(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 40 of 1987.

Date of decision .. November 26, 1987.

P.Yarrayya, son of late P.Ramanna,
First Fireman, S.E.Railway, Khurda Road,
P.O.Jatni, Dist- Puri. ... Applicant.

Versus

1. Union of India through the General Manager,
S.E.Railway, Garden Reach, Calcutta- 43.

2. Divisional Railway Manager, S.E.Railway,
At- Khurda Road, P.O.Jatni, Dist- Puri.

3. Chief Operating Superintendent, S.E.Railway,
Garden Reach, Calcutta- 700 043.

... Respondents.

M/s G.A.R.Dora & U.C.Mohanty,
Advocates. .. For Applicant.

Mr. B.Pal, Sr. Standing Counsel.
M/s Ashok Mohanty & L.Mohapatra,
Standing Counsel (Railways).. For Respondents.

C O R A M :

THE HON'BLE MR .B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

---

1. Whether reporters of local papers may be allowed to see the judgment ? Yes .

2. To be referred to the Reporters or not ? Yes .

3. WhetherTheir Lordships wish to see the fair copy of the judgment ? Yes .

J U D G M E N T

K.P.ACHARYA, MEMBER(J) In this application under section 19 of the Administrative Tribunals Act, 1985, the order passed by the competent authority removing the applicant from service is under challenge.

2. The applicant was a Driver Grade 'C' serving under the South Eastern Railway stationed at Khurda Road. It was alleged against the applicant that on 10.1.1981 the applicant along with some others remained absent from duty and resorted to illegal strike and intimidated the willing workers of the running staff not to join their duties and insisted that they should join the strike. For these allegations, the competent authority held that it was not reasonablypracticable to hold an inquiry and therefore dispensing with the inquiry the competent authority ordered removal of the applicant from service in accordance with Rule 14(ii) of the Railway Service (Discipline & Appeal) Rules, 1968. Being aggrieved by this order of removal, the applicant approached the Hon'ble High Court of Calcutta in a writ application praying therein to quash the order of removal . At the time when the High Court of Calcutta took up the hearing of the writ application, it was found that the applicant had not exhausted the remedy available to him to first approach the appellate authority in terms of Rule 22 of the aforesaid Rules. The Hon'ble High Court of Calcutta directed the applicant to approach the appellate authority and simultaneously the High Court gave direction to the appellate authority to hear the matter and dispose of the appeal in the light of the observations made by the Hon'ble Supreme Court in the case of Satyavir Singh and others. v. Union of India, reported in AIR 1986 SC 555.

The applicant accordingly approached the appellate authority, namely Chief Operating Superintendent, South Eastern Railway, Garden Reach, Calcutta-43 who heard the appeal and finally confirmed the order of removal passed by the disciplinary authority. Being aggrieved by the order passed by the appellate authority confirming the order passed by the disciplinary authority, the applicant has filed this application under section 19 of the Administrative Tribunals Act,1985 praying therein to quash the order of removal.

3. In their counter, the respondents maintained that no illegality has been committed by the competent authority in dispensing with the enquiry because it was actually not reasonably practicable on the part of the competent authority to hold an inquiry in view of thetense situation then prevalent. Due to the tense situation and since the law authorised the competent authority to dispense with the inquiry, accordingly, the competent authority thought it fit and proper to dispense with the inquiry which he did and ultimately came to the conclusion that the applicant was guilty of the allegations and hence the order of removal was passed by the competent authority which has been later confirmed by the appellate authority and both the orders being accordingto law, this Bench should not interfere with the order of removal. In a nut-shell it is maintained by the respondents that the application being devoid of merit is liable to be dismissed.

4. We have heard Mr.G.A.R.Dora, learned counsel for the applicant and learned Standing counsel appearing for the Railway Administration at some length. Counsel for the applicant

vehemently pressed before us to unsettle the order of punishment imposed on the applicant on two grounds, namely, there is an irreconcilable discrepancy in regard to the date of occurrence alleged by R.Apalswamy (who was the victim-informant) while lodging the First Information Report and the date given by the disciplinary authority, in the impugned order in regard to the pressure given on him to join the strike. It was also argued that the case launched at the instance of R.Apalswamy having ended in acquittal in favour of the applicant by a competent criminal court it should have heavily weighed with the appellate authority and on that account the appellate authority should have given the benefit to the applicant. It was further argued by learned counsel for the applicant that only one day's absence from duty should not have persuaded the disciplinary authority to jump into a conclusion that the prayer for availing leave was intentional, more so to join or indulge in the illegal strike. In a nut-shell the contention put forward on behalf of the applicant is that the disciplinary authority has taken recourse t dispensation of the regular enquiry without any basis or foundation and without being backed by law. Hence it was urged before us that on these grounds, the impugned order of removal should be set aside. After arguing on merits of the case as stated above, counsel for the applicant also urged before us that the order of the appellate authority suffers from various defects, namely, the appellate authority has not at all passed an order in accordance with the direction given by the Hon'ble High Court of Calcutta to dispose of the appeal interims of the observations made by the Hon'ble Supreme Court in the case of Satyavir Singh v. Union of India and others (supra). It was also submitted at the

