CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 176 / 2009

Thursday, this the 21st day of October, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

M.M.Anandan,
Ex.Labourer,
Disc No.842, Wheel Shop,
Southern Railway, Work Shop,
Golden Rock, Trichy. ....Applicant

(By Advocate Mr M.P.Krishnan Nair)

v.

1. Union of India,
represented by the Secretary,
Railway Board,
Ministry of Railway, New Delhi.

2. General Manager,
Southern Railway, Park Town,
Chennai-600 003.

3. The Chief Mechanical Engineer,
Southern Railway, Park Town,
Chennai-600 003.

4. The Chief Work Shop Manager,
Central Work Shop,
Southern Railway, Golden Rock, Trichy-4.

5. Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003. ....Respondents

(By Advocate Mr K.M.Anthru)

This application having been finally heard on 18.10.2010, the Tribunal on 21.10.2010 delivered the following:

ORDER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

The applicant who is aged 82 has approached this Tribunal for redressal

of his apparently long pending grievance. The long pendency of the grievance is also one of the defences of the respondents. The factual matrix is as follows: The applicant would claim that he was appointed as Office Boy in the Railway Workshop on 10.4.1945. Apparently thereafter he was promoted as a Labourer in April 1948. He would claim that his normal date of superannuation would be 30.4.1987. There was an announcement by the labour union to conduct a day's token strike in the month of August 1949. The applicant being an active member was apparently arrested on 8.3.1949. In this connection our attention is drawn to Annexure A-6 dated 12.3.1949. It relates to the suspension of the applicant for the reason that Disc No.842 Anandan who is the applicant herein, was arrested by the Sub Inspector of Police, Golden Rock on 8.3.1949 under section 151 Cr. P.C. read with 2(1)(a) of Madras Maintenance of Public Order 1947 and therefore he is placed under suspension from 9.3.1949 AN. It is stipulated in the said order that the applicant will draw during the period of suspension a subsistence allowance at the rate of half the leave salary and full rate of House Rent Allowance is permissible to him. It is also further stipulated in the said order that a copy of the said order would be served on the Sub Inspector of Police, Golden Rock Police Station to enable him to advise the authority to take a final decision of his case. In the same order vide endorsement made on 22.3.1949 it is stipulated that the services of the applicant will be terminated on 28.3.1949 in terms of his Service Agreement and which is to be served through the Sub Inspector of Police, Golden Rock indicating thereby that he might be in the persuasive control of the Sub Inspector of Police and therefore in a position to be served a notice through the Police.

2. Our attention was drawn by the applicant to the judgment passed by the Hon'ble Apex Court in **Moti Ram Deka v. General Manager, North East Frontier Railway** [AIR 1964 SC 600] wherein similar matters akin to the case of

the applicant were taken up. But the respondents would point out that there is a difference in the matter and the present one. As the applicant's case relates to pre-constitution of India period whereas Motiram's case relate to post-constitutional era. But then on going through the judgment, it appears that the point of interest which would have been arisen under the Government of India Act 1915, the Rule framed in 1920 and amended in 1924 as well as the Governors Provinces Civil Services (Control and Appeal) Rules and Governors Provinces Civil Services (Delegation) Rules, 1926 as well as the Secretary of State in 1930 were also considered by the said judgment.

3. Their Lordships found:

> "10. This position continued until we reach the Government of India Act, 1915. This Act repealed all the earlier Parliamentary legislation and was in the nature of a consolidating Act. There was, however a saving clause contained in section 130 of the said Act which preserved the earlier tenures of servants and continued the rules and regulations applicable to them. Section 96B of this Act which was enacted in 1919 brought about a change in the constitutional position of the civil servants.' Section 96B(1) in substance, provided that "subject to the provisions of this Act and the rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasures and it added that no person in that service may be dismissed by any authority subordinate to that by which he was appointed. It also empowered the Secretary of State in Council to reinstate any person in that service who had been dismissed, except so far as the Secretary of State in Council may, by rules, provide to the contrary. Section 96B(2) conferred power on the Secretary of State in Council to make rules for regulating the classification of the Civil Services in India, the method of recruitment, the conditions of service, pay and allowances and discipline and conduct while sub section (4) declared that all service rules then in force had been duly made and confirmed the same.
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> 11. In 1935, the Government of India Act 1935 was passed and S.96B(1) was reproduced in subsection (1) and (2) of section 240, and a new sub-section was added as subs. (3). By this new sub-section, protection was given to the civil servant by providing that he shall not be dismissed or reduced in rank until he had be en given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The definition contained in s. 277 of the said 596 act shows that the expression "dismissal" included removal from service.
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> 12. That continued to be the position until the Constitution was adopted in 1950. The Constitution has dealt with this topic in

