

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.514/2001

New Delhi this the 23rd day of October, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

✓ 1. Laxmi Narain Mukharjee
S/o Hira Lal Mukharjee,
Ex., Fireman A,
Loco Foreman, Burdwan. W.B.

2. Ashit Kumar Bagesh,
Ex., Fireman
Loco Foreman, Ranaghat.

3. Supadhyay Ganguli,
Ex., Fireman
Loco Foreman, Ranaghat,
Eastern Railway, Sealdhah.

4. Abani Kumar Dutta,
S/o Ashotosh Dutta,
Ex., Diesel Assistant
Under Foreman, Burdwan.
Eastern Railway Burdwan.

5. Late Achinto Kumar Biswas,
Ex. Fireman under
Loco Foreman, Ranaghat,
Eastern Railway, Ranaghat.

6. Narendra Nath Napit,
South Eastern Railway,

7. Sudesh Kumar,
S/o Late Shri Vasudev Ram,
R/o Q.No.47/3,
Traffic Colony, Tata Nagar.

8. Mohan Dass,
Ex.Driver Grade-C,
Eastern Railway Ashansol.

9. J.C.Bhomick,
Ex.Driver Grade-C
Eastern Railway Asansol.

✓ 10. Jamil Ahmed,
Train Lighting Fitter,
N.E.R.Bareily.

11. B.K.Dey,
Ex.Labour,
Working under A.C.M.E.(W),
LLH, Eastern Railway Lilooch,

12. Dafdar,
Fitter,
Working under ACME, (W),
LLH, Eastern Railway, Lilooch.

✓ 13. Om Prakash,

Safaiwala,
Working under ACME/LLH
Eastern Railway, Lilooch.

C/o All the applicants represented through All India
Loco Running Staff Association, Through its authorised
representative
Shri Y.P.Kohli,
S/o Late Shri Kesar Chand Kohli,
House No.4041/16, Bagichi Ram Chander,
Pahar Ganj, New Delhi.

(By Advocate: Shri Mahesh Srivastava with
Shri Pankaj Srivastava)

-Versus-

1. Chairman Railway Board,
Govt. of India,
Rail Bhawan,
New Delhi.
2. General Manager,
Eastern Railway,
Netaji Subhash Road,
Starly Palace,
Calcutta.
3. Divl.Railway Manager,
Eastern Railway,
Sialdah, Howrah.
4. General Manager,
S.E.Railway,
Garden Beach, Calcutta.
5. Divl.Railway,
S.E.Railway,
Chakradharpur, Bihar.
6. Chief Personal Officer,
Eastern Railway,
Calcutta.
7. Divl.Railway Manager,
North Eastern Railway,
Izzat Nagar,
Bareily, U.P.
8. Chief Workshop Engineer,
Eastern Railway,
Calcutta.
9. Loco Foreman,
Asansol W.Bengal.

...Respondents

(By Advocate: Shri E.X.Joseph with
Shri Rajinder Khatter)

(21)

O R D E R

By Mr. Shanker Raju, Member (J):

Through this OA applicants, 13 in number, are seeking extension of the benefit of the Apex Court's decision in Union of India v. R. Redappa, 1993 (4) SCC 269 and have impugned respondents' memo dated 23.8.98 whereby representation preferred by seven applicants was rejected. They have sought their re-instatement with all consequential benefits.

2. Applicants have also filed MA-2046/2001, seeking condonation of delay which is minimum of one day and for the reasons assigned in the application the MA is allowed, delay in filing the OA is condoned.

3. This application is filed by two sets of employees. All these applicants have been working as Loco Running staff who allegedly participated in the strike in 1981 and were removed by the respondents after dispensing with the enquiry under Rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968. All of them have filed cases before different Benches of the Tribunal, which have been dismissed on merits by the Tribunal having found the reasons for dispensing with the enquiry as justifiable.

