

Ashok Kumar vs.uoi & Ors.

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Court : Delhi

Decided On : Oct-29-2018

Appellant : Ashok Kumar

Respondent : Uoi & Ors.

Judgement :

\$~5 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 4200/1997
ASHOK KUMAR Date of Judgment:

29. 10.2018

... Petitioner

Through: Mr.M.K.Bhardwaj, Advocate UOI & ORS. versus Through: Ms.Rashmi Malhotra, Mr.Shalinder Respondent Saini & Mr.Himanshu Kaushik, Advocates
CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HONBLE MR. JUSTICE PRATEEK JALAN S.RAVINDRA BHAT, J.

(ORAL)

ORDER

2910.2018 The petitioners grievance is that the Tribunal even while returning % 1. its finding that the law was not complied with inasmuch as the copy of the Inquiry Report was not furnished to the petitioner [by virtue of the decision in Managing Director ECIL vs. B. Karunakar (1993) 4 SCC727, directed his reinstatement but without any benefit of past service. The operative order of the Tribunal is as

follows: 4. Ordinarily, in the circumstances aforesaid, we would have set aside the impugned order and sent back the case to the disciplinary authority to start afresh with the disciplinary W.P.(C) 4200/1997 Page 1 of 4 2. proceedings from the stage of supply of a copy of the report of the Inquiry Officer, however, in view of the inordinate delay in disposal of this application and the nature of allegations of misconduct, we are of the view that it would serve the ends of justice if the applicant is directed to be reinstated in service without any back wages or seniority on the basis of past service instead of directing fresh proceedings from the stage of supply of Inquiry Officers report.

5. In the result, this application partly succeeds and it is hereby partly allowed. The impugned order of removal from service as affirmed by the Appellate Authority is set aside and the respondents are directed to reinstate the applicant in service within a period of two months from the date of receipt of a copy of this order without any back wages or seniority on the basis of his past service. However, the period between the date of the impugned order of removal and the date of reinstatement shall be treated as qualifying service for the purposes of post retirement benefits. No costs. This petition was called for hearing and was dismissed on two previous occasions. The order dated 23rd August, 2016, the Court made the following observations: 2. Learned counsel for the petitioner submits that as, admittedly, the copy of the inquiry report was not supplied to the petitioner, thus the entire inquiry proceedings stand vitiated and consequently, not only the petitioner should be reinstated but would also be entitled to back wages and consequential promotion.

3. Learned counsel for the respondents submits that having regard to the Article of Charge the Tribunal has taken a lenient view.

4. the petitioner, after taking instructions from the petitioner submits that the petitioner is willing to abide by the order passed by the After some arguments, learned counsel for W.P.(C) 4200/1997 Page 2 of 4 3. Tribunal subject to the modification that he may be given benefit of seniority from the date of his reinstatement at a future date and that he would not claim any monetary benefit of seniority till now but only prospectively.

5. We may notice at this stage that the article of charge was framed in the year 1990 and the order of the Tribunal is of the year 1997 and thereafter this writ petition is pending ever since. At this stage, learned counsel for the respondents wishes 6. to seek instructions as to whether this arrangement can be made or not, i.e. to grant seniority to the petitioner in the peculiar circumstances of the case with no back wages. Learned counsel for the respondent submits that according to instructions given to her, the suggestions are acceptable and the petitioners seniority would be given to him with effect from the date of his reinstatement.

4. Learned counsel for the petitioner, however, submitted that this Court should consider the overall perspective and given there was no material or evidence to hold the petitioner guilty of the charges leveled against him. He submitted that since the petitioner had continued his service from 1987 till his removal in 1991, the wiping out of his ten years of service would be seriously prejudicial to him.

5. Having considered the order of the Tribunal as well as the previous order of the Court dated 28th March, 2016, we notice that the Tribunals approach was broadly equitable. In B. Karunakar (supra), the Court directed the remission of cases to disciplinary bodies, wherever defects on account of failure to provide copies of inquiry reports were found and thereafter proceed to decide whether penalty, and to what extent, had to be imposed in case the employee is not exonerated. The necessary consequence of this, is that further proceedings had to be continued. W.P.(C) 4200/1997 Page 3 of 4 Instead, the Tribunal here adopted an equitable approach taking into account the fact that relegating the parties to Inquiry proceedings would have caused further delay and prolonged the resolution of the issue.

6. In these circumstances, the Tribunal directed reinstatement without back wages and benefits of the past service. Having regard to the overall facts and circumstances, this Court is of the opinion that the petitioners claim for seniority based on past service is not justified. However, at the same time, the Court notices that the period that he was initially employed sometime in 1987 till the date of his removal from service cannot be altogether ignored, at least for the purposes of the terminal benefits accruing to him.

7. Having regard to these considerations, the Court hereby directs that the petitioner shall be entitled to seniority from the date of his re- instatement and at the same time also entitled to all service benefits for the period from his initial date of appointment in 1987 till the date of his removal and thereafter from the date of his reinstatement till the date of superannuation. The writ petition is partly allowed in the above terms.

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