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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.158/90

Date of Order: 15.10.93

BETWEEN:

- 1.C.H.Dharma Raj (Died)(LR's brought on record)
- 2.Ch.Venkataramana (Wife)
- 3.Ch.Naveen Kumar (Son)
- 4.Ch.Madhavi (Daughter)
- 5.Ch.Venkataramana (Guardian rep. minor son Ch.Rajnikanth)
...Applicants

A N D

1. The Union of India,
represented by Chairman,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad.
3. The Divisional Railway Manager,
(Broad Gauge), South Central
Railway, Secunderabad.
4. Additional Divl. Railway
Manager(Broad Gauge)
South Central Railway,
Kazipet.
5. The Divl. Mechanical Engineer
(Power)(Broad Gauge), S.C.Rly.,
Secunderabad.

.. Respondents.

Counsel for the Applicant

.. Mr.P.Krishna Reddy

Counsel for the Respondents

.. Mr.D.Gopal Rao

CORAM:

HON'BLE MR. JUSTICE V.NEELARI RAO : VICE-CHAIRMAN

HON'BLE Mr.P.T.THIRUVENGADAM : MEMBER (ADMN.)

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O.A.No.158/90.

Date: 15-10-1993.

J U D G M E N T

X as per Hon'ble Sri P.T. Thiruvengadam, Member(Admn.) X

The applicant joined Railway Service on 15.8.1973 as Fireman 'A' and was posted at Dornakal. While he was working as Driver 'C' at Dornakal he is alleged to have actively participated in stoppage of work and also instigated and prevented the staff working on the lines which resulted ⁱⁿ detention of trains and affected movement, on 30.1.1981. The disciplinary authority found ^{that} it was not reasonably practicable to hold disciplinary enquiry and invoked the power under Rule 14(ii) of the Disciplinary and Appeal Rules, 1968 and imposed the penalty of dismissal of the applicant from service on 3.2.1981. Aggrieved by the said order of dismissal, the applicant preferred an appeal to the appellate authority who had confirmed the penalty order on 1.8.1981. Aggrieved by the said order of appellate authority, the applicant had filed a writ petition bearing W.P.No.8411 of 1981 before the Andhra Pradesh High Court which was later transferred to the file of this Bench and was registered as T.A.No.318/86. This T.A. was disposed of by this Tribunal on 23.11.1987 with a direction to the appellate authority to re-dispose of the appeal in accordance with the observations made by the Supreme Court in Ramachander's case and Satyaveer Singh's case and also the relevant C.M.Ps. The appellate authority was also directed to give a personal hearing to the applicant. In pursuance of this direction, the applicant filed a fresh appeal to the authority on 4.2.1988 in addition to the previous appeal dt. 13.3.1981. The applicant had also requested for holding an enquiry. The applicant was given

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personal hearing on 5.2.1988. The appellate authority in its letter No.SC/P/Conf./90/Loco Staff dt. 4/5.4.1988 again confirmed the punishment imposed by the disciplinary authority by recording the reasons as under:-

" In obedience of the directive of the Hon'ble Tribunal Administrative Tribunal, Hyderabad Bench

... ..
... ..

I have given personal hearing to you on 5.2.88 and your deposition was considered carefully. In pursuance of the directive of the Hon'ble Central Administrative Tribunal, Hyderabad, I have made discreet enquiries by deputing a Departmental Officer to DKJ to obtain the present situation. On going through the written report submitted by the Officer, I am satisfied that it is not practicable to hold a departmental enquiry even now in public interest and also in the interest of the smooth running of the trains and movement of essential commodities.

... ..
... ..

I find that the proper procedure has been followed in this case and reasonable opportunity was given to you and the punishment of dismissal from service already awarded by the Disciplinary Authority on the basis of the available evidence and on record is adequate. I, therefore, confirm the punishment imposed by the Disciplinary Authority."

2. Aggrieved by this, the applicant has filed the present O.A. with a prayer that the order of the appellate authority dt. 4/5.4.1988 may be quashed and for a direction to the respondents to reinstate him from the date of dismissal with continuity of service, back-wages, seniority, promotion etc. After filing this O.A. the applicant died on 7.7.1991 and his wife and children were brought on record as his Legal Representatives (Applicants 2 to 5) vide orders dt.29.8.1991.

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3. The learned counsel for the applicant referred to similar cases wherein the employees had been removed/ dismissed from service for alleged participation in illegal strikes, instigation of co-workers etc. by invoking Rule 14(ii) of Discipline and Appeal Rules, 1968 for Railway servants. In those cases also the appeals had been turned down by the appellate authorities. Writ petitions had been filed in the Andhra Pradesh High Court and therein the appellate authorities were directed by the Court to re-dispose of the appeals as per para-8 of the Judgment in Satyaveer Singh's case read with the Judgment of the Supreme Court in Ramachander's case. The applicant approached the authorities again with additional grounds of appeal. They were granted personal hearing. The authorities did not concede the request for holding full fledged enquiry and dismissed the appeals on various grounds mainly relating to the impracticability of holding the enquiry at the late stage. O.A.s were filed on ~~the~~ file of this Bench bearing O.A.Nos.24 of 1986 and batch. The said O.As. were disposed of by this Tribunal on 5.9.1990. Para-37 of the order reads as under:-

"On a perusal of the records of the cases placed before us, we find no material to show that the appellate authority or the person(s) deputed by him ..