Bar that the appellate order is a cryptic one and not being a speaking order , according to judicial pronouncements made by the Supreme Court, the appellate order is also liable to be quashed. All these contentions put forward on behalf of the applicant were stiffly opposed by the learned Standing Counsel for the Railway Administration and it was submitted that there has been a due compliance of the law that holds the field today, and there being no merit at all in the contentions advanced on behalf of the applicant such contention should be outright rejected and the order of removal should be sustained. Emphatically it was argued by the learned Standing counsel for the Railway Administration that in no circumstances it can be held that the appellate authority has not followed the directions of the Calcutta High Court and as a matter of fact the appellate authority has taken into consideration the observations of the Hon'ble Supreme Court in the case of Satyavir Singh (supra) and thereafter the appeal has been disposed of on merits. It was also contended on behalf of the applicant that the disciplinary authority while dispensing with the inquiry has not at all given reasons as to why it was not reasonably practicable on his part to hold the inquiry.

5. We have given our anxious consideration to the arguments advanced at the Bar. We do not like to express any opinion on the merits of the case because of the conclusions which we propose to arrive at and the directions which we propose to give in this case. Undisputedly the Calcutta High Court had given a direction to the appellate authority to dispose of the appeal in the light of the observations made by Their Lordships of the Supreme Court in the case of Satyavir

Singh v. Union of India. This fact is undisputed. We woule like to devote our attentionto the order passed by the appellate authority over which there is a serious dispute between both sides as to whether the appellate authority had devoted his attention to the case of Satyavir Singh. v. Union of India and others. The order of the appellate authority formed subject matter of Annexure-6. In the appellateorder we do not find a single line mentioned by the appellate authority in regard to the case of Satyavir Singh v. Union of India. Learned Standing Counsel contended that even though the principles enunciated in the case of Satyavir Singh v. Union of India and others have not been specifically mentioned by the appellate authority, yet from the substance of the appellate order it can be well presumed that principles laid down in Satyavir's case was in the mind of the appellate authority Very unfortunately we cannot read into the mind of the appellate authority. Nowhere the appellate authority has breathed a single word stating that he had taken into consideration the observations made by Their Lordships in the case of Satyavir Singh, far less to speak of the fact of mentioning or dealing with the observations made by the Hon'ble Supreme Courtin the case of Satyavir Singh and the grounds on which the appellate authority distinguishes the case of Satyavir Singh so that the principles laid down therein would not cover the present case. We are unable to accept the contention of the learned Standing Counsel for the Railway Administation made with some vehemence because, at the risk of repetition, we may say that the observations of the Supreme Court in Satyavir's case has not at all been dealt and hence not taken into consideration. In such circumstances, we are of opinion that the direction given by the Hon'ble High

Court of Calcutta has not been followed by the appellate authori and hence the order of the appellate authority suffers from an irreparable defect. To add to all these, we may say that there is considerable force in the contention of the learned counsel for the applicant that the order of the appellate authority is not a speaking and reasoned order.

6. Hon'ble Supreme Court in their Judgment reported in AIR 1967 SC 1606(Bhagat Raja v. Union of India and others) has been pleased to observe as follows :

> " The decisions of tribunals in India are subject to the supervisory powers of the High Court under Art. 227 of the Constitution and of appellate powers of Supreme Court under Art. 136. It goes without saying that both the High Court and the Supreme Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word " rejected " or " dismissed ". Ordinarly, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, Supreme Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, Supreme Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, Supreme Court, in appeal may find it difficult to ascertain which are the grounds which weighed with the Central Government

in upholding the order of the State Government. In such circumstances, what is known as a 'speaking order' is called for. "

In another judgment reported in AIR 1970 SC 1302 (M/s.Mahabir Prasad Santosh Kumar v. State of U.P. and others) Their Lordships were pleased to observe as follows :

