

In the Central Administrative Tribunal
Principal Bench, New Delhi.

(6)

Regn. No.0A-1034/88

5.10.1993

Shri Suraj Prakash Applicant

Versus

Union of India Respondents

For the Applicant Shri Umesh Mishra, Counsel

For the Respondents None

CORAM: Hon'ble Mr. J.P. Sharma, Member (Jud1.)
Hon'ble Mr. B.K. Singh, Member (A)

1. Whether to be sent to the Reporters or not? Yes

(Oral) Judgement

(By Hon'ble Shri J.P. Sharma, Member)

The applicant was employed as a Shunter, when there was a general strike in the Loco-running staff in the Indian Railways in 1981. The applicant, at the relevant time, was employed as a Shunter and was posted at the Loco Shed, Ghaziabad. Since, it was alleged that the applicant had committed a misconduct under the Railway Servants (Conduct) Rules, 1966, an enquiry was initiated under Discipline and Appeal Rules, 1968. There is a provision in Rule 14(2), where when holding a regular enquiry as envisaged, the oral enquiry can be dispensed with by the disciplinary authority giving reasons therefor. By the order dated 3.2.1981, the disciplinary authority, in exercise of its power under Rule 14 (ii), passed the order of removal from service. Aggrieved by the said order, the applicant filed a Writ Petition No.2123/81 before the Delhi High Court on 14.7.1981 and got an interim order regarding payment of his salary/wages

in the interim period, leaving to the respondents whether to take work from him for any job assigned to him or not. On the enforcement of the Administrative Tribunals Act, 1985 under Section 29 of the said Act, Writ Petition stood transferred to the Principal Bench of the C.A.T. registered as T-743/85 and was decided by the judgement dated 25.2.1987. By this judgement, the applicant was directed to ~~not~~ assail the said order of removal from service dated 3.2.1981 under the extant rules by filing a review petition/revision to the competent authority. In pursuance of that direction of March 18, 1987, a revision petition was preferred under Rule 25 of the D.A.R., 1968 which was rejected by the competent authority by the order of December 14, 1987 holding that the holding of the enquiry against the applicant is not still feasible, ^{result L} may in the apprehension of breach of peace and rejected the same. Aggrieved by the same, the applicant filed an application assailing the aforesaid order dated 14.12.1987 and praying for the grant of reliefs that the punishment order of removal from service dated 3.2.1981, be quashed and the applicant be given all consequential benefits of reinstatement, back wages, continuity of service, etc. A notice was issued to the respondents, who contested the application and in their reply, stated that the order of removal had been passed by the competent authority under the provisions of Rule 14(2) of the D.A.R., 1968. As such, the applicant is not entitled to the grant of any relief. The applicant has also filed the rejoinder.

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2. We have heard the Learned counsel for the applicant. None appeared on behalf of the respondents. The matter has been on Board for about a month.

3. The learned counsel for the applicant argued that the Supreme Court had decided a similar appeal by the Union of India in the case of Union of India and Others Vs. R. Reddappa and Another. In this case, various decisions of C.A.T. Benches were challenged, i.e., the decisions given by the Hyderabad, Jodhpur and Chandigarh Benches of the C.A.T. All these appeals were taken together. It is not necessary to give details of the facts of the case, but it is relevant to point out that in the case of Hyderabad Bench, the petitioners were ordered to be reinstated with the liberty to the Railway Administration to hold disciplinary proceedings under Rule 9 of the D.A.R., 1968. In the case of the decision of the Jodhpur Bench, the petitioners of that case were not reinstated and a direction was given to the respondents to hold a departmental enquiry, but the residences allotted to them as a part of their service condition, were ordered to be not vacated from them. In the case of the decision of the Chandigarh Bench, the applications were dismissed upholding the order passed by the disciplinary authority against the petitioners of those cases.

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4. The Hon'ble Supreme Court decided the matter in the following manner:-

"However, what is apparent is that the order of dismissal against the employees has not been sustained in the Courts. Although Jodhpur Bench has not examined the matter on merits and the CAT Chandigarh has dismissed the claim petitions on bare technicality, yet there can be no doubt that the Government whether in 1990 or in 1991 or in 1992 has been considering the matter, and efforts had been to grant relief to these employees. What should be done then which may do justice to both the parties? Overall picture is that there are five types of employees, one, whose claim petition before tribunal has been allowed and they have been directed to be reinstated; second, whose claims petitions had been allowed to a limited extent, namely, the appellate and revising authority had been directed to re-examine their cases; third, those who have retired during pendency of the claim petitions; fourth, where the claim petitions have been dismissed because the appeals filed had already been dismissed; and fifth, those who did not approach the Court and the Government have taken a decision to re-employ them. We are not concerned with last category. But the rationale behind this decision of the

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Government is to atone the injustice done to these employees. It has not been found by any tribunal that the orders passed against the respondents was in any manner justified. In other words, the exercise of power was arbitrary. If this be so as is apparent then there can be no justification for denying the benefit to employees. Technical arguments apart once this Court is satisfied that the participants in the strike were unjustly treated the Court is not only competent but has an obligation to act in a manner which may be just and fair. Keeping this in light we issue following directions:-

(i) Employees who were dismissed under Rule 14(2) 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 merits by one of the tribunal it is just and fair to direct the appellant to pay the employees compensation

equivalent to three years salary inclusive 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 cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

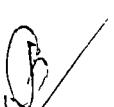
(iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purposes of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those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

5. In view of the above facts, we find that the case of the applicant is almost pari materia with the case of an employee who was summarily dismissed without holding an enquiry under the provisions of Rule 14, sub-clause (2) of the D.A.R., 1968. The case of the applicant falls in

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clause (1) of the conclusions arrived at in the aforesaid judgement by the Hon'ble Supreme Court. In view of this, the application is to be allowed in terms of the judgement of the Hon'ble Supreme Court.

6. The respondents are, therefore, directed to reinstate the applicant as per the direction issued by the Hon'ble Supreme Court. The judgement to be complied with within a period of three months. In the circumstances, the parties to bear their own costs.


(B.K. Singh)

Member (A)


(J.P. Sharma) 5.10.93

Member (J)