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have examined any witnesses to find out whether there is still fear of intimidation of witnesses, who are the witnesses still available, whether any of the witnesses have declined to depose on the ground that they are unable to recapitulate the facts relating to these cases at this distance of time, who are the material witnesses who have retired from service or left the service, the relevant documents which are sensitive and whose disclosure endangers the peace and smooth working of the railways. The Patna Bench of the Central Administrative Tribunal in Ekrajul Khan Vs. Union of India reported in X (1990) 13 ATC 456 I while considering a similar case observed as follows:

- "3. On a perusal of the order of the 2nd respondent, we are satisfied that there is force in the submission of the counsel of the applicant that the 2nd respondent has not made a sincere attempt to find out whether at this stage it is not reasonably practicable to hold an enquiry under the normal rules. The 2nd respondent has assumed, without any basis that nobody would dare to come and depose against the applicant. Besides, the 2nd respondent has also speculated that some of the witnesses might have died or retired and as such would not be available to give evidence.
4. What the appellate authority is expected to do is to make a sincere and honest attempt to hold an enquiry, as the rule is that normally no railway servant shall be removed from service without conduct of an enquiry. Without even making an attempt to get at the witnesses, the 2nd respondent has arrived at the conclusion that some of the witnesses might have died or retired and, as such, would not be available. Even if some of the witnesses are not available that is no reason to dispense with the enquiry, for others can be summoned and examined. It is too presumptuous on the part of the 2nd respondent to hold that nobody would dare to come and depose against the applicant, without summoning anybody!"

We think that the observations apply in toto to the cases before us. We are, therefore, of the view that the appellate orders are liable to be struck down even on the ground that they are not based on relevant materials that stand the scrutiny of judicial review."

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4. It is the case of the applicant herein that non conducting of enquiry at the appeal stage is pre-judicial to him. At this stage, we called for the records of the case and on perusal we have to arrive at the same observations as in para-37 of the order in O.A.No.24/86 and batch and referred to supra.

5. In the order in O.A.No.24/86 and batch, the operative portion reads as under:-

"In the result, we set aside the orders of the appellate authorities/reviewing authorities rejecting the appeals/review petitions of the applicants and the orders of the disciplinary authorities dismissing the applicants from service

.. .. .

we direct the appellate authority to conduct an enquiry either himself or through an enquiring authority appointed by it in accordance with the Railway Service (Disciplinary and Appeal) Rules, 1968. If an enquiry is not possible at all, the applicants will be entitled to be reinstated with all consequential benefits."

This order was further modified in Review Applications bearing R.A.No.109 of 1990 and batch wherein after setting aside the orders of dismissal the respondents were directed to reinstate the applicants with immediate effect. Railway administration filed S.L.P.Nos.4681-82 of 1992 ^{and batch} against the above orders passed by this Bench in O.A.No.24/86 and batch and R.A.No.109 of 1990 and batch dt. 5.9.1990 and 27.3.1991 respectively. Supreme Court had noted that more than a decade has gone since the employees were dismissed for participating in strike, but the end has not reached. The following directions were issued in the operative portion:-

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- "(i) Employees who were dismissed under Rule-14(ii) for having participated in the Loco staff strike of 1991 shall be restored to their respective post within a period of three months from today.
- (ii) (a) since more than three years have elapsed from the date the orders were found to be bad on merits by one of the Tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the Judgment was delivered, that is, in 1990,
- (b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.
- (iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purposes of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death."

6. The issues raised by the applicant in this O.A. are squarely covered in O.A.No.24/86 on the file of this Bench and by Supreme Court in their Judgment referred to above. Keeping in view the directions of the Hon'ble Supreme Court in the relevant S.L.Ps. we deem fit and proper to issue the following directions with regard to the applicant in this O.A.

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disciplinary authority as confirmed by Mr

- (a) The order of the appellate authority dt. 4/5.4.1988 bearing No.SC/P/Conf./90/Loco Staff is set aside. But the applicant/LRs of the applicant will be eligible only for the benefits as mentioned at (b) and (c) below.
- (b) The applicant, who is no more, shall be given notional continuity from the date of dismissal till the date of his death for the purpose of calculation of settlement benefits,
- (c) For the intervening period viz. from the date of dismissal till the date of death, no payment need be made. However, any amount paid by way of suspension allowance or in pursuance of any court orders, shall not be recovered.

7. The O.A. is disposed of accordingly. No costs.

P. T. Thiruvengadam
(P.T.THIRUVENGADAM)
MEMBER (ADMN.)

V. Neeladri Rao
(V.NEELADRI RAO)
VICE -CHAIRMAN

Dated 15th October, 1993.

Grh.

Dy. Registrar (Judl.)

Copy to:-

1. Chairman, Railway Board, Rail Bhavan, Union of India, New Delhi.
2. The General Manager, South Central Railway, Secunderabad.
3. The Divisional Railway Manager, (Broad Gauge), South Central Railway, Secunderabad.
4. Additional Divisional Railway Manager (Broad gauge), South Central, Kazipet.
5. The Divisional Mechanical Engineer (Power) Broad gauge), S.C. Railway, Secunderabad.
6. One copy to Sri. P. Krishna Reddy, advocate, CAT, Hyd.
7. One copy to Sri. D. Gopal Rao, SC for Railways, CAT, Hyd.
8. One copy to ~~xxx~~ Library, CAT, Hyd.
9. One spare copy.

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