IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 187/90
~~XXXXX~~ ~~199~~

DATE OF DECISION 30.4.91.

K.Sumathi Applicant (s)

M/s K. Ramakumar, V.R. Ramachandran Nair & Roy Abraham Advocate for the Applicant (s)

Versus

Union of India represented by the General Manager, Southern Railway, Madras, & 2 others. Respondent (s)

~~M/s M.C Cherian, Saramma~~ Cherian and T.A. Rajan. Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member.

The Hon'ble Mr. N. Dharmadan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

Earlier petition TAK No. 575/87 filed by the petitioner was heard along with TAK 695/87 and disposed of with the following direction.

> "In the conspectus of the facts and circumstances we allow both the petitions and set aside the impugned orders dated the 20th November 1982, (Ext.P2) and direct the respondents that the petitioners should be retained in service so long as any casual labourers, male or female, within the Palghat Division of Southern Railway with later dates of first appointment is continued in service, taking the division as the unit of employment."

The present application is a consequence of the above direction. According to the applicant he was reengaged by the respondents reluctantly w.e.f. 16.12.1988 after filing of a Contempt petition. So no payment of his pay and allowances

due to him from 20.12.1982 pursuant to the direction in TAK 575/87 was made to him. Since the termination order (Ext P2 in the earlier O.P.) was quashed by this Tribunal he is automatically entitled to all consequential benefits. He should have been paid his pay and allowances with other all consequential benefits from the date of termination upto reinstatement. According to the applicant the respondents are bound to pay the same even without any direction from the Tribunal in Annexure B Judgment. His claim is covered by judgments. The Learned Counsel for the applicant relied on the following decisions in support of his contention. 1. M/s Hindustan Tin Works(P) Ltd. Vs. The Employees of M/s Hindustan Tin Works Co. (AIR 1979 SC 75) 2. Pushpa Iyengar Vs Indian Airlines Corporation and Others, 1988(1) LLJ 386. 3. Union of India and another Vs. Shri Babu Ram Lella. (AIR 1988 SC 344)

2. The respondents filed detailed counter affidavit. They denied all the claims of the applicant. They submitted that the applicant was engaged as casual labourer in the office of the Asst. Engineer, Shoranur on the basis of a sanction given by Senior Divisional Engineer temporarily when work in the Assistant Engineer's office could not be managed with the regular staff. Later when work in the office of Assistant Engineer was reduced, it could be managed by regular staff and there was no necessity of the services of the applicant. Accordingly, the applicant's service was terminated after complying with theformalities under I.D.Act 1947. Challenging the termination order, the applicant filed O.P. 9952 of 82 with the following prayers:

" i) To call for the records leading upto Ext.P-2 and quash the same by the issuance of a Writ of Certiorari or any other appropriate Writ, order or direction.

ii) To issue a Writ of Mandamus directing the respondents to continue the petitioner in service in the Palghat Division of the Southern Railway.

iii) To issue such other Writs, orders and directions as this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. This O.P. was later transferred to this Tribunal and disposed of as TAK-575/87. The judgment is Annexure A. The respondents also produced alongwith counter affidavit Ext RI(a) proceedings of the Government of India dated 22.1.1974 and Ext. RI(b) and RI(c) decisions produced in support of the contention that the termination of the applicant was not contrary to the provisions of the I.D.Act. The termination was effected in accordance with the policy and procedure followed in that office. The casual labourers were being engaged and retrenched in the Assistant Engineer's office at Shoranur on the basis of section-wise seniority. This practice was upheld by the courts and Tribunals. There was also a ban on recruitment of fresh casual labourers except with special sanction. So the applicant had no right to continue in service.

5. It is after adverting to all these aspects that this Tribunal granted the limited relief of retaining the applicant in service "so long as any casual labourers, male or female within the Palghat Division of Southern Railway with later dates of Ist appointment ... continued in service, taking the division as a unit of employment."

6. Having heard the argument and after perusal of the documents we are of the view that this Tribunal while passing Annexure A Judgment never intended to direct the respondents

to reinstate the applicant with all consequential benefits. This is clear from the further orders. There was review filed by the respondents. It was dismissed by Annexure-B order. Later this Tribunal passed Annexure-C order in the Contempt Petition filed by the applicant. Relevant portion reads as follows:

> "..As it is agreed by counsel on either side that the petitioner has been admitted to duty w.e.f. 16-12-88 there is nothing further to be perused in this petition..."

There is no indication in any of the subsequent proceedings or orders that the applicant made a claim for back wages or reinstatement with retrospective effect from 1982.

7. The further important fact is that at the time of the reinstatement the applicant did not raise any claim for back wages from 1982 nor did he make a prayer in this behalf before the Tribunal either in the Original Application or in the Contempt Petition. The present claim of back wages is the result of an after thought and it cannot be allowed. The respondents explained in the counter affidavit the circumstances for terminating the applicant. This Tribunal pronounced the earlier judgment and directed the respondents only to retain the applicant in service. There is no direction to give any back wages. This direction has bacome final and binding on the parties. The review filed by one of the parties had been rejected. Under these circumstances, we are of the view that the respondents are only bound to retain the applicant in service and provide her work prospectively.

