

deemed to have retired, the same consequence follows viz. exit from or severance of relation with the Service or office held. The degree of finality too is the same in all these three situations inasmuch as the consequence is reversible at the discretion of the competent authority unless it is impliedly or explicitly disable from doing so, as for example in the instant case where a person, who has held office of Member of a Public Service Commission, becomes ineligible for service under the Government of India or the Government of a State by virtue of the bar imposed by Article 319 of the Constitution of India.

(24) None of the authorities cited by the petitioner is of any help to the petitioner being distinguishable on facts.

(25) In view of the foregoing discussion, we find no merit in this writ petition and the same is dismissed. No order as to costs.

S.C.K.

Before Ashok Bhan & N. K. Sodhi, JJ.

CHANDGI RAM,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

C.W.P. No. 18548 of 1994

7th May, 1996

Constitution of India, 1950—Art. 21—Code of Criminal Procedure, 1973—S. 300—Army Act, 1950—S. 125—Army Rules, 1954—Rl. 197-A—Illegal detention for 24 days without cause—Petitioner tried for negligent driving of a military vehicle by a Summary Court Martial and punished in 1977-78—Petitioner re-arrested in September, 1994 declaring him to be a proclaimed offender in F.I.R. on the basis of which the petitioner was tried and punished by Summary Court Martial—Petitioner's implorations that he was not proclaimed offender and he was tried in the year 1977 remained unheeded—No order on the file declaring him proclaimed offender—Callous behaviour of the police—Two guilty officials directed to pay damages of Rs. 50,000 personally by depositing the amount with the Registrar of High Court—State Government injuncted from reimbursing the amount to erring officials—Discharge of duties in a most negligent manner displaying total lack of human feelings and negligent functioning cannot be condoned.

Held, that inspite of the fact that the petitioner had already been tried in F.I.R. 189 dated 1st October, 1974 by the Summary Court Martial and sentenced, which he had undergone, he was again arrested for the commission of the same offence in violation of his fundamental rights guaranteed under Article 21 of the Constitution of India. Kamal Singh, Head Constable, respondent No. 4 and Man Singh, Station House Officer, Police Station, Ganaur, respondent No. 7, are primarily responsible for the illegal arrest of the petitioner resulting in depriving the petitioner of his liberty guaranteed under Article 21 of the Constitution of India. There was no order declaring the petitioner a proclaimed offender.

(Para 11)

Further held, that their action deserves to be deprecated and condemned. Such like police officials bring bad name to the department and lower the image of the law enforcing agency in the eyes of public. Petitioner had to undergo a lot of inconvenience, suffer harassment and incur a lot of expense for getting bail as well as getting the orders from the Army authorities.

(Para 11)

Further held, that for the mental torture caused to the petitioner and the members of his family and for his illegal detention in custody for 24 days in violation of the mandate of the Constitution provided under Article 21 petitioner deserves to be compensated by way of damages.

(Para 12)

Further held, that these two respondents were primarily responsible for the illegal detention of the petitioner as they had failed to discharge their duties diligently and carefully. Each one of them is directed to deposit a sum of Rs. 25,000 within two months, with the Registrar of this Court, who would, thereafter, remit the amount by a payee's demand draft drawn in favour of the petitioner, to the petitioner after deducting the necessary charges for preparation of the demand draft. State Government is injuncted from reimbursing Man Singh, respondent No. 7 and Kamal Singh, respondent No. 4. the amount of compensation which these two officials have been directed to pay personally. If the amount is not paid within two months as directed above, then the same shall become interest bearing at the rate of 15 per cent per annum with effect from the illegal detention of the petitioner till its realisation.

(Para 17)

S. K. Mittal, Advocate, for the petitioner.

Ritu Bahri, AAG (H) R. K. Malik, Advocate, for the respondent.

JUDGMENT

Ashok Bhan, J.

(1) This petition discloses a callous attitude of some of the officials of the law enforcing agency of this country, and the casual

manner in which these officials deprived the petitioner of his right of liberty guaranteed under Article 21 of the Constitution of India. It is disturbing to note that a person who was tried for negligent driving of a military vehicle by a Summary Court Martial and punished way back in the year 1977 or 1978, was re-arrested in September, 1994, declaring him to be a proclaimed offender. Petitioner was kept in illegal custody for a period of 24 days without any cause and inspite of his pleadings that he was not a proclaimed offender and had already been tried and duly punished by a Summary Court Martial.

