

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
~~P.A. No.~~

459

1989

DATE OF DECISION 11-9-1989

M.Venkateswarlu Petitioner

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

Versus

The Divl.Rly.Manager, SCR, Vij. Respondent
& 2 others

Mr.N.R.Devaraj. SC for Rlys. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.Surya Rao, Member(J1)

The Hon'ble ~~Mr.~~ Ms. Usha Savara, Member(A)

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?

Yes
No

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

By
DRS
22/9/86

DR
(DSR)

(JUDGMENT OF THE TRIBUNAL PREPARED BY HON'BLE SHRI D.SURYA RAO,
MEMBER(J)

The applicant herein, a railway employee, was placed under suspension on 19-5-85. While under suspension, he was retired from service under Rule 2046 of the Railway Establishment Code, Volume-I (corresponding to FR. 56-A), by an order dated 25-3-86. The order of retirement was to take effect from three months from the date of receipt of the notice, that is, with effect from 8-7-1986. The applicant was paid subsistence allowance during these three months. The applicant states that he preferred an appeal against the decision to retire him, but no action was taken thereon. The applicant, thereupon filed O.A. No. 66/86 before this Tribunal. The Tribunal, by an order dated 28-3-88 set aside the order of retirement and directed reinstatement of the applicant. By an order dated 21-7-88, the applicant was reinstated and taken back to duty at ^{later} Vijayawada on 2-8-88. He was transferred from Vijayawada ^{Gauge} Division to the Hyderabad Metre ~~Gauge~~ Division. The applicant joined the new station Khandwa, in November 1988. He filed an application to the authorities on 22-8-88 claiming full salary and allowances for the period from 25-3-86 that is the date of the order issued under Rule 2046 and the date of reinstatement, viz. 2-8-88.

[Signature]

This was followed by reminders on 12-10-88 and 22-11-88.

No action was taken thereon. On 30-6-89 he retired from service on his normal date of superannuation.

In this O.A. he prays that he may be paid arrears of salary and allowances, incremental benefits, bonus and other allowances ~~in~~ treating the entire period from 25-3-86 to 2-8-88 as on duty, since the order of compulsory retirement has been set aside as illegal, by this Tribunal in O.A. 66/86.

2. On behalf of the Respondents viz. Railways, a counter has been filed stating that the suspension of the applicant was ordered on 19-5-85 as the applicant was involved in a criminal case. It is contended that in O.A. 66/86, the Tribunal had not granted him the consequential benefits while setting aside the order of retirement. It was further stated that the Tribunal has orally observed that ^{payment of} ~~it is not open that the~~ consequential benefits of salary, etc. would depend upon the outcome of the criminal case but has not incorporated the same in the judgment. It is contended that since the Tribunal has not ordered consequential benefits the applicant cannot claim the same by way of separate Application. It is further contended that since the

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applicant was under suspension at the time of premature retirement under Rule 2046, it would follow that if that order of retirement was set aside, it is deemed that he continued to be under suspension.

3. We have heard the learned counsel for the applicant Shri G.V.Subba Rao and the Standing Counsel for the Railways, Shri N.R.Devaraj, on behalf of the respondents.

4. The learned counsel for the applicant relies upon Rule 1805 (1) of the Railway Establishment Code Volume-II (6th edition, 1987) which reads as follows:

"1805(1): If on a review of the case referred to in Rule 1802(a), 1803(a) and 1804(a) either on representation from the railway servant retired prematurely or otherwise, it is decided to reinstate the railway servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or as leave of the kind due and admissible, including extraordinary leave, or by treating it as dies-non depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or if the order of premature retirement is set aside by a court of law."

He states that applying this rule, since the order of retirement has been set ~~as~~ aside by the Tribunal, the applicant should be paid full pay and allowances from the date of retirement till the date of reinstatement.