4. Subsequently, in the wake of the decision of the Constitution Bench of the Apex Court in Union of India v. Tulsi Ram Patel, 1985 (2) SLJ 145 as avenue of appeal has been provided against the dismissal under Article 311 (2) and Rule 14 (ii) of the Railway Rules (ibid). The decision of the respondents was challenged before the High

22

Court of Calcutta, which stood transferred to Calcutta Bench of the Tribunal, except the case of applicants No.5 and 10 as their cases were dismissed by the Apex Court alongwith the judgment of Tulsi Ram Patel. Applicants preferred appeal and revision and after rejection approached the Tribunal. In Redappa's case the following directions have been issued:

"(i) Employees who were dismissed under rule 14 (ii) for having participated in the Loco Staff Strike of 1981 shall be restored to their respective post within a period of three months from today.

(ii) (a) Since more than three years have elapsed from the date the orders were found to be bad on merit by one of the Tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent of dearness allowance calculated on the scale of pay prevalent in the year the judgement was delivered that is in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those case where the employees are dead the compensation shall be paid to their dependants. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefits but they shall be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death."

5. Applicants claimed benefit of this decision and applicants No.1-7 filed OA-891/94 which was disposed of on 19.5.97 by directing the respondents to act upon the representation to be filed by the applicants.

6. Respondents rejected the representations by stating that their cases are not covered by the decision of the Apex Court in Redappa's case (supra) whereas though

applicant Nos 8-13 were not parties before the Tribunal yet they filed their representation but no decision has been taken thereon.

7. In one of the cases of A. Devadanam v. Railway Board & Others, Civil Appeal No.759/1998 decided on 29.11.2000 despite their cases being rejected by the Tribunal on merits bet benefits of Redappa's case was extended to them. These were petitioners who participated in the strike.

8. Shri Mahesh Srivastava, learned counsel appearing for the applicants placing reliance on the decision of the Apex Court in Redappa's case contends that their cases is on all four covered by the decision in Redappa's case (supra) and the respondents cannot deprive them of the similar treatment as meted out to others in Devadanam's case (supra), which is violative of Articles 14 and 16 of the Constitution of India and by placing reliance on a decision of the Apex Court in K.C. Sharma v. Union of India, 1998 (1) SLJ 54 and Singhara Singh v. State of Punjab, 1983 SCC (L&S) 1670 contends that being similarly circumstanced applicants cannot be deprived of the benefit of the decision.

9. Sh. Srivastava states that the applicants are among the 800 employees who participated in the strike in 1981 and few of the OAs have been allowed by the Patna Bench. The grounds for rejection by the respondents are not justifiable as the judgement in Redappa's case (supra) is in rem and binding under Article 142 of the Constitution of India. Further placing reliance on Devadanam's case

(supra) it is contended that observation has been made therein that all the participants of the strike are entitled to the benefit of the judgement, as such the Tribunal in OA-1144/96 accorded same benefits to the petitioners therein. Further reliance has been placed on CA-2694/89 decided on 5.11.93 where the benefit has been accorded to the similarly circumstanced keeping in view Redappa's case (supra).

10. Whereas respondents' counsel Shri Rajinder Khatter states that the cases of the applicants are not covered by the judgment in Redappa's case (supra) and accordingly they cannot be extended the benefits. It is stated that among the five types of employees enumerated in the decision applicants are not covered in any of the category. The dismissals have been challenged before the High Court of Calcutta and subsequently transferred to Calcutta Bench of the Tribunal whereas dismissal has been upheld by the Calcutta Bench and the reasons to dispense with the enquiry has been found justifiable. According to them applicants form a different category of employees and as none of them was a party to Redappa's case they cannot be given benefit of the same. Applicants have not challenged their dismissal on original applications before the Apex Court. One of the employees J.C. Bhowmik whose case was dismissed by the Tribunal approached the Apex Court in SLP No11385-11386/96 which was dismissed on 29.3.96. As the Calcutta Bench as already decided the issue and SLP against which is dismissed the applicants have no valid claim. Shri Khatter has also stated that applicant No.10 has assaulted the fellow employees and was involved in a criminal case on filing OA-514/2001, before

the Allahabad Bench the OA was dismissed and the reasons have been found justifiable. Sh. Khatter also produced the judgments whereby the Calcutta Bench has dismissed the claims of the applicants therein on merits and also stated that applicants No.6 and 7 were not members of Loco Running Staff Association, as such they are not entitled for the relief claimed for. Moreover the plea of limitation was also taken by the respondents.