Articles 309, 310 and 311. Art.310 deals with the tenure of office of persons serving the Union or a State, and provides that such office is held during the pleasure of the President if the post is under the Union, or during the pleasure of the Governor if the post is under a State. The doctrine of pleasure is thus embodied by Art. 310(1). Art.310(2) deals with cases of persons appointed under contract, and it provides that if the President or the Governor deems it necessary in order to secure the services of a person having special qualifications, he may appoint him under a special contract and the said contract may provide for the payment to him of compensation if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate: that post. it is significant that Art.310(1) begins with a clause "except as expressly provided by this Constitution"'. In other words,if there are any other provisions in the Constitution which impinge upon it, the provisions of Art. 310(1) must be read subject to them. The exceptions thus contemplated may be illustrated by ,reference to Articles 124, 148, 218 and 324. Another exception is also provided by Art. 311. In other words, Art. 311 has to be read as a proviso to Art. 310, and so, there can be no doubt that the pleasure contemplated by Art.310(1) must be exercised subject to the limitations prescribed by Art. 311.

13. Art. 309 provides that subject to the provisions of the constitution, Acts of the appropriate Legislative may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. This clearly means that the appropriate Legislature may pass Acts in respect of the terms and conditions of service of persons appointed to public 697 services and posts, but that must be subject to the provisions of the constitution which inevitably brings in Art. 310(1). The proviso to Art. 309 makes it clear that it would be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may. direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and prescribing the conditions of service of persons respectively appointed to services and posts under the Union or the State The pleasure of the President or the Governor mentioned in Art. 310(1) can thus be exercised by such person as the President or the Governor may respectively direct in that behalf, and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. These rules, and indeed the exercise of the powers conferred on the delegate must be subject to Art. 310, and so Art. 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Art. 309 has to be read subject to Articles 310 and 31 1, and Art. 310 has to be read subject to Art 311. It is significant that the provisions contained in Art. 311 are not subject to any other provision of the Constitution. Within the field covered by them they are absolute and paramount. What then is the effect of the provisions contained in Art. 311(2)? Art. 311(2) reads thus:-

> "No such person as aforesaid shall be dis- missed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

Therefore, substantially the position is that the factor of pleasure of the President as expressed by executive orders will not extend to capricious, unjust or illegal orders. But then the respondents would contend that even if the removal of the applicant was illegal, unjustifiable and capricious, still, it has to be turned down on the ground of greater public policy implicit in the laws relating to the limitation. They would aver that stale and dead events cannot rejuvenated under any circumstances lest it will lead to unending litigation which may be against public policy. But the applicant would submit that the question of limitation would not come in this matter as greater question of life and livelihood covered under constitutional provisions would find place with the grievance of the applicant. Besides, he would say that Annexure A-7 which ought to have been the basis of determination by the respondents and that in the case of the applicant it would prove that the allegation against him which resulted in his removal from service was unjust and to be unjustifiable and found to be so by the respondents. He highlighted the failure of the respondents in not responding to the determination tool which was placed in their hands by the judgment of the Magistrate Court. Therefore, it becomes imperative for us to examine the purport and content of the judicial order issued by the Sub Magistrate, Trichy. It relates to the trial of the applicant and the allegation against the applicant and another was that they, together had endangered the safety of persons by dealing with the machinery belonging to the Railways. The occurrence of allegation is that on 8.3.1949 at about 2.25 AM, two accused including the applicant had stopped work and went out for card punching. It appears that after they stopped work and were nearing card punching machine which was kept in the open and may be at a distance of 30 to 40 feet from the lathe they were working earlier, on instructions from

Natesan Pillai, Chargeman took Accused No.2 and and tested all the 3 lathe machines and found two iron pieces to have been placed in the gear wheel of the 3 lathe machines. Apparently, on the complaint of the Railways, the applicant and another were arrested and later removed from service.

4. On behalf of the prosecution several witnesses were examined and court found that after examination of witnesses, PW-7 who is the Sub Inspector of Police, Golden Rock that on receipt of the Exhibit P-1 report from the Manager of the Golden Rock Workshop, he took up investigation of the case, sent up material objects 1 and 2 for remand and that as the **two accused were already under remand, having been arrested in connection with the threatened strike** notice given by the Labour Union in which the two accused were members and after further investigation and enquiry he laid the charge sheet. The court after examination of prosecution witnesses, found that the incident might have occurred after 2.25 AM and they would have reached the card punching place by 2.27 AM and at 2.28 AM accused 2 and witness 3 were called off and taken to the wheel shop. Therefore, if at all, the act of placing the iron pieces in the machines must have taken place between 2.25 AM and 2.28 AM. After examining the details, the court made the following findings:

i) I do not find any necessity to take accused 2 and prosecution witness 2 for testing the machines leaving away others.

ii) He is the immediate subordinate of prosecution witness 1 and he is one who may expect his favour (PW-2).

iii) The defence contention is that prosecution witness 1 & 2 connived with each other with the pretext of testing the machines made them understand that the iron pieces had been kept in the machines and thus foisted the case against the accused.