(2) Present petition has been filed with two fold prayer i.e. for issuance of a writ of mandamus directing the respondents to pay compensation by way of damages to the petitioner for keeping him in illegal confinement for 24 days in gross violation of his fundamental rights guaranteed under Article 21 of the Constitution of India without any cause and directing respondents 1 and 2 to initiate departmental inquiry against the guilty officials and for awarding suitable punishment to them for their gross negligence in the discharge of their duties.

(3) Facts leading to the unfortunate arrest and illegal detention of the petitioner are :—

(4) Petitioner was enrolled in the Indian Army as Driver on 11th August, 1962 and was discharged from the army service in the year 1979. While serving in the Indian Army and while on Government duty, an accident took place with the military vehicle driven by the petitioner with a bus in the jurisdiction of Police Station, Ganaur, District Sonapat on 1st October, 1974, in which the arm of one Smt. Balbir Kaur was amputated. First information Report No. 189 dated 1st October, 1974 was lodged against the petitioner under Section 279/338, Indian Penal Code, at Police Station, Ganaur. Since, petitioner was in military service and the accident took place while driving the military vehicle while on operational duty, the Army authorities withdrew the aforesaid criminal case from the criminal court, Sonapat, under Section 125 of the Army Act, 1950 read with Rule 197-A of the Army Rules, 1954, for trial of the petitioner under the law applicable to the army personnel. Police file of the above said case was sent to the Army authorities on 17th March, 1976,—*vide* despatch No. 401/ZD/59393. Judicial file of the case was also sent to the Army authorities under the orders of the Judicial Magistrate, 1st Class, Sonapat, dated 24th March, 1976. This fact finds mention in the F.I.R. index of the Police Station, Ganaur.

which is clear from the report made by the Police Station, Ganaur, to the Judicial Magistrate 1st Class, copy of which has been annexed as Annexure P-1.

(5) Petitioner was tried by the Army authorities by Summary Court Martial and was awarded two months rigorous imprisonment in military custody, which the petitioner underwent, while he was serving in the Army. On his retirement from the military service in the year 1979, petitioner joined the Haryana Roadways as a Driver.

(6) On 16th September, 1994, Head Constable Kamal Singh, respondent No. 4, of Police Station Ganaur, arrested the petitioner at Mohindergarh Bus Stand on the ground that the petitioner was proclaimed offender in F.I.R. No. 189 dated 1st October, 1974. Plea of the petitioner that he had already undergone imprisonment for the commission of the said offence and there being some mistake, Kamal Singh should check up the record before arresting him, went unheeded. Petitioner's request that he be shown the order—*vide* which he was declared a proclaimed offender also went unheeded. Petitioner was handcuffed and put under arrest by Kamal Singh, Head Constable. He was immediately taken to Sonapat and was not even permitted to inform his family members about his arrest. Petitioner was produced before the Station House Officer, Police Station Ganaur on the same day. He made a request to the Station House Officer, Police Station Ganaur to check the record as he had never been declared a proclaimed offender. No heed was paid to his request by the Station House Officer, Police Station Ganaur. Petitioner was then presented before respondent No. 5, where he again made a request that there was some mistake as he had never been declared a proclaimed offender. He requested the Ilqa Magistrate to check up the judicial file in this regard. Without confirming from the judicial file, petitioner was ordered to be put in judicial custody by the Ilqa Magistrate. Petitioner was again produced before the Ilqa Magistrate on 24th September, 1994. In the remand papers it was alleged that the petitioner was a proclaimed offender. Without satisfying himself as to whether any such order of proclaimed offender was passed, petitioner was again ordered to be sent to the Judicial custody. On getting the information about the arrest, family members of the petitioner immediately rushed to Sonapat, where they came to know about all the facts. After arranging for the expenses to meet the fees of the Advocate etc., relatives of the petitioner again came to Sonapat and moved an application for bail on 26th September, 1994. In the bail application also, the plea taken by the petitioner was that he had been illegally