The learned Standing Counsel for the Railways has raised two objections to the maintainability of the application. He contends that the Tribunal has orally observed at the time of disposal of O.A.66/86 that the question of consequential benefits would depend upon the result of the criminal case launched against the applicant. We are unable to accept this contention. Parties are bound only by what is contained in a judgment or an ~~et~~ order or a decree of the court. Any attempt to rely upon any observations made during the course of arguments even if established, would not bind the parties. The contention that the applicant is not entitled to the benefits of arrears of salary, allowances and other benefits on the basis of a vague assertion that the Tribunal has observed that the consequential benefits would depend upon the outcome of the criminal case in our view is wholly untenable.

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5. The next contention is that it is deemed that the applicant has continued under suspension since prior premature to the order of/retirement he was under suspension.

The learned counsel for the railways obviously seeks to draw inspiration from the provisions of the Railway Servants (Discipline and Appeal) Rules, namely, Rule 5(4) which lays down that, "where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant is set aside by a decision of the court of law and if the disciplinary authority decides to hold a further enquiry against the employee on the same allegations, the railway servant shall be deemed to have been placed under suspension from the date of original order of dismissal, removal or compulsory retirement, and shall continue to remain under suspension until further orders." This provision has no application in the instant case as the applicant has not been compulsorily retired by way of penalty.

To equate an order passed under Rule 2046 to an order of compulsory retirement by way of penalty would, in our view, wholly unsustainable. The ^{only} ~~short~~ question is as to how the period between the date of retirement and the date of reinstatement is to be governed under the Rules. The Rule as already extracted above, namely Rule 1805 of the Railway Establishment Code, Volume-II states in unequivocal terms that the employees reinstated

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consequent to an order of court of law, would be entitled ^{to} treat the period as duty for all purposes including to full pay and allowances for the said period. This rule is a statutory rule and cannot be ignored by the railway authorities. It would, therefore, follow that the applicant's claim for payment of arrears of salary ^{and} allowances and other consequential benefits as though he was on duty from the date of compulsory retirement till the date of reinstatement, has to be allowed. The applicant has claimed such payments from 25-3-86 to 2-8-88. It is, however, noticed that he was actually retired only from 8-7-86 and not from 25-3-86. The learned counsel for the applicant has sought to include the three months notice period for payment of full pay and allowances. This portion of the claim is, in our view, untenable. He would be entitled to full pay and allowances and other consequential benefits only from 8-7-86 to 2-8-88 treating the ~~entire~~ period as duty.

The respondents are directed to work out ^{and pay} the amounts due to the applicant consequent to this order passed by us, within a period of three months from the date of receipt of this order. With these directions, the O.A. is allowed ^{but} and in the circumstances of the case there will be no order as to costs.

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6. The applicant has filed M.A. 521/89 in this O.A. This Miscellaneous Petition is merely a repetition of the claim put forth in the main Application, namely to direct the Respondents to pay the arrears of salary for the period from 25-3-86 to 2-8-88 treating the entire period as duty with all consequential benefits by fixing a date. Such an application is wholly uncalled for and not maintainable. This Miscellaneous Application is accordingly dismissed.

D. Surya Rao

(D. Surya Rao)
Member (J)

U. Savara

(Ms. Usha Savara)
Member (A)

Dated: 11 th September, 1989.

mhb/

S. Jayaram
DEPUTY REGISTRAR (J)
21/9/89

TO

1 (1) The Divisional Railway Manager,
South Central Railway,
Vijayawada Division, Vijayawada ✓

1 (2) The General Manager,
South Central Railways,
Ranikhet, Secunderabad - 500 371 ✓

3 (3) The Divisional Railway Manager,
South Central Railway,
Hyderabad (M.G) Division,
Secunderabad. ✓

4 (4) One copy to Mr. G. V. Subba Rao, Advocate, H. No. 1-1-230/33,
Chikkadpally, Hyderabad - 500 020 ✓

5 (5) One copy to Mr. N. R. Sevaraj, Sec. for Rlys, C.R.T, Hyderabad. ✓

6 (6) ~~One copy to Mr. G. V. Subba Rao, Advocate, H. No. 1-1-230/33,
Chikkadpally, Hyderabad - 500 020~~ ✓

At P. D. Hall 20/9/89.

Contd. on 18.