

25

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 201 of 1987

Date of Order: 12.7.90

Shaikh Hussain

.....Applicant

Versus

General Manager, South Central Railway,
Rail Nilayam, Secunderabad and others

.....Respondents

...

For Applicant: Mr.G.V.Subba Rao, Advocate

For Respondents: Mr.N.R.Devaraj, SC for Railways

C O R A M:

THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI D. SURYA RAO, MEMBER (JUDICIAL)

..

(Judgment delivered by Hon'ble Shri B.N. Jayasimha)
Hon'ble Vice Chairman

1. The applicant contends that while working as Guard 'A' in the Railways, a search was conducted of his house and no railway property was recovered. However, a case bearing Crime No.16/85 of the Vijayawada Railway Police Force under section 3(a) of the Railway Properties (RWP) Act, 1966 was filed in the Special Judicial First ClassMagistrate, Vijayawada. The applicant was released on bail. Thereafter by an order dated 25-10-1985 the applicant was suspended from service from 18-10-1985. This order was served on him on 31-10-85. The order was issued by the Divl.Safety Officer, Vijayawada.

bv

contd..?

The applicant submitted an appeal under Rule 18(1) of Railway Servants (Discipline and Appeal) Rules on 10-11-1985 against the order of suspension. He submitted a reminder dated 31-1-1986 and also sought revocation of the suspension order. He also asked for enhancement of subsistence allowance since three months suspension period was over and no action was taken thereon. The applicant states that thereafter he was compulsorily retired under Rule 2046 of the Railway Establishment Code Volume 2. The said order of compulsory retirement was challenged in O.A.No. 91/87 of this Tribunal. In the present application the order of suspension is questioned. The main grounds urged are that Divisional Safety Officer is not competent to place the applicant under suspension, that no reasons have been communicated to him for suspension, that the appeal against the order of suspension has not been disposed of and that the suspension is being continued for an inordinately long period and as such he should not have been allowed to continue under suspension indefinitely.

2. On behalf of the respondents a counter has been filed stating that the applicant was arrested on 17.10.85 along with other staff for his involvement in large scale thefts etc., of property from the Railways and on receiving information from the Security authorities, the competent authority has placed him under suspension w.e.f. the date of his arrest under Rule 5 of Railway Servants (D&A) Rules, 1968. The suspension was reviewed at all levels and the competent authority has come to the conclusion to prematurely retire him taking his past service into consideration. Consequently a premature retirement notice dt.25.3.86 was served on the applicant and he was prematurely retired from service w.e.f.8.7.86. It is therefore denied that

bni

the suspension was not reviewed. It is further stated that the applicant has filed another O.A. No.91/87 challenging the order of premature retirement and the same was allowed by this Tribunal. Consequently the applicant was reinstated to service and allowed to continue till the age of superannuation. The competent authority while extending the benefits of normal retirement, considered the suspension period as suspension only and the intervening period from the date of premature retirement to the date of reinstatement to the service was treated ~~as~~ as duty. Since the power was conferred on competent authority he has decided the period of suspension as suspension only. It is further averred that the said criminal case under criminal case No.16/85 is still pending before the special Judicial First Class Magistrate/ Railways/Vijayawada . For these reasons it is prayed that that the application may be dismissed.

3. We have heard Shri G.V. Subba Rao, learned counsel for the applicant and Shri N.R. Deva Raj, learned standing counsel for Railways. Although the application was filed questioning the order of suspension, in the circumstances stated in the counter Shri Subba Rao contends that the order passed by the competent authority treating the suspension period as suspension only is not according to the rules. He contends that the period of suspension has to be treated as duty applying Rule 2044 (a)(3) of Indian Railway Establishment Code Vol.II, as the order of the compulsory retirement was set aside by the Court on merit. The applicant is therefore entitled to full pay and allowances. In the counter, the rule under which the competent authority has treated the period as suspension only has not been stated. We find that the contention of Shri G. V. Subba Rao, is to be upheld and the applicant is entitled to full pay and allowances for the period of suspension in accordance with the rules

bwt

-: 4 :-

referred to above. The respondents are accordingly directed to work out the differential amount due to the applicant within a period of three months and disburse the same to him. No order as to costs.

Dictated in the open court

B.N.Jayashimha
(B.N. JAYASIMHA)
VICE CHAIRMAN

D. Surya Rao
(D. SURYA RAO)
MEMBER (JUDICIAL)

Dt. 12th July, 1990

12/7/1990
For DEPUTY REGISTRAR (JUDL).

Mvs

To

1. The General Manager, S.C.Railway, Railnilayam, Secunderabad 323211.
2. The Divisional Safety Officer, S.C.Railway, Vijayawada - 001.
3. The Divisional Railway Manager, S.C.Railway, Vijayawada - 001.
4. The Commandant, Railway Protection Force, S.C.Railway, Vijayawada - 001.
5. The Senior Divisional Operating Superintendent, S.C.Railway, Vijayawada - 001.
6. One copy to Mr.G.v.Subba Rao, Advocate.
1-1-230/33, Jyothi Bhavan, Chikkadapalli, Hyderabad - 020.
7. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench.
8. One spare copy.

pvm

PLD 1/1/90

371