arrested and that he had never been declared a proclaimed offender. It was also mentioned that the petitioner's case was referred to the Army authorities where he was punished. Ilaqa Magistrate again without calling for the judicial file from the record room and without satisfying himself as to whether the petitioner was actually declared a proclaimed offender or not, rejected the bail application of the petitioner. Second application for bail was filed on 1st October, 1994. On the insistence of the counsel for the petitioner, Judicial Magistrate sent for the original file. It was reported back that no such file was available in the record room pertaining to the present case. It was pleaded that the petitioner be released on bail, he being the only male person in the family could bring the orders from the Army authorities,—*vide* which he was punished in the above said case. This plea was accepted and on 8th October, 1994, petitioner was released on bail for one month subject to furnishing of personal bond in the sum of Rs. 20,000. Petitioner was required to surrender on 8th November, 1994 with the direction that if he failed to produce the orders passed by the Army authorities, his bail application shall stand rejected and he shall submit himself to the judicial custody.

(7) After his release, petitioner immediately went to Hyderabad and obtained a certificate to the effect that the above noted criminal case was withdrawn from the Criminal Court, Sonapat and that the petitioner was tried by a Summary Court Martial by the Army authorities and he was awarded punishment in that case which he had undergone. Papers were produced before the Judicial Magistrate 1st Class, Sonapat. Thereafter, on 8th November, 1994, the Judicial Magistrate 1st Class, Sonapat, discharged the petitioner after recording a finding that the petitioner had already been tried and punished by the Army authorities in the above noted. F.I.R. that the petitioner could not be tried for the same offence twice over and, therefore, could not be arrested in the above said F.I.R.

(8) This case came up for motion hearing on 20th December, 1994. Notice of motion was ordered to be issued to respondents 1 to 4 only to show cause as to why appropriate compensation be not awarded to the petitioner for his illegal detention. State of Haryana was further directed to disclose the names of Superintendent of Police, Sonapat, and the Station House Officer, Police Station, Ganaur, District Sonapat, who were at the relevant time holding those posts so that they could be held personally liable in the matter of unlawful detention of the petitioner. Ilaqa Magistrate, who had been arrayed as respondent No. 5 was not issued the notice. Officers who were holding the posts of Superintendent of Police, Sonapat,

and Station House Officer, Police Station, Ganaur, District Sonapat, have been added as respondents 6 and 7.

(9) Counsel for the parties have been heard.

(10) Article 21 of the Constitution provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". As per provisions of Section 300, Code of Criminal Procedure, a person who has once been tried by the Court of competent jurisdiction for an offence and convicted or acquitted, is not liable to be tried again for the same offence.

(11) In spite of the fact that the petitioner had already been tried in F.I.R. 189 dated 1st October, 1974 by the Summary Court Martial and sentenced, which he had undergone, he was again arrested for the commission of the same offence in violation of his fundamental rights guaranteed under Article 21 of the Constitution of India. Kamal Singh, Head Constable, respondent No. 4 and Man Singh, Station House Officer, Police Station, Ganaur, respondent No. 7, are primarily responsible for the illegal arrest of the petitioner resulting in depriving the petitioner of his liberty guaranteed under Article 21 of the Constitution of India. There was no order declaring the petitioner a proclaimed offender. Had these two respondents paid attention to the pleas of the petitioner and checked up the F.I.R. index of the Police Station, they would have found that the petitioner had already been tried in F.I.R. 189 dated 1st October, 1974 by the Summary Court Martial. It is recorded in the F.I.R. index of the police station that the judicial file of the case in F.I.R. 189 dated 1st October, 1974 has been sent to the Army authorities under the orders passed by the Judicial Magistrate 1st Class, Sonapat, dated 24th March, 1976. Averments made by these two respondents that the petitioner did not plead before them that he had already been tried and punished in F.I.R. 189 dated 1st October, 1974, is not acceptable. Affidavits filed by these two respondents are self-contradictory. Kamal Singh, Head Constable, has stated that he produced the petitioner before Man Singh, Station House Officer, Police Station, Ganaur, on the same day whereas Man Singh has pleaded that the petitioner was never produced before him. He has pleaded an alibi by stating that he was, in fact, out of station on the said date. Pleas raised by these two respondents, under the circumstances, cannot be accepted. Their action deserves to be deprecated and condemned. Such like police officials bring bad name to the department and lower the image of the law enforcing agency in the eyes of public. Petitioner had to undergo a lot of inconvenience.

suffer harassment and incur a lot of expense for getting bail as well as getting the orders from the Army authorities.

