

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

71

ORIGINAL APPLICATION NO.721/91

DATE OF JUDGEMENT: 24.3 1995

Between

Sri K.Mallikarjuna Rao .. Applicant

and

1. Chief Executive
Nuclea~~ß~~ Fuel Complex
Moulali
Hyderabad-762

2. The Secretary
Department of Atomic Energy
Govt. of India
New Delhi .. Respondents

Counsel for the Applicant :: Mr C.Venkatakrishna

Counsel for the Respondents :: Mr N.R.Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.V.HARIDASAN, MEMBER (JUDL.)

HON'BLE SHRI A.B. GORTHI, MEMBER (ADMN)

..2..

JUDGEMENT

(As per Hon'ble Shri AV Haridasan, Member(J))

While the applicant was working as Tradesman 'B' at Nuclear Fuel Complex, QA&T Division, Hyderabad, he was placed under suspension by an order dated 20.07.1980. Thereafter, a chargesheet was issued to him which contained four charges, that he attended duty late, that he behaved in dis-orderly/indecent manner intimidating the members of the Adhoc Committee of NFC Employees' Co-operative Society on 19.7.1980, that he repeatedly remained absent from his place of work without permission while on duty and that he tampered with his punchcard struck off the entries made by the Manager, etc. An enquiry officer was appointed and an inquiry was held. After the conclusion of the inquiry, the disciplinary authority imposed on the applicant the penalty of removal from service. The applicant challenged this order before the High Court of AP by filing Writ Petition No. 5200/83. The learned Single Judge of the High Court though found that charges 1 and 3 were established, held that removal from service was too disproportionate ~~penalty~~ to be awarded. Therefore the WP 5200/83 was disposed of setting aside the ~~penalty~~ and directed the respondents to reinstate the applicant into service within two months without any backwages.

2. The first respondent herein, who was also the first respondent in the said writ petition No.5200/83 was directed to re-fix the pay of the petitioner in the permanent post held by him prior to his suspension giving him the benefit of any increment which he would

73

have earned if he had not been suspended and to treat the petitioner (applicant in this OA) to have continued in service throughout, for the purpose of only pension and gratuity.

3. Dis-satisfied by the order of the Single Judge, the respondents filed Writ Appeal No.253 of 1985. The applicant also filed Writ Appeal No.553 of 1985 to the extent he was aggrieved that the penalty was set aside though the applicant was denied backwages. Both these writ appeals were disposed of by a common judgement by the Division Bench dated 18.12.1987. The Division Bench that dealt with the writ appeals felt, that the matter should go to the Appellate Authority for consideration as to whether there was any evidence to establish the charge no.4 against the applicant. However, the Division Bench held that the Appellate Authority should consider the appeal of the ~~as~~ petitioner and pass an appropriate order and that, even if it was found by the appellate authority that charge no.4 was established, the penalty of removal from service, would not be imposed and that, a minor penalty would be imposed. However, the Writ Appeal No.553 filed by the applicant was dismissed.

4. During the pendency of the [✓] appeals, an interim order was issued directing the respondents either to reinstate the applicant forthwith, or to pay him pay and allowances as applicable to the post held by him prior to his removal. ~~in~~ In the final order in the writ appeal No.253 of 1985 it was directed that the interim order should be continued till the appellate authority

(JW)

disposed of the appeal.

5. Pursuant to the interim order in the writ appeal, the applicant was receiving pay and allowances but he was not reinstated. The respondents felt aggrieved by the order in the writ appeal. Therefore, they approached the Supreme Court in Civil Appeal No.3668/89. While disposing of the civil appeal the Supreme Court felt that having regard to the facts and circumstances of the case, that the penalty of removal from service imposed on the applicant was disproportionate to the acts of misconduct and therefore, modified the judgement of High Court by directing the respondents to reinstate the applicant in the post which he held at the time when his services were terminated without any backwages. It was also mentioned by Supreme Court that if any amount had already been paid till then as backwages, the same would not be recovered from him. Further, the respondents were permitted to post the applicant if they were so advised in any other equivalent post.

6. Pursuant to the Supreme Court's order, the respondents posted the applicant as Tradesman 'B' in QA&T Division with effect from the date of the order of the Supreme Court, i.e. 31.8.1989. Thereafter, the Dy.Chief Executive (A), Nuclear Fuel Complex issued an order dated 16.5.1990 stating that the applicant has been reinstated into service vide order dated 16.10.89 and the period of absence of the applicant from 15.10.1982 i.e. the date of removal of the applicant to 30.8.1989 i.e. the date of order of the Supreme Court shall be treated as 'NON-DUTY' and that the period

(FBS)

from 31.8.1989 (the date of order of the Supreme Court) to 24.10.1989 (the date of rejoining duty) shall be treated as duty for all purposes. Another order dated 22.5.1990 was issued stating that the period from 20.07.1980 to 14.10.1982 also would be treated as 'NON-DUTY'. It is aggrieved by these two orders, that the applicant has filed ~~by~~ the present application. It is the case of the applicant that as the Supreme Court has only denied the backwages to the applicant, the entire period of suspension, as well as from the date of removal from service till re-instatement should be ~~be~~ treated as 'DUTY' for all purposes. Therefore, the applicant has prayed that the order dated 16.5.90 and 22.5.90 may be set aside and ~~that, it may~~ be declared that the applicant was in continuous service from 20.7.80 to 30.08.1989 and that, he is entitled to the benefits of seniority and increments.

