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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.740/91

DATE OF DECISION: 05.11.1993.

SHRI ASHOK KUMAR GUPTA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM: THE HON'BLE MR. N.V. KRISHNAN, VICE-CHAIRMAN
THE HON'BLE MR. B.S. HEGDE, MEMBER (J)

FOR THE APPLICANT IN PERSON.

FOR THE RESPONDENTS SHRI SHYAM MOORJANI,
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY
HON'BLE MR. N.V. KRISHNAN, VICE-CHAIRMAN).

The applicant is an ex-employee of the Northern Railway who stands dismissed from service without holding any enquiry in the manner provided under the Railway Servants (Discipline & Appeal) Rules, 1968-Rules for short- on the ground that it was not reasonably practicable to do so, by invoking the provisions of Rule 14 (2).

2. The brief facts of the case are as follows:-

2.1 The applicant was working as a Driver under the second respondent, the Divisional Railway Manager, Northern Railway. By an order dated 10.6.1980 (Annexure-A-3) the Divisional Electrical Engineer removed the applicant from service by invoking the provisions of Rule 14(2). An extract of the order is reproduced below which states the reason for such action.

"Whereas I am satisfied that Shri Ashok Kumar Gupta, Driver at about 5 p.m. on 9.6.1980 assaulted Shri Mangat Singh, Driver 'B' Hd.Qr./DLI and tried to stop him for going on duty to work a train, which is a serious offence in as much as obstruction was being

caused in the normal working of train and intimidating the employee to join illegal strike.

Whereas due to the present disturbed conditions and circumstances of the case I am satisfied that it is not reasonably practicable to hold an enquiry in the manner provided under Railway Servants D&A Rules, 1968."

2.2. By an order dated 23.6.1980 (Annexure A-4), the Chief Operating Superintendent reviewed the Annexure A-3 order, *suo motu*, and reduced the penalty to reduction to the grade of shunter for two years, with loss of seniority.

2.3. The applicant filed two appeals to the General Manager on 30.7.80 and 4.9.90 against the modified order of penalty.

2.4. It is alleged that the applicant did not resume duty as a shunter and was unauthorisedly absent. Besides, it is alleged that "on 31.1.1981 Shri Ashok Kumar Gupta Electric Shunter GZB committed misconduct in as much as that he threatened Shri K.K. Sharma, Engine Driver on duty in the Down Yard at GZB to make over the key of Electric Engine No.21018 and to de-energise the engine, thereby contravened Rule 3 (i)-(iii) of Railway Service Conduct Rules, 1968." Annexure A-5 order dated 2.2.1981 was passed against him again by invoking Rule 14 (2) and the applicant was removed from service with immediate effect.

2.5. The applicant and others similarly penalised moved the High Court of Delhi in C.W. 2123/81 which was received on transfer in the Tribunal and registered as T-743/85. This and T-741/85 were disposed of by the judgement dated 25.2.1987, a copy of which has

been filed by the respondents as Annexure-R-5. Relying on the judgement of the Supreme Court in the similar cases of Tulsi Ram Patel & Others (AIR 1985 SC SC 1414) and the subsequent judgement in Satyavir Singh's case (1985 (3) SCC 252) the Tribunal dismissed both the petitions but held that an appeal may be filed against the impugned order of removal and the appellate authority was directed to dispose of that appeal keeping in view the law laid down in the aforesaid judgements of the Supreme Court.

2.6. Thereafter, the applicant filed an appeal on 18.3.89 which was dismissed by the appellate authority (Annexure A-8) on 3.12.87 on the ground that the circumstances still did not permit the holding of an enquiry by the appellate authority (Annexure-A-8).