" From the materials on the record it cannot be determined as to who considered the appeal addressed to the State Government, and what was considered by the authority exercising power on behalf of the State Government. The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. This Court had occasion to protest againstthis practice in several decisions. The power of the District Magistrate was quasijudicial; exercise of the power of the State Government was subject to the supervisory power of the High Court under Art.227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given, and the appeal id dismissed without recording and communicating any reasons. "

Their Lordships had also taken the very same view in judgments reported in AIR 1966 SC 671 and AIR 1969 SC 1297. It is needless for us to say that the in the case of S.P.Sampath Kumar v. Union of India and others reported in AIR 1987 SC 386 Their Lordships have been pleased to hold that the Administrative Tribunal is substitute for the High Court and not supplemental. Applying the principles laid down by Their Lordships in the above mentioned casesto the facts of the present case, we cannot but hold that the present case suffers from irreparable defect committed by the appellate authority in not recording any

(24) XII 48

reasons for dismissing the appeal. The appellate authority has only referred to the Railway Rules without discussing the facts in detail and has summarily disposed of the appeal holding that the disciplinary authority was justified in dispensing with the inquiry and removing the applicant from service. This is against the dictum laid down by Their Lordships in the aforesaid judgments. The additional ground on which the appeal stood dismissed is that the applicant had not approached the appellate authority in right time and there was a delay in approaching the appellate authority by five and half years which heavily weighed in the mind of the appellate authority in dismissing the appeal. In our opinion, the appellate authority was not correct to say so because the applicant filed the appeal before the appellate authority on the direction of the Hon'ble High Court of Calcutta and by such order of the Hon'ble High Court of Calcutta, it isdeemed that the delay in filing of the appeal was condoned and hence there was no further scope for the appellate authority to dispose of the appeal against the applicant on the ground of delay. All these facts and circumstances taken together persuade us to remit the matter to the appellate authority for fresh consideration of the case and for disposal according to law and especially in the light of the observations of the Hon'ble Supreme Court in the case of Satyavir Singh v. Union of India and others (supra).

7. Our view gains support from a judgment of the Central Administrative Tribunal, Gauhati Bench quoting the observations of Their Lordships in a similar matter decided on 3.12.1986 which runs thus :

" (observations of the Hon'ble Supreme Court)

Heard Shri M.K.Ramurthy for the petitioners and the Learned Additional Solicitor General for the respondents

(25) XIII 19

> The main contention of the petitioners is that the direction given by this court in its judgment entitled Satyavir Singh v. Union of India has not been complied with by the appellate authority. We are inclined to agree with the petitioner's grievance that the appellate authority has not in terms complied with the directions. The learned Additional Solicitor General has, therefore, agreed that the Appellate Authority shall re-dispose of the appeals in accordance with law and keeping the directions of this Court in the judgment referred to above in view while dealing with the matter. "

8. While agruments were advanced on behalf of the applicant, learned counsel for the applicant drew our attention to an order passed by the Additional Divisional Railway Manager, South Eastern Railway, Bilaspur passed in the case of one Akbar Ali formerly Electric Driver Grade 'C' and V.K.Sharma formerly Electric Driver Grade'C'. Both the orders are contained in Order No.E/GE/Court/CH (W) dated 9.7.1987. In the said order the appellate authority i.e. the Additional Divisional Railway Manager, Bilaspur took a lenient view of the matter stating that since the tense situation was no more prevalent at the relevant time, a further opportunity should be given to Akbar Ali and V.K.Sharma to amend themselves and therefore on that account they were reinstated into service. We do not like to express any opinion as to the justifiability or otherwise on the part of the Additional Divisional Railway Manager, Bilaspur having passed such an order and reinstating V.K.Sharma and Akbar Ali because it may create some embarrassment for the appellate authority in this case. It is left to the discretion of the appellate authority to take this into consideration if he so likes and pass such orderas as deemed fit and proper, according to law.

(26) XIV 20

9. In view of the discussions made above, we deem it expedient in the ends of justice to remand this case to the appellate authority, namely Chief Operating Superintendent, Garden Reach, Calcutta, to dispose of the appeal keeping in view the observations made above. Therefore, the appellate order is hereby set aside and the case is remitted back to the appellate authority to dispose of the appeal afresh within three months from the date of receipt of a copy of the judgment. In case the applicant is aggrieved by any order passed by the appellate authority, liberty is given to the applicant to approach this Bench.

10. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

26.XI.87

.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN, I agree.

26.11.87

.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 26, 1987/Roy, S.P.A.