Therefore the learned Magistrate acquitted the applicant and found him

not guilty. In other words, he strongly suspects that the accused might have been falsely prosecuted. There is no allegation further that machines were in any way damaged. **If iron pieces were kept inside the gear wheel then most probably during the test the gear would have been damaged.** If the gear wheel had not been damaged, it must be that before testing itself the machine would have opened and the gear wheel manipulated. This is a time consuming exercise from which it can only be construed that persons concerned knew that it will be worthwhile to expose the machines. Therefore, prima facie it may be correct to surmise that the applicant may have been falsely prosecuted and removed from service. Therefore, the fraud taints his removal and this is corroborated by a judicial order which is not appealed against.

5. At this point of time, the respondents would contend that whether the applicant be falsely prosecuted and removed from service is true or not. Since he had not challenged the removal at the appropriate time itself it is not proper to reopen the issue once again. The applicant would rely on the judgment of the Apex Court. If the applicant had been falsely prosecuted or even a modicum of falsity can be attached to his removal, the pleasure doctrine of the President cannot come to their rescue for the authorities under any circumstances, as doing so will defeat the rule of law. The applicant would rely on the secret letter of Railways which was produced in compliance with the order passed by the Tribunal on 15.1.2010. The case of the applicant was that the Railways may be directed to produce the list of 22 employees who were removed from service equivalently as also a copy of the secret letter dated 17.1.1974 issued by the Railway Board to pay the arrears of pay and allowances for 3 years prior to the attainment of the age of superannuation as well as pensionary benefits to all those employees who were removed from service by invoking Rule 148(3) of the IREC. The Railways submitted that the list of 22 employees are not available

with them due to passage of time but produced a second letter which would canvass a view that in clarification of a letter dated 20.1.1972, the cases of termination of service of permanent Railway employees under the Railway Services (Safeguarding of National Security) Rules, 1949/1954, who have applied for reinstatement but have attained the age of superannuation, may be paid arrears of pay and allowances only for the period prior to their attaining the age of superannuation within three years backwards from the date of their application. It is also provided that he may exercise option within a period of one month from the date of receipt of intimation by the individual concerned. **Therefore, it is ensues that the onus is on the Railways to inform the concerned individual relying on the methodology of redressal being offered to him**. Obviously, the Railways have not informed the applicant ,of the existence of such a letter. But the Railways rely on an order of the co-ordinate Bench of the Tribunal at Madras in O.A.No.1314 and 1315 of 1992 dated 29.4.1994. In this case the Tribunal held that in both these cases there were break in service in respect of applicants therein which have not been condoned and applicants were not confirmed against any post. It held that the applicants therein have not fulfilled the relevant provisions of Railway Pension Rules and so the question of principles of equitable estoppel cannot be invoked. The Railways by relying on this order negatived the claim of the applicants. But the applicant would point out that there is substantial difference in these two cases. He would say that he is in substantive employment and that is the reason why the Annexure A-6 order mentions that during the suspension itself, he will be granted subsistence allowance, which was not to be, in those days if he was not a substantive employee. The question of continuous service relied on by the Railways in Para 424 of the Manual did not arise in this case as apparently due to the fraudulent and malicious prosecution reason was found, probably because of trade union activities of the applicant to remove him from service. Even prima

facie and going by the judicial finding which had not been controverted in any revision or appeal, it would appear that a manipulated methodology was utilised to ease out the applicant from service. The Annexure A-5 letter would speak of a service agreement, but the service agreement is not produced and since it is with Railways and would have applied to applicant and a thousand consequence of such agreement was not extended by the Railways. But even if the Railways and to construe that the service agreement provided for arbitrary dismissal, even, following the judgment in Moti Ram's case, their doctrine of the President pleasure itself is circumscribed by good procedure and best practices. The Hon'ble Apex Court has clearly found that even under the Government of India Act, 1935 before dispensing with the services of any Government servants, an opportunity of hearing must be granted to him. No opportunity was ever awarded to the applicant and the sole defence which is relied on by the General Manager of the Southern Railway is this is a pre-constitution case and therefore, the provisions cannot be made applicable to him as in Moti Ram's case and the judgments relied on by the Hon'ble Apex Court in that case does not appear to be the case. Constitution of India is the paramount law of India under which we as a people came together to form a nation. The constitutional laws are different from ordinary legislation so much so that it is based on national aspirations and is fundamental and basic to the formation of the society which it seek to regulate and govern. That being so, the existence primarily of constitutional provisions even in a nascent form and its pre eminence even before it is formalised on legal adoption cannot be ruled out. Besides the focus of Government of India Act of 1935 is also is to provide opportunity of being heard before the services of any Government servants are to be dispensed with. In this case, we have already found that such opportunities were denied and also it is quite possible that he may have been falsely and maliciously prosecuted.

