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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~ HYDERABAD

O.A. Nos. 531, 150 to 158 ~~XXXX~~ 1987
~~XXXXXXX~~ ~~150 and 158~~

DATE OF DECISION _____

P. Jeevaratnam and others Petitioner

G.V. Subba Rao Advocate for the Petitioner(s)

Versus

General Manager, S.C.Rly & others Respondent

N.R. Devaraj Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. Jayasimha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

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ORIGINAL APPLICATION: NOS.531, 150 to 158
of 1987.

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(JUDGMENT OF THE TRIBUNAL)

In all these cases the applicants were alleged to have been involved in the theft of railway property which gave rise to their arrest and consequently to their suspension. All of them are questioning the orders of their prolonged suspension. We will take up the OA.154/1987 as a typical case for the purpose of giving facts and contentions raised. The applicant in OA.154/87 was working as Assistant Guard at Vijayawada. On 3-6-85 at about 11-30 AM a case was registered as Crime No.16/85 under Section 3(a) of RP(UP) Act, 1966 on the file of the Ist Class Magistrate for Railways, Vijayawada. He states that he was released on bail, the applicant was placed under deemed suspension from 3-6-1985 onwards under Rule 5(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 by an order dated 17-6-85 issued by the Divisional Safety Officer, South Central Railway, Vijayawada. The applicant states that the order of suspension of the Divisional Safety Officer is illegal as it is not by a competent authority. He further states that he had submitted an appeal

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dated 30-6-1985 seeking revocation of suspension order but till to-date his appeal has not been disposed of even though 21 months have elapsed. The prolonged suspension resulted in social stigma and mental agony ~~to~~ not only to himself but also to his family members. The respondents have violated the norms and guidelines given by the Railway Board in regard to the suspension ~~of the employees~~ and revocation of the employees. The respondents have not complied with various guidelines and norms prescribed by the Railway Board in regard to the suspension orders from time to time.

2. In the counter filed on behalf of the respondents it is stated that the applicant was arrested on 3-6-1985 for his involvement in ^athe racket of organised and large scale thefts along with criminals and several others from the luggage vans of Train Nos.131/132 Express between Renigunta and Vijayawada during the year 1983 to 1985. This resulted in heavy shortages amounting to ^{over}Rs.2 Lakhs. ^A ^{against the applicant viz} The case ^{is} Crime No.16/85 U/s 3(a) RP(UP) Act was registered at RPF Post, Vijayawada. The applicant was produced on 3-6-1985 before the Special Judicial First Class Magistrate, Railways, Vijayawada and he was given to RPF custody. He was released on bail on the same date. In all, Railway property worth Rs.19,290/- was

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recovered in this case. After completion of enquiries a complaint was filed in the court of SJFCM/Railways/Vijayawada on 22-2-1986 and the same was taken on file vide CC No.135/86 and the case is pending trial in the Court. The applicant is the accused in this case. It is because of the pending criminal proceedings against the applicant that the order of suspension was issued under Railway Servants (Discipline & Appeal) Rules by the competent authority.

3. We have heard the learned counsel for the applicant Shri G.V.Subba Rao and Standing Counsel for the Railways Shri N.R.Devaraj. Shri Subba Rao has advanced the arguments principally on the following three points.

- i) The orders of suspension was issued by an authority who had no jurisdiction;
- ii) The procedure prescribed for suspension and follow up action in the various circulars issued by the Railway Board have not been followed; and
- iii) The applicant has been discriminated in revoking the order of suspension whereas in the case of similarly placed persons the order of suspension has been revoked and the applicant is kept under continued suspension.

We shall now deal with these contentions. In regard to the first point, Shri Subba Rao contends that the order of suspension is dated 17-6-1985 in OA.Nos.153,154,157 & 158 of 1987, dt.4-5-1985 in OA.No.150/87, dt.30-5-85 in OA.155/87 and 16-5-85 in the remaining cases. He contends that the applicants have been kept unde