2.7. Against this order, the applicant filed OA-457/88 which was disposed of by the judgement dated 16.11.1989 (Anneuxre A-10). The Tribunal issued the following orders: -

" i) The impugned order dated 3.12.1987 is set aside directing the appellate authority to ascertain the factual position afresh, apply its mind thereto and record its considered opinion as to whether it would be reasonably practicable to hold an enquiry and thereafter take such action on the appeal filed by the applicant in accordance with law. The applicant may, if necessary, submit in writing to the appellate authority all the objections that were raised before us to the validity of the penalty order dated 2.2.1981 which the appellate authority will duly consider before passing its order.

ii) Similarly, the appellate authority will take up the pending appeals dated 30.7.1980 and 4.9.1980 against the impugned order of penalty (passed in revision) dated 23.6.1980, consider the factual situation existing while doing so and record a considered finding whether an enquiry should be held as required by Rule 9 of

the rules and thereafter take such action on the appeal as it deems appropriate in law. Here again the applicant may, if considered necessary, submit in writing all such objections that he may have against the validity of the impugned order of penalty dated 23.6.1980 which the appellate authority will consider before passing final orders on the appeal.

iii) The competent authority will consider the question of treatment of the period on and after the dates on which the penalties mentioned above were levied, after the appeals against those orders are disposed of as directed above and pass appropriate orders in accordance with rules on the subject."

2.8. In pursuance of this direction the applicant submitted review/appeal dated 23.7.1990 (Annexure A-11) to the General Manager, Northern Railway, New Delhi.

2.9. It appears that the Annexure A-4 was heard by the D.R.M. There is no reference to this in the O.A. He passed an order dated 18.12.90, copy filed by the respondents as Annexure R-9. The appeal was again dismissed for the reasons mentioned below:-

"Coming to the Hon'ble CAT New Delhi's directives with regard to ascertaining the factual position as afresh and application of mind thereto on whether it is reasonably practicable to hold and enquiry in the manner provided under the D & A R rules in the present circumstances. In my opinion holding of an enquiry even now is not reasonably practicable because :

There have been a number of demonstrations and other violent activities including assault on officials working over Delhi Devision in the recent past. The present industrial relation atmosphere is not conducive to holding of an enquiry in the present case as there is an apprehension of intensification of agitation and other such activities in which Ashok Kumar Gupta is actively involved. As per the records available with the undersigned Sh. Ashok Kumar Gupta is still actively involved in active instigation and abetment of other staff for violent incidents which has resulted in assault on one of the Railway employee as late as 12.12.90. There is thus, still even at this stage no likelihood of independent witnesses turning up in case an enquiry is held, in view of the activity and reputation of Sh. Ashok

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Kumar Gupta, and the present situation. It is thus still not practicably possible to hold an enquiry.

On a thorough re-examination of the case I thus find that Sh. Ashok Kumar Gupta was correctly punished, by following the relevant rules in practice on the railways and the punishment was commensurate with the offence. On a meticulous examination of his appeal, I find no reason to differ from the orders of the disciplinary authority or my predecessor in his earlier dealing with the appeal, and the appeal is thus rejected."

2.10. There is a reference to this Annexure

A-11 appeal dated 23.7.90 in the Annexure A-1 order of the General Manager dated 15.1.1981. But by that order the earlier appeals dated 29.7.1980 and 4.9.1980 alone which the applicant had filed before the General Manager (vide para 2.3) were dismissed. It was held that an enquiry could not be conducted even now. The General Manager's orders are more or less on the same grounds as those of the D.R.M. in the Annexure R-8 order.

2.11. It is in these circumstances that the applicant has filed this O.A. to quash the Annexure A-1 order dated 15.1.91 of the appellate authority and the order of reversion dated 23.6.80 (Annexure A-4) and the order of removal (Annexure A-5) and to order his reinstatement with back wages and interest.

3. The respondents have filed a reply contending that the applicant is not entitled to any relief.

4. The matter came up for final hearing on 1.10.93 when the judgement dated 5.8.93 of the Supreme Court in Civil Appeal Nos. 4681-82 of 1992 and a number of other civil appeals Won (Union of India & Others Vs. R. Reddappa & Another) was brought to our notice. The civil appeals were directed against the judgements passed by

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Hyderabad, Jodhpur and Chandigarh Benches of the Central Administrative Tribunal against the respondents. The matter related to the dismissal of about 200 railway employees (loco running staff of different zones) under Rule 14 (2) of the Railway Servants (Discipline & Appeal) Rules for their participation in the Loco Running Staff Association strike in January, 1981 on the ground that it was not reasonably practicable to hold an enquiry.

