

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

I. Contempt Application No.15/87
in
Tr.Application No.183/86

Shri Virdhaval Dhananjay Worlikar,
R/o Worlikar House,
Trombay Custom Road,
Bombay - 400 088

II. Contempt Application No.16/87
in
Tr.Application No.184/86

Shri Vinayak Dhananjay Worlikar,
R/o. Worlikar House,
Trombay Custom Road,
Bombay - 400 088.

.. Applicants

Vs

The Union of India through the
Central Railway Administration,
Victoria Terminus,
Bombay - 400 001.

.. Respondent.

Coram: Hon'ble Vice-Chairman B.C.Gadgil.

Hon'ble Vice-Chairman B.C.Mathur.

Appearances

1. Mr.S.R.Atre for the
applicants.
2. Mr.D.S.Chopra for the
Respondents.

ORAL JUDGMENT
(Per: B.C.Gadgil, Vice-Chairman (J))

Dated: 24.11.1987

These two contempt matters can be conveniently decided by a common judgment. Tr.Application No.183/86 and 184/86 were filed by the two persons: Virdhaval Dhananjay Worlikar and Vinayak Dhananjay Worlikar who were railway employees. They were in railway service and were dismissed from service on 18.6.1980 without holding any departmental enquiry. This order of dismissal was challenged in a city civil court by filing two suits. Those suits were transferred to this Tribunal for decision and were numbered as Tr.Application No.163/86 and 184/86. These two matters

were heard by this Tribunal and they were allowed. The Tribunal has passed an order setting aside the dismissal of both the applicants. The Railway administration was directed to reinstate them in service with consequential benefits such as grant of salary and allowances. However, our order made specifically clear that the respondents would be at liberty to hold a departmental enquiry and pass an appropriate order.

2. The Railway administration, with a view to comply the above mentioned judgment, has passed the order on 31.8.87 stating that the decision has been taken to hold departmental enquiry and that both the applicants shall be deemed to be placed under suspension with effect from 18.6.80 and shall continue to remain under suspension until further order. These orders are said to have been passed under rule 5(4) of the Railway Servants' Discipline and Appeal Rules.

3. The grievance of the applicants is that the above mentioned orders keeping the applicants under suspension with retrospective effect from 18.6.80 should not have been passed as they are contrary to the reinstatement order given by us. According to them in this way the respondents have committed a contempt.

4. Mr. Chopra for the respondents frankly stated before us that the railway administration never intended and would never intend to disobey the orders of the Tribunal so as to contempt. He, however, urged that Rule 5(4) permits that passing of the order of suspension with retrospective effect and the Tribunal's order for reinstatement would not come in the way of the administration to pass such an order. Mr. Chopra would be right if such an order are permissible otherwise the railway administration will have to pass an appropriate order so as to obey the judgment of the Tribunal.

5. It is not necessary to reproduce Rule 5(4) of the Railway Servants Discipline and Appeal Rules 1968. Suffice it to say that there was a similar rule 12(4) in the CCS(CCA)1957. The Rule 10(5) of CCS(CCA)1965 is also worded in a similar fashion. Both these rules viz. 12(4) and 10(5) were under scrutiny by the Supreme Court. The Supreme Court, in the case of Khem Chand Vs Union of India and Others reported in AIR 1963 SC 687 has interpreted rule 12(4) while the interpretation of Rule 10(5) of 1965 Rules was given by the Supreme Court in the case of Mr. H.L.Mehra reported in 1974 Service Law Journal 379. In both these cases, the Supreme Court held that an order of deemed suspension would be permissible only if the concerned employee was under suspension at the time the departmental inquiry was initially held and the order of dismissal was passed. It was also held that such suspension which was then existing can be continued under the said rule. We have also observed that Rule 5(4) of the Railway Servants Discipline and Appeal Rules 1968 is similar to the rule. In the present matters the applicants were not under suspension when they were dismissed from service in 1980. Consequently it may not be possible for the administration to pass an order of suspension with retrospective effect under rule 5(4).

6. The position is therefore that the impugned order of deemed suspension cannot be said to be in compliance with our judgment. Of course that order dated 31.8.87 would be operative from the said date. We must, however, observe that the applicants would be at liberty to challenge the said suspension from 31.8.87 on any other ground.

7. At this stage, Mr.Chopra for the respondents frankly informed the Tribunal that in view of the above decision, the railway administration would now pass an appropriate order of reinstatement of the applicants and order full back wages upto 31.8.87.

8. The respondents are directed to pass such an order within a period of two months from today. Of course, while making payment of back wages, the respondents would be at liberty to deduct the amount that has already been paid to the applicants.

9. In view of the above direction, we do not think that it will be necessary to proceed further with these contempt applications. Notices issued are therefore dispense with. The contempt applications are therefore disposed of with no order as to costs.

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(B.C.GADGIL)
VICE-CHAIRMAN(J)

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(B.C.MATHUR)
VICE-CHAIRMAN(A)

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