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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.159/90 Date of Order: 15.10.1993

BETWEEN:

K.Rama Swamy .. Applicant.

A N D

1. The Union of India rep. by the Chairman, Railway Board, Rail Bhavan, New Delhi.

2. The General Manager, South Central Railway., Rail Nilayam, Secunderabad.

3. The Divisional Railway Manager, (Broad Gage), S.C.Railway, Secunderabad.

4. The Additional Divisional Rly., Manager, (Broad Gage), S.C.Railway, Secunderabad. .. Respondents.

Counsel for the applicant .. Mr.P.Krishna Reddy

Counsel for the Respondents .. Mr.D.Gopal Rao

CORAM:

HON'BLE Mr.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

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

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(60)

O.A.No.159/90. Date: 15-10-'93.

No.O.

J U D G M E N T

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

...

The applicant joined Railway service on 30.4.1965 as Mechanical Khalasi and subsequently he was promoted as Basic Trimmer and Trimmer with effect from 27.9.1977 and 9.2.1979 respectively. While he was working as such, the applicant is alleged to have actively participated in an illegal stoppage of work at Kazipet on 18/19.5.1981 and also instigated the staff not to go to work. The disciplinary authority found it was not reasonably practicable to hold disciplinary enquiry against the applicant and invoked the power Under Rule 14(ii) of the Discipline and Appeal Rules, 1968 and imposed the penalty of dismissal from service on 21.5.1981. Against this dismissal order, the applicant prefered an appeal to the appellate authority who confirmed the penalty order on 29.5.1981. Aggrieved by the order of the appellate authority, the applicant had filed a Writ Petition before the Andhra Pradesh High Court bearing W.P.No.8416/81 which was later transferred to the file of this Bench and was registered as T.A.No. 319/86. This T.A. was disposed of by this Tribunal on 17.12.1987 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 5.2.1988 in addition to the previous appeal dt. 29.5.1981. The applicant had also requested for holding of an enquiry. The applicant was given personal hearing on 5.2.1988.

...4/-

The appellate authority in its letter No.SC/P/Conf/P/79/KZJ dt. 4.5.1988 again confirmed the punishment imposed by the disciplinary authority by recording the reasons as under:-

> "In obedience of the directive of the Hon'ble Central Administrative Tribunal, Hyderabad Bench
> ... ...
> ... ...
>
> I have given personal hearing to you on 5.2.1988 and your deposition was considered carefully. In pursuance of the directives of the Hon'ble Central Administrative Tribunal, Hyderabad, I have made discreet enquiries by deputing a Departmental officer to KZJ 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 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 on record is adequate. I, therefore, confirm the punishment imposed by the Disciplinary Authority."

2. Aggrieved by this, the applicant has filed this O.A. with a prayer that the order of the appellate authority dt. 4.5.1988 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.

...4/-

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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 A.P. 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 fulfledged enquiry and dismissed the appeals on various grounds mainly relating to the impracticability of holding the enquiry at that late stage. O.As. were filed on the file of this Bench bearing O.A.Nos.24/1986 and batch. The said O.As. were disposed of on 5.9.1990. Para-37 of the order reads as Under:-

> "On 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,

...5/-

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 ((1990) 13 ATC 456) while considering a similar case observed as follows:-

> "3. On a perusal of the orderof the 2nd respondent, we aresatisfied 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 struck down even on the ground that they are not based on relevant materials that stand the scrutiny of judicial review."

...6/-

4. It is the case of the applicant herein that non conducting of enquiry at the appeal stage is prejudicial 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 Services (Discipline 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:-

...7/-

"(i) Employees who were dismissed under Rule 14(ii) for having participated in the Loco staff strike of 1991 shall be restored to their respedtive 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 of 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 penaionery benefits. This benefit shall be avilable 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 coveredin 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 it fit and proper to issue the following directions with regard to the applicant in this O.A.

....8/-

(a) The order of the disciplinary authority as confirmed by the appellate authority bearing No.SC/P/Conf/P/79/KZJ is set aside. But the applicant will be eligible only for the benefits as mentioned at (b) and (c) below.

(b) The applicant shall be restored to the post from which he was dismissed from service on 21.5.1981 within three months from the date of communication of this order. The applicant shall not be entitled to any promotional benefits, but will be given notional continuity from the date of dismissal till the date of restoration for purposes of calculation of pensionery benefits.

(c) For the intervening period viz. from the date of dismissal till the date of restoration 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)
VICE CHAIRMAN

Dated 15th October, 1993.

Grh.

Dy. Registrar(Judl.) 18/10/93

Copy to:-

1. Chairman, Railway Barod, Rail Bhavan, Union of India, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager, (Broad guage), S.C.Railway Secunderabad.
4. The Additional Divisional Railway Manager, (Broad guage), S.C.Railway, Secunderabad.
5. One copy to Sri. P.Krishna Reddy, advocate, CAT, Hyd.
6. One copy to Sri.D.Gopal Rao, SC for Railways, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

Steno/Typist 25/10/93