(12) For the mental torture caused to the petitioner and the members of his family and for his illegal detention in custody for 24 days in violation of the mandate of the Constitution provided under Article 21, petitioner deserves to be compensated by way of damages in *Rudul Sah v. State of Bihar and another* (1), compensation by way of damages was awarded to a person who had been detained illegally in prison. It was held that where a fundamental right of any citizen was infringed and a person is deprived of his liberty without any authority of law, then the authorities violating such rights are liable to pay compensation. Coming down heavily on the authorities acting in such irresponsible manner and reminding that if civilisation is not to perish in this country, it is necessary to educate ourselves into accepting that respect for the rights of individuals is the true bastion of democracy, their Lordships held :—

“Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Council were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonable be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.”

(13) Again, in *Smt. Nilabati Behera alias Lalita Behera (through the Supreme Court Legal Aid Committee) v. The State of Orrisa and others* (2), it was held as under : —

“This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the rights of the citizen to the remedy by way of a civil suit or criminal proceedings.”

(14) Shri R. S. Yadav, I.P.S., who was the Superintendent of Police, Sonapat, at the relevant time, in his affidavit has stated that these facts were not brought on record and that departmental inquiry against these officials has already been instituted. There is nothing on the file to show that R. S. Yadav was in any way negligent in the discharge of his duties.

(15) Counsel appearing for respondents 4 and 7 argued that they acted in a *bona fide* manner in the discharge of their duties and there being no malice on their part, they should be dealt with leniently. Respondents 4 and 7 acted in a most negligent manner displaying total lack of human feelings and such like negligent functioning of the State or its officers cannot be condoned. Increasing abuse of power by the public authorities infringing fundamental rights resulting in depriving a person of his liberty, cannot be condoned in a light fashion. Petitioner deserves to be compensated for his illegal detention by way of damages.

(16) We are not inclined to observe anything with regard to the conduct of respondent No. 5 as no notice had been issued to him in the writ petition.

(17) Although, petitioner has claimed a sum of Rs. 1 lac by way of damages, we determine the compensation at Rs. 50,000, to be paid to him. Man Singh, the then Station House Officer, Police

Station, Ganaur, respondent No. 7 and Kamal Singh, Head Constable, respondent No. 4, are held liable personally for payment of the amount of compensation. Personal liability is being fixed on these two respondents as we have found that these two respondents were primarily responsible for the illegal detention of the petitioner as they had failed to discharge their duties diligently and carefully. Each one of them is directed to deposit a sum of Rs. 25,000 within two months, with the Registrar of this Court, who would, thereafter, remit the amount by a payee's demand draft drawn in favour of the petitioner, to the petitioner after deducting the necessary charges for preparation of the demand draft. State Government is injuncted from reimbursing Man Singh, respondent No. 7 and Kamal Singh, respondent No. 4, the amount of compensation which these two officials have been directed to pay personally. If the amount is not paid within two months as directed above, then the same shall become interest bearing at the rate of 15 per cent per annum with effect from the illegal detention of the petitioner till its realisation.

(18) Second prayer made in this writ petition has become infructuous as departmental proceedings have already been instituted against the delinquent officials.

(19) The writ petition stand allowed in the aforesaid terms.

R.N.R.

Before Ashok Bhan & P. K. Jain, JJ.

THE GOVERNMENT OF MANIPUR.—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER.—Respondents.

C.W.P. No. 10155 of 1995

10th July, 1996

Constitution of India, 1950—Arts. 226/227—Entry 40, List 1 of VII Schedule—Entry 34 of List II of the VII Schedule—Punjab Government by executive order/public notice dated 1st July, 1995 withdrawing permission granted to the States of Manipur, Assam and Nagaland for selling their lottery tickets in the State of Punjab on