7. Respondents have filed a reply statement resisting the prayer in the application. We have carefully perused the pleadings and documents and have heard at length the arguments of the learned counsel for the parties.

8. Sri Venkatakrishna, learned counsel for the applicant, ~~who~~ argued that as no punishment was awarded to the applicant by the Judgement of the Supreme Court, ~~therefore~~, the period of suspension and the period ~~in which~~ which the applicant remained off service are liable to be treated as duty for all purposes including ~~for~~ that for the period during which the applicant was on suspension, the applicant should have ~~be~~ backwages.

FB

O.A.No.721/91

...6...

9. Shri NR Devraj, Sr.Central Govt. Standing Counsel on the other hand argued that though the Supreme Court held that the penalty of removal from service was disproportionate and directed the respondents to reinstate the applicant into service on the post in which he was at the time when he was removed from service, but specifically directed that the applicant would not be entitled to any back wages. This according to the learned counsel for the respondents, indicates that the applicant would not be entitled to any benefit of service during the period for which he was out of service.

10. On a careful scrutiny of the Judgements of the Single Judge and Division Bench of High Court of AP and the Judgement of the Supreme Court, we are of the considered view that the stand taken by the Standing Counsel for the respondents, is not correct. It is evident from all these judgements that the penalty of removal from service was grossly disproportionate to the alleged misconduct committed by the applicant. The penalty of removal from service therefore, would not stand and has been rightly set aside also. It is under these circumstances that the applicant was directed to be reinstated. Though the Division Bench of AP High Court granted liberty to the applicant to file appeal to the appellate authority and the appellate authority to dispose of the appeal, with a rider that even in case the Art.4 of the memorandum of charge was held to be proved, only a minor penalty would be imposed, in the appeal filed against the Judgement by the respondents the Supreme Court directed the reinstatement of the applicant denying him backwages. After the order of the Supreme

...7

77

Court, it was not open to the Disciplinary Authority to impose any penalty at all. So, the penalty which the applicant suffered in this case was that he was kept out of service for some time. It is also worth-mentioning that for a major part of the period, the applicant was paid full pay and allowances on the basis of the interim order in writ appeal, which was kept alive till the disposal of the appeal by the final order in the writ appeal. Under these circumstances, we are convinced that though the applicant was taken back to service only on the post from which he was removed from service, he should be granted the benefit of increments accrued to him during that period notionally as also, to count his service for pension as was ordered by the Single Judge. The claim of the applicant that he is entitled for full backwages during the period of suspension also cannot be accepted; because, it cannot be said that the applicant was exonerated of all the charges, or that, he was even awarded only a minor penalty. Denial of pay and allowances or backwages cannot be considered to be a penalty of minor or major. Infact, there has not been any adjudication as to what should have been a proper penalty. However, the Supreme Court held that interest of justice would be met if the applicant was reinstated into service without backwages. Therefore, the claim of the applicant for full wages during the period of suspension cannot be accepted. However, the impugned orders dated 16.5.90 and 22.5.90 to treat the period between 15.10.82 to 30.8.89 and 20.7.80 to 14.10.82 respectively as 'NON-DUTY' cannot stand for the reasons stated above. We are of the considered view that these two periods should be treated as 'duty' for the purpose of pension and gratuity and that the

Copy to:-

1. Chief Executive, Nuclear Fuel Complex, Moulali, Hyd-762.
2. The Secretary, Department of Atomic Energy, Govt. of India, New Delhi.
3. One copy to Sri. C.Venkatakrishna, advocate, 7-1-571, Subhash road, Secunderabad-003.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

(78)

applicant's pay should be re-fixed on re-instatement giving him the benefits of accrued increments for the period during which he was kept out of service^{notionally}. However, it is made clear that the applicant shall not be entitled to seniority ^{over} any of his erstwhile juniors who have been promoted to higher posts while the applicant was out of service.

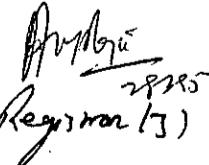
11. In the result, the application is allowed ~~in part~~. The impugned orders dated 16.5.90 and 22.5.90 are set aside. Respondents are directed to treat the period from 15.10.1982 to 30.8.1989 and from 20.7.80 to 14.10.82 as 'duty' for the purposes of pension and gratuity and also to refix the pay of the applicant from the date of his re-instatement, giving him the benefits of accrued increments which he would have earned (during the period he was kept out of service) notionally. The applicant shall not be entitled to any arrears consequent to such notional ^{re-}fixation till the date of his re-instatement into service. There is no order as to costs.


(A.B.GORTHI)
Member (Admn)


(A.V. HARIDASAN)
Member (Judl.)

Dated: 24, 3 1995

mv1


28/2/95
Dy. Registrar (J)

Contd... 91