6. The applicant had taken us through the legal opinion issued by the counsel for the Madras High Court Legal Services Authority. It denotes the various methodology employed by the applicant continuously till date to have his grievances redressed. The respondents would say such redressal methodology are not in consonance with the Administrative Tribunals Act. But we find that in fact following 1974 secret letter the Railways ought to have informed the applicant of the grievances methodology available to him especially in the light of the GM's letter in 1970 and passed a final order thereon. Since they have not passed a final order which had prompted the applicant to move after authorities. That alone cannot take away the right for redressal of his grievance as the grievance relates to the behest of the railway officers themselves. It would appear that Zonal Officers of the Railways would be determined to defeat the strike called by the employees and therefore, going by the judgment passed the learned Magistrate Court, it would prima facie appear that a manipulative procedure was adopted to ease out the applicant from employment. As rightly held by the Hon'ble Apex Court, fraud will defeat even concluded decrees and it is the bounden duty of the Court then to reopen and re-examine dehors the time and situation. We have gone through the judgment at Annexure A-3 of the Division Bench of Madras High Court. We will only say that we are in agreement with it.

7. Therefore what remains is how to resolve this issue at this time. We have already found that the applicant ought to have been reinstated back in service following the order of the Magistrate, Trichy. Railways would contend that the applicant had not approached them for such reinstatement. But the fact remains that at least at the time of service of the concerned order he was persuasively under the control of police authority. Whether he was in police custody or judicial custody, it is not known. But the Railways considered it expedient to serve its

notice including termination letter through the Sub Inspector of Police. In the situation thus prevailing, it cannot be possible for the applicant to have raised a complaint against his removal. As to how far this restraint of the applicant would have lasted at this point of time, we are unable to judge. But it appears that the applicant and others like him had been agitating against their unjust removal and the Hon'ble Apex Court had passed an order which is produced as Annexure A-4 and it effectively stipulated that it is not necessary for everyone to come to the court. The Hon'ble Apex Court held conclusively that the concept of justice is that one should get what is due to him under the law even without asking. Therefore, it has to be construed that the applicant has to be reinstated even without him asking for it. Therefore, the defence of the respondents that the applicant ought to have asked for reinstatement would be putting premium on fraud. Therefore, we have no hesitation to hold that the question of limitation has no role to play as the onus is on the Railways to reinstate him firstly on the basis of of judgment of the Magistrate Court and secondly, along with 22 others and thirdly, should have offered him solace by virtue of the decision taken in 1972 and 1974. Having failed in all these, respondents now cannot be heard to claim that plea of the applicant would be hit by limitation. If such defences are to be accepted, it will be tantamount to adding insult to injury.

8. The applicant has prayed for pensionary benefits and for disposal of Annexure A-1 representation within a time frame. As the applicant is already aged 82 and we are in agreement with the Hon'ble High Court of Madras that there is no need for any direction to dispose of Annexure A-1 representation. In view of the fact that the applicant ought to have reinstated earlier and even inspite of representations and other cases in which the whole situation is known only to the Railway authorities, they have taken a negative stand and had not informed the applicant of the correct situation, we hold that the applicant is

entitled to pensionary benefits from a period which would date back 3 years prior to the filing of the O.A i.e. from 26.2.2006 onwards. In harmony with the judgment of the High Court of Madras, we direct the respondents to compute and calculate the pension which would have been notionally available to the applicant had he been taken back in service on the next date of judgment of the Hon'ble Magistrate Court, Trichy and to pay him arrears of pension within eight weeks from the date of receipt of copy of this order and also sanction future pension within such period. The arrears should be computed as arising from and be paid with simple interest @ 6% per annum from 26.2.2006 till the date of payment. Further pension shall also be paid.

9. The O.A is allowed to the limited extent as indicated above. There shall be no order as to costs.

Dated, the 21st October, 2010.

DR K.B.SURESH
JUDICIAL MEMBER

K NOORJEHAN
ADMINISTRATIVE MEMBER

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