he overstaying leave and information received by the Commandant of the petitioner being arrested and thereafter admitted to bail; as also the date when the petitioner joined back.

4. Now, as regards Article-II of the charge all we have to say is that it is not the charge that the petitioner concealed the fact of he being arrested. The charge is of being arrested and detained in judicial custody from April 29, 2001 to May 18,

2001. It cannot be a charge attracting a misconduct that a person was arrested. It cannot be a charge attracting misconduct that a person remained in judicial custody for a period. There is no culpability in either. The culpability would be, upon proof, of the wrongful act done for which a person is charged and convicted at a criminal trial.

5. The petitioner was acquitted at the trial on February 07, 2003. The acquittal by the learned Additional Sessions Judge has attained finality.

6. Under the circumstances it has to be held that petitioners absence was not wilful. It was on account of acts beyond his control. As noted above, he proceeded on leave from Mumbai to Delhi on April 02, 2001, not knowing that in the afternoon of the same day his wife consumed sulphas in the morning and died at 1.30 P.M. Since his in-laws alleged cruelty on account of insufficient dowry, the FIR was registered and the petitioner was arrested. He has suffered the consequence of he being wrongly arrested for the offence punishable under Section 304-B IPC. Wrongly arrested we say for the reason, there is irrefutable evidence that not only on the day when the petitioners wife committed suicide he was not in his matrimonial house but was not in his matrimonial house for months together prior thereto on account of being posted at Mumbai.

7. In a case where a Government servant is arrested for an alleged wrongful act committed not in discharge of official duties, the department can never have evidence to sustain the charge of doing a criminal wrong which would be a misconduct. To wit : A Government servant is charged for the offence of murder. We cannot think of the said charge being a subject matter of a disciplinary proceeding. The charge has to be tested at a regular criminal trial. If the offending act is such that a Government servant should not be permitted to perform duties in public interest, the correct thing to do is to place him under suspension.

8. The penalty of removal from service levied upon the petitioner is thus required to be set aside.

9. Ordered accordingly. The order dated January 18, 2002 passed by the disciplinary authority, the order dated March 28, 2002 passed by the appellate

authority and the order dated August 23, 2003 passed by the revisional authority are set aside.

10. The petitioner is reinstated in service with 50% back wages. Other consequential benefits such as continuity in service increments etc. shall be granted to the petitioner.

11. No costs. CHIEF JUSTICE (PRADEEP NANDRAJOG) JUDGE APRIL23 2014
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