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suspension retrospectively with effect from 3-6-1985. There is no provision under the rules for issue of an order of suspension from an earlier date. Shri Devaraj for the Department contends that except for the applicant in OA 154/1987 all the other applicants have been in custody for more than 48 hours. In regard to the applicant in TA 154/1987, he was in custody only for 3 hours. Hence while conceding that Rule 5(2) of the Railway Servants (D&A) Rules does not apply to the case of the applicant in OA 154/87, Shri Devaraj states that this is not the position in regard to the other applicants^{ions.}. The Standing Counsel further contends that even if there is no deemed suspension from 3-6-1985, the applicant in OA 154/87 is deemed to be under suspension from the date of order viz. 17-6-1985 and that the period from 3-6-1985 to 17-6-85 *in regard to all other applicants they are deemed to be under suspension from 3-6-85* would be treated as duty. In view of the arguments of Shri Devraj the applicant in OA 154/87 can be treated as under suspension only from 17-6-1985. In regard to all the others cases viz. OA 531, 150, 152, 153, 155, 156, 157 and 158 of 1985, admittedly, all of them were under custody for more than 48 hours and the Station Superintendent who is competent to place the subordinate railway servants under suspension, had placed them under suspension immediately thereafter and subsequently it was confirmed by the concerned authorities. In passing the orders of confirmation, ^{authorities} they have used wrong forms viz. form prescribed for suspension under 5(1) of the Railway Servants (D&A) Rules instead of the form

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prescribed for suspension under 5(2) of the Railway Servants (D&A) Rules. Shri Devaraj contends that the use of a wrong form or quoting a wrong provision by itself would not invalidate the order inasmuch as the facts show that these suspensions were valid and are passed by the Station Superintendent under Rule 5(2). Shri Subba Rao contends that the Supreme Court in AIR 1972 SC 565 has held that an order passed under wrong provision cannot be validated. We are of the view that citing a wrong provision does not invalidate the order of suspension and the contention of Shri Subba Rao that the order of suspension is not valid is therefore rejected.

4. The next contention of Shri Subba Rao is that the *in O.A. 154/1987 of the applicants in the other cases have* applicant ~~has~~ been under suspension for about 21 months at the time of filing of this application and ~~he~~ continues to be under suspension till to-date. The various circulars of the Railway Board prescribe that there should be a periodical review of suspension orders and the orders of suspension should be reviewed having regard to the necessity for keeping a Government servant under suspension. In Circular No.23/10/79.ER dated 2-4-1979 it is held that it is obligatory on the part of the competent authority to review each case of suspension and if it is necessary to extend the suspension, the competent authority should place on record the circumstances under which the decision had to be taken.

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Shri Devraj contends that the applicants had submitted representations for revoking suspension. The representations were duly considered and the suspensions were continued duly enhancing the subsistence allowance. The Investigating authorities considered that the continuation of suspension of the applicants was necessary having regard to the cases against them. This review was made on 14-3-1986 by the Additional Divisional Railway Manager. The applicants also made ~~xx~~ representations to the Additional General Manager on 10-10-1987 and the Additional General Manager had considered the matter and thereafter the General Manager taking into consideration all the aspects of the case decided that the applicants should be continued to be kept under suspension. The General Manager reviewed the cases on 8-1-1988 and found that it is necessary to continue the persons under suspension. He therefore contends that there had been review of the cases and in view of the fact that they are involved in

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the theft of railway property, the administration at the highest level came to a conclusion that their suspension is necessary to be continued and it is not advisable to restore them and post them to some other posts. Since the applicants are to be posted as Guards or as Assistant Guards they could not be posted to those posts again having regard to their misconduct which involved grave moral turpitude and loss of Government property. We have considered these rival contentions. Admittedly, there was no review by the authorities as to whether the applicants should be continued under suspension during the pendency of the Criminal Case till 8-1-1988. ~~There was a review~~ ~~There was a review~~ There was a review made on 14-3-1986 by the Additional Divisional Railway

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Manager, Vijayawada, but the record produced discloses that this review was limited to enhancement of the suspension pay to 75% of the pay and allowances due to the applicants. The record no doubt discloses that the question whether the applicants should continue to be under suspension was posed and the matter was discussed between the Additional Divisional Railway Manager and the Security Officer. However, no decision was recorded therein. The record also shows that a Member of Parliament had written to the General Manager seeking revocation of suspension of these employees on 18-6-1986 and the administration considered that letter and came to the conclusion that the applicants should continued to be under suspension. As stated supra, on a subsequent representation made by the applicants, the Additional General Manager examined the matter and a review was thereafter made and it was finally decided on 8-1-1988 that it is not a case of disciplinary