5. After considering the issues elaborately, the Supreme Court held as follows:-

"However, what is apparent is that the order of dismissal against the employees had not been sustained in the Courts. Although Jodhpur Bench has not examined the matter on merits and the C.A.T. Chandigarh has dismissed the claim petitions on their 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 case; 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 the last category but the rationale behind this decision of the Government is to atone the injustice done to these employees. It has not been found by any Tribunal that the orders passed against the respondent 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 posts 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."

6. In the light of this judgement of the Supreme Court, which applies to all employees who have been dismissed under Rule 14 (2) for having participated in the Loco Running Staff Association strike, the benefit of this judgement will be available to the applicant also. Therefore the order dated 2.2.1981 (Annexure A-5) removing the applicant from service is liable to be quashed and the applicant is liable to be reinstated in service in terms of the Supreme Court's judgement.

7. However, before 2.2.1981, the applicant had already been reverted from the post of Driver to the post of Shunter by the order dated 23.6.1980 (Annexure A-4) in review of the impugned Annexure A-3 order, by which he was removed from service under Rule 14 (2). The appeals made against these orders made to the General Manager

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have been dismissed by the impugned Annexure A-1 order. The D.R. M. has also dismissed the appeal by the Annexure R-9 order dated 18.12.90. These orders are apparently not covered by the Supreme Court's judgement because the order of removal (Annexure A-3) was passed on 23.6.90.

8. We have carefully considered the grounds on which the appeals have been rejected. We have come to the conclusion, as other Benches too have done earlier, that there is lack of application of mind in passing the appellate order and no evidence has been produced to show that a proper enquiry could not be held. No evidence has also been produced to substantiate the charge on the basis of which the Annexure A-3 order was passed. The question of directing the respondents to hold an enquiry is not required to be considered now because, in similar circumstances, the Supreme Court has already directed that the Railway servants should be taken back in service. Applying the ratio of that judgement, we quash the Annexure A-3 order dated 10.6.1980 removing the applicant from service, the Annexure A-4 order dated 23.6.1980 by which Chief Operating Superintendent modified the penalty to one of reduction as a shunter, the Annexure R.9 order dated 18.12.90 of D.R.M. rejecting the applicant's appeal dated 23.7.90, and the Annexure A-1 order dated 15.1.1991 of the General Manager by which the appeals filed against the Annexures A-3 and Annexure A-4 orders have been dismissed.

9. In the circumstances, this application is allowed with the following orders/directions:-

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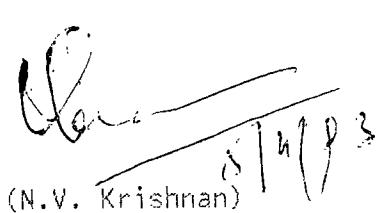
i) The respondents are already bound to give effect to the judgement dated 5.8.93 of the Supreme Court in Civil Appeal No.4681-82/92 Union of India and Ors. Vs. R. Reddappa and Another in terms of the directions given therein. Thus the applicant gets full relief against the Annexure A-5 order of removal dated 2.2.1981.

ii) For the purpose of determining the post to which the applicant would be restored in terms of directions of the Supreme Court's judgement supra, we declare that the applicant should be deemed to be holding the post of Driver when the impugned Annexure A-5 order was passed as we have set aside the Annexures A-3, A-4 and A-1 and R-9 orders by which the applicant was first removed from service but later reduced to the rank of Shunter and his application was dismissed.

10. With these directions the O.A. is allowed. No costs.


(B.S. Hegde) 5/11/93

Member (J)
5.11.93
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(N.V. Krishnan) 5/11/93

Vice-Chairman
5.11.93.