11. We have carefully considered the rival contentions of the parties and perused the material on record. No doubt applicants No.1-7 have filed cases against their dismissal before the Calcutta High Court which were transferred to Calcutta Bench and heard alongwith TA-419/86 and were dismissed on 25.1.88. Meanwhile, Apex Court in Redappa's case (supra) issued directions, *inter alia*, one of the directions was that those who were dismissed under Rule 14 (ii) of the Rules ibid having participated in the strike of 1981 shall be re-instated within three months from the date of the judgment. Two of the applicants whose cases were dismissed by the Calcutta Bench filed appeal and the Apex Court in CA-2695/89, Union of India v. S.A. Ahmed disposed of the SLP by re-iterating the directions in Redappa's case (supra).

12. We also find that 12 OAs were dismissed by the Calcutta Bench on 16.12.94, holding that these cases do not fall within the five types of cases described and the order or removal against them have attained finality on filing, CA by order dated 14.7.97 the matter was sent back for fresh consideration in the light of the Redappa's case.

No doubt the different Benches considered the cases of the applicants and dismissed them on merits. No doubt in Redappa's case five types of employees have been described inter alia, one of it was whose cases have been dismissed because the appeals filed have already been dismissed, yet in 30 cases whose claim was dismissed by the Tribunal on preferring SLPs directions have been issued to extend to them the benefit of Redappa's case. Moreover, in Biswas's case the Tribunal though held that the applicants do not fall within the five types of cases delineated by the Apex Court in Redappa's case, their cases have been sent back for getting the benefit of judgement in Redappa's case.

13. Moreover we find that in the case of Davadanam (supra) the Tribunal has rejected the cases on merits and their claim was also rejected by the High Court. Placing reliance on Redappa's case their claims have been decided in the light of Redappa's case and moreover the following observations have been made:

"It is stated by Mr. Malhotra that this order may open a flood gate for several other employees similarly situated. We make it clear that any person who has not approached any Tribunal or any Court as on today will not be entitled to get the benefit of this order."

14. If one has regard to the aforesaid ratio of the Apex Court which is binding under Article 141 of the Constitution and noted that the participants in the strike were unjustly treated and the competent authority who has an obligation to act in a manner which may be just and fair the reinstatement has been ordered and the observations of the Apex Court would not apply to the cases of the applicants as they had already filed a case and in respect

of applicants No.1-7 they have been given liberty in OA-891/94 to approach this Court, their claim cannot be denied.

15. In so far as Redappa's case is concerned and the contention of the respondents that the applicants were instrumental in assault and they have not merely participated in the strike their cases are not covered by Redappa's case cannot be countenanced, as the similarly circumstanced employees who have active role to play in the strike their cases have also been considered in the light of the Redappa's cases and were also reinstated.

16. If one has regard to the Constitutional Bench decision of K.C. Sharma's case similarly circumstanced cannot be deprived of the benefit of the decision merely on the basis of delay. Applicants 1-7 have approached the Tribunal earlier and their claim was rejected as they have not been found to be covered by the decision in Redappa's case the aforesaid decision of the respondents is not justifiable as in other cases also despite the petitioners cases have been dismissed on approaching the Apex Court their claims have been decided in the light of Redappa's case.

17. As regards applicants No.8-13 though they were not parties before the Tribunal where the directions have been issued to the respondents to dispose of their representation but yet they have filed their representation but the same have not been responded they are also not debarred by the observations of the Apex Court in Devadanam's case (supra). As they have approached the

(10)

Tribunal much before the cut off date of 29.11.2000, we are of the considered view that the ratio in Redappa's case (supra) in all four covered the cases of the applicants they cannot be deprived of the extension of the benefits of this judgment being similarly circumstanced.

18. In the result the OA is allowed. Impugned order dated 20.3.98 is quashed and set aside. Respondents are directed to extend to the applicants the benefit of the judgment rendered by Apex Court in Union of India v. R. Redappa, 1993 (4) SCC 269, within a period of three months from the date of receipt of a copy of this order, in accordance with law, rule and instructions on the subject. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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