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enquiry but one wherein a gang was systematically creating thefts and loss to the railways and that consequently suspension should not be revoked. It was also considered whether they can be transferred elsewhere and it was decided that since the Assistant Guards are generally headquartered at Vijayawada they cannot be put into any other job on transfer. For these reasons, the decision was taken on 8-1-88 to continue them under suspension. It is true as contended by the learned counsel for the applicants that as per Railway Board's circular, a periodical review were not done. It is incumbent on the authorities to undertake such a periodical review but having regard to the fact that the review was made specifically & with reference to the possibility of reinstating the applicants in 1988, the question for consideration on the facts and circumstances of the case is whether the Tribunal can substitute its judgment for that of the authorities concerned. Admittedly the charge against the applicants relates to serious

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charges of theft and other offences involving grave moral turpitude. The Criminal case is in progress. Hence, we would not be justified in directing revocation of suspension merely on the ground of delay in completion of the Trial.

5. The next question is whether it is open to the authorities to continue the applicants under suspension when they have themselves reinstated one of the co-accused Shri Chenniah who was charged with identical offences by revoking the order of suspension. Shri Subba Rao argues that the applicants have been discriminated by applying different standards. Shri Devaraj contends that Shri Chenniah was reinstated only with a view to pass an order of premature retirement under Rule 2046 of the Railway Establishment Manual, as the administration considered that the premature retirement of Shri Chenniah would be to pay only half the salary as compared to his being paid 75% of pay and allowances while he was under

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suspension. In other words Shri Devaraj contends that the order proposed to be passed against Shri Chenniah would be more penal than against the applicants by continuing them under suspension.

However, it is seen that in the case of Shri Chenniah the suspension was revoked and he was allowed to continue in office without any order of compulsory retirement being considered. It is argued by Shri Devaraj that in the case of Shri Chenniah, he had not completed the requisite 30 years of service and hence the order of compulsory retirement could not be passed. He also states that the Railway administration has now considered the order passed in respect of Shri Chenniah as a mistake but contends that such an order cannot be made a ground for reinstating the applicants. We are unable to agree with the contention of Shri Devaraj. From the records, we find that even the Member of Parliament in his letter had referred to the case of Shri Chenniah

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while seeking intervention on behalf of the applicants. The ground of discrimination urged by the learned Counsel for the applicants therefore cannot be easily dismissed. The department by re-instating Shri Chenniah and thereafter proposing to compulsorily retire from service have closed their option to take disciplinary action against him. No action has, in fact, been taken so far to compulsorily retire Chenniah and he is continuing in service after the revocation of the suspension order. Obviously when revoking the suspension orders in the case of Chenniah, the competent authority did not consider the charges pending against him are such that he cannot be reinstated in service. If Shri Chenniah who was also involved in the same Criminal Cases could be allowed to continue in service to perform his duties, there appears no justification why the applicants and other similarly situated persons should be asked to continue under suspension. No doubt, it

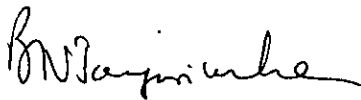
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is primarily for the administration, having regard to the gravity of the charges, to come to a conclusion in regard to desirability of revoking the orders of suspension. On the ground of discrimination, however, we find that we have to direct the respondents to reinstate the applicants. It is open to the respondents to transfer the applicants and post them in any other equivalent or other posts and the applicants shall be bound to perform the duties assigned to them during the pendency of the Criminal Case. The applicants will have no right to claim any particular post which they held prior to their suspension. The applications are accordingly allowed and the respondents are directed to reinstate the applicants within 15 days from the date of receipt of this order. There will be no order as to costs.

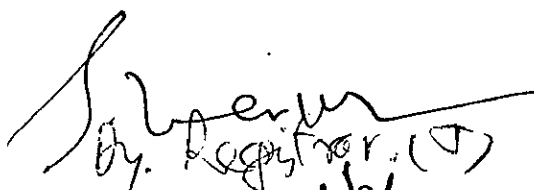

(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL)

DT. 23rd FEBRUARY: 1988

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Dy. Registrar (D)
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