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8. The applicant's contention that he is entitled to backwages simply because of the quashing of the order of termination cannot be accepted. The automatic granting of back wages simply because of the setting aside of the order of termination has not been accepted by this Tribunal. We have, (the same Bench) taken the view that grant of consequential benefit depends upon various factors. Invariably the grant of such benefits will depend upon the facts of each case. Having regard to the facts and circumstances in TAK-575/87 this Tribunal decided only to grant retention of the applicant and not reinstatement retrpspectively. In RA 61/89 the same Bench has considered the issue in detail. This decision was followed in OA 215/89.

> "It is a general proposition that when an employee is reinstated in service after a certain period of unemployment he should be restored to the previous without any disadvantage in the absence of any cogent reason to deny it. <u>If the employee was always ready to work but he was kept away illegally on account of the illegal act of the employer there is no justification for not awarding him full back wages.</u> There are exceptions to this general proposition and the relevance of the discretion of the Tribunal assumes importance in this exceptional cases in which the Tribunal can in its discretion may deny or reduce the back wages. Chinnappa Reddy, J. in Surendra Kumar Varma and others V. Central Govt. Industrial Tribunal, New Delhi, 1981 (1) LLJ 386 held as follows:
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> > "But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums, the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is vestige of discretion left in the Court to make appropriate consequential orders."

Again in the case reported in Concerned workman of Sahai Industries V. B. D. Gupta and others, 1984 (1) LLJ 165 the Supreme Court quoted with approval the following passage from the earlier decision in Allahabad & Dhari Gram Panchayath V. Shri Brahad Santras Safai Kamdar Mandal 1971 (1) LLJ 508:

"In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure."

In Gujarat Steel Tubes Ltd. V. GST Mazdoor Sabha 1980 (1) LLJ 137 at page 174 the Supreme Court held as follows:

"Another fact of the relief turns on the demand for full back wages. Certainly, the normal rule, on reinstatement, is full back wages since the order of termination in non est. (See 1971 (1)(1) S.C.R. 563 and (1979) 3 S.C.R. 774). Even so, the Industrial Court may well slice off a part if the workmen are not wholly blameless or the strike is illegal and unjustified. To what extent wages for the long interregnum should be paid is, therefore, a variable dependent on a complex of circumstances. (See for e.g. 1967 (15) F.L.R. 395 paras 3 and 4)."

In the light of these decided cases we are of the view that there cannot be a straight jacket formula for the grant of back wages. The Tribunal or the court will have to be realistic and all relevant facts and considerations should enter the final verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. So we have to examine each case and see whether Industrial Tribunal has discharged the statutory duty of examining carefully the facts and relevant circumstances for the exercise of the discretion at the appropriate stage, after taking a decision to issue a direction for reinstatement, for deciding the further question of grant or refusal of back wages to the concerned employee. According to M.P. Jain, 'Principles of Administrative Law' fourth Edition, page 327 "The need for 'discretion' arises because of the necessity to individualize the exercise of power by the administration, i.e. the administration hasto apply a vague or indefinite statutory provision from case to case." The Supreme Court in Jaisimghanis case, AIR 1967 SC 1427 held as follows:

"In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey- 'Law of the Constitution' - Tenth Edn., Introduction cx).

"Law has reached its finest moments, "stated Douglas, J. in United States v. Wunderlich, (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion as Lord Mansfield stated it in classic terms in

> the case of John Wilkes, (1770) 4 Burr 2528 at page 2539 "means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful."

Under these circumstances we are not prepared to accept the contention of the learned counsel for the applicants that when a reinstatement is ordered after setting aside an order of dismissal the payment of backwages should also follow as a necessary corollary to it. According to us as indicated above it depends upon the facts and circumstances of each case. Even in the leading case cited at the bar, namely: M/s Hindustan Tin Workers Pvt. Ltd. V. the Employees of Hindustan Tine Workers and others, AIR 1979 SC 75, The Supreme Court only said "ordinarily the workmen whose service has been illegally terminated will be entitled to full back wages except when he is gainfully employed during the period." The expression "ordinarily" includes that there is no cast iron rule as contended by the applicants. It is flexible and the Tribunal can consider the relevant circumstances to deviate from the rule. The Ernakulam Bench of the Tribunal in R.A. 61/89, T.R. Rajan Vs. Executive Engineer and others, in which one of us (Hon'ble Shri N. Dharmadan) was a party, following the above Supreme Court decision held as follows:

> "But we feel that grant of consequential benefits depends on various circumstances and facts such as conduct of the applicant, conduct of the respondents, whether the applicant was gainfully employed elswehere when he was out of employment during disciplinary proceedings, whether the employer had engaged any other person as substitute in the place of applicant and paid him etc. Only after a proper evaluation and assessment of overall circumstances in each case and the satisfaction of the court that the grant of consequential benefits to the government servant is necessary that such benefits are also granted along with the order of reinstatement. It is only in the interest of justice that the court passes such order granting consequential benefits. According to us it is not an invariable and inflexible rule to be applied in every case that whenever a direction is issued for the reinstatement of the officer, should it also automatically follow consequential benefits to be paid to the employee."

This Tribunal took the same view in RA 87/90 (in OA 6/89) also.

9. From the above decisions it is clear that the applicant has not made out any case and the decisions relied on by him are not applicable to the facts of this case and distinguishable.

10. In the result this application has no merits. It is only to be rejected. Accordingly we do so. There will be no order as to costs.

30.4.'91.

(N. Dharmadan)
Judicial Member

30/4/91.

(N.V. Krishnan)
Administrative Member