

(2008) 11 DEL CK 0203

Delhi High Court

Case No: LPA No. 706 of 2008

Mahanagar Telephone Nigam
Limited

APPELLANT

Vs

Naresh Ahlawat

RESPONDENT

Date of Decision: Nov. 18, 2008

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 376

Hon'ble Judges: A.P. Shah, C.J; Dr. S. Muralidhar, J

Bench: Division Bench

Advocate: V.K. Rao, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

CM APPL No. 16204/2008

Having heard learned Counsel for the Appellant and for the reasons stated in the application, the delay in filing the appeal is condoned. The application is disposed of.

CM APPL No. 16205/2008

For the reasons stated in the application, the permission to file the additional documents is granted. The application is disposed of.

LPA No. 706/2008 and CM APPL No. 16203/2008 (stay)

1. This appeal is directed against the impugned order dated 1st September 2008 passed by the learned Single Judge allowing the Writ Petition (Civil) No. 6350 of 2008 filed by the Respondent.
2. The Respondent joined the Delhi Telephones as Lower Division Clerk in 1979. On account of his involvement in a criminal case in which he was charged for the

offences under Sections 376/302 of the Indian Penal Code, he remained under suspension from 23rd September 1985 till 19th November 2004. He was convicted by the Trial Court on 7th September 1992. However by a judgment dated 4th October 1993 of the High Court of Punjab and Haryana, the Respondent was acquitted. The State filed an appeal soon thereafter in the Supreme Court which remained pending. Ultimately on 4th February 2003 the Supreme Court dismissed the said appeal thus upholding the acquittal of the Respondent.

3. The Respondent filed Writ Petition (Civil) No. 6698 of 2003 in this Court praying for reinstatement in service with consequential benefits. While the writ petition was pending on 19th November 2004 the Appellant Mahanagar Telephone Nigam Limited ("MTNL"), the successor to the Delhi Telephones, reinstated the Respondent.

4. By an order dated 6th December 2004 this Court disposed of Writ Petition (Civil) No. 6698 of 2003 leaving it open to MTNL to take a decision as regards the payment of back wages, the treatment of suspension period and consequential benefits. Pursuant thereto MTNL issued an order dated 1st March 2005 whereby it decided to treat the subsistence allowance paid to the Respondent between 12th September 1985 to 31st August 1992 as the final payment. As regards the period spent under suspension from 1st September 1992 till 19th November 2004, for which period no subsistence allowance had been paid, the MTNL decided that a proportionate allowance equal to 50% of the basic pay along with other allowances as admissible should be paid to him in accordance with the Rules, subject to the adjustment of subsistence allowance already paid and completion of formalities.

5. The Respondent challenged an order dated 1st March 2005 by filing Writ Petition (Civil) No. 4924 of 2005 in this Court. This writ petition was dismissed on 20th February 2006. A further Writ Petition (Civil) No. 3819 of 2007 filed by the Respondent was disposed of by an order dated 22nd May 2007 whereby the learned Single Judge of this Court directed MTNL to pass a speaking order within a period of four weeks on his representation on the treatment of his suspension period between 1st September 1992 and 19th November 2004 under intimation to the Respondent.

6. Pursuant to the aforementioned order dated 22nd May 2007 the Appellant MTNL passed an order dated 7th July 2007 to the following effect: "Whereas, Hon"ble High Court of Delhi in their judgment vide CWP No. 4924/2005 dated 20.2.2006 has made certain observations on MTNL decision on payment of subsistence allowance for entire period (12.08.1985 to 19.11.2004) and entitlement of the petitioner with regard to other entitlements flowing therefrom. As regards regularization of the period of suspension from 12.08.1985 to 19.11.2004, the Competent Authority after considering the facts and circumstances of the case and documents on record/file in totality, has come to the conclusion that in normal situation the employee should have been dismissed for having been convicted, issued an order of reinstatement would not have been entitled automatically to full back wages.

And whereas in view of the facts of the case and observations of the Hon'ble High Court as referred above, it has been decided that the suspension period from 12.09.1985 to 19.11.2004 shall be treated as qualifying service for pension and retirement benefits. However, the period of suspension from 12.09.1985 to 19.11.2004 of Shri Naresh Kumar Ahlawat, LDC (CL-03577), shall be treated as non-qualifying service for the purpose of leave, pay and allowances, increment and promotion. The subsistence allowance already paid for the entire suspension period shall be treated as pay and allowances for that period.

7. Aggrieved by the aforementioned order dated 7th July 2007 the Respondent filed a Writ Petition (Civil) No. 6350 of 2008. Before the learned Single Judge, the learned Counsel for the Respondent (Writ Petitioner) placed reliance upon the decision of this Court in Dinesh Kumar Kain v. Assistant General Manager, Corporation Bank 2006 VI AD (Delhi) 88 in support of his contention that the Respondent was entitled to all service benefits including seniority, increments and consideration for promotion, which he would have otherwise earned during the period of his suspension, had he not been suspended.

8. The learned Single Judge after extracting the relevant passage from the decision in Dinesh Kumar Kain allowed the writ petition of the Respondent and modified the order dated 7th July 2007 passed by the MTNL to the extent that the respondent is directed to treat the period of suspension of the petitioner from 12.9.1985 to 19.11.2004 as qualifying service for the purpose of notional increments and promotions which the petitioner otherwise would have earned during the period of his suspension.

9. We have heard Mr. V.K. Rao, learned Counsel for the Appellant at length. It is first submitted that the decision in Dinesh Kumar Kain was not applicable to the facts of the instant case. It is submitted that the relevant Rule as far as the employees of the Bank are concerned, the Rule 54-B of the Fundamental Rules which leaves it to the Bank to decide how much of the pay and allowances are to be granted to an employee who is placed under suspension and whether or not the said period shall be treated as a period spent on duty. Without prejudice to the aforementioned contentions it is submitted that the Appellant did not decide to grant the benefit of the entire period of suspension for the purpose of increments and promotion because the Respondent had not approached the Bank for relief till 2003 although he had been acquitted on 4th October 1993 itself. It is further submitted that the decision to grant him 50% of the allowances had become final and by that yardstick only half the period of suspension should be counted as qualifying period for the purposes of leave, pay and allowance, increments and promotion.

10. We are unable to accept the submissions made by learned Counsel for the Appellant. The Respondent cannot be found fault with for not approaching the Bank for reinstatement till the disposal of the State's appeal by the Supreme Court. The order of the High Court having been challenged by the State in the Supreme Court,

it is possible that the Respondent may not have been able to persuade the Bank to reinstate him till such time his acquittal attained finality.

11. We also find no justification for not treating the suspension period as qualifying period for the purposes of promotion and increments when in fact 50% of the salary and allowance payable to the Appellant for the suspension period has already been granted to him.

12. As regards the Rule 54-B, we find that it only gives a discretion to MTNL as regards treating the period suspension. On the facts of the present case, we are not satisfied that the MTNL was justified in declining to exercise its discretion to grant the Respondent the benefit of counting the period of suspension for the purpose of increments and promotions.

13. We can find no error or infirmity in the impugned order of the learned Single Judge that calls for interference. We find no merit in this appeal and it is dismissed as such. The pending application also stands dismissed.