

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00194/2015

Date of CAV : 21.08.2018
Date of Order : 04-09-2018

Between :

K.Venkat Rao S/o Venkateswarlu,
Hindu, Aged 50 years R/o Katam Reddy Nagar,
Opp: Panchayat office, Padugupadu Mandal,
Nellore District.Applicant

AND

1. Union of India, rep. by its General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
2. The Senior Divisional Electrical Engineer,
Traction Distribution, S.C. Railway, Vijayawada.
3. The Additional Divisional Railway Manager,
Personnel Branch, South Central Railway,
Vijayawada.Respondents

Counsel for the Applicant: Mr.J.M.Naidu

Counsel for the Respondents : Mr.N.Srinivas Rao, SC for Rlys

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985, for the following relief :-

“ It is therefore prayed that this Hon'ble Tribunal may be pleased to declare the action of the 2nd respondents in rejecting the claim of the applicant for his reinstatement into service vide proceedings No. B/P.87/II/2005/TRK/3, dt. 12-09-2014 inspite of acquittal in criminal case criminal Revision case No.242 of 2006 dated 23-01-2013 by the Hon'ble High Court of AP, is illegal arbitrary and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to reinstate the applicant into service with all benefits including back wages, seniority, promotion etc., and pass such other

or further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts necessary for considering the OA are as follows :-

The applicant submits that he was appointed as Gangman on 27.04.1984 in the Department of Engineering and thereafter he was further promoted as Khalasi Helper in the month of August, 1996. While working as Khalasi Helper under the 2nd Respondent, he was implicated in Criminal Case in CC No.36 of 1997 on the file of Special Judicial first class magistrate for Railways, Nellore. In the said Criminal Case the applicant was convicted along with others under section 3(a) of RPUP Act and sentenced to pay fine of Rs.500/- each in default to suffer simple imprisonment for a period of three months.

3. Thereafter, under Rule 14(1) of the Railway Servants (D&A) Rules, 1968, 2nd Respondent issued show cause notice proc. No. B/O/II/2002/TRD/2, dated 01.07.2002 calling for explanation as to why the applicant should not be imposed with the penalty of Dismissal from service. The applicant submitted representation dated 19.07.2002 to the 2nd Respondent and the applicant was imposed with the punishment of removal vide order dated 14.03.2005.

4. The applicant also preferred appeal against the judgment of the learned special Judicial First Class Magistrate for Railways, Nellore, in Criminal Appeal No.109 of 2002 in the Court of Sessions, Nellore Division, Nellore, which was finalised by order dated 24.11.2005 confirming the

sentence imposed in CC No.36 of 1997. The applicant also preferred appeal before the 3rd respondent who has modified the punishment to that of compulsory Retirement while the Criminal Appeal was pending.

5. Subsequently the applicant was acquitted by the Hon'ble High Court in Criminal Revision No.242/2006 by the judgment dated 23.01.2013. Admittedly no departmental proceeding was initiated by the Respondents against the applicant but show cause notice was sent to him indicating that the 2nd Respondent has proposed to imposed on the applicant, the penalty of dismissal from service as per the notice vide Annexure-I to OA. The representation submitted by the applicant was rejected and 2nd Respondent, in exercise of power under Rule 14(1) of Railway Servants (D&A) Rules, 1968, and Railway Board circular dated 06.06.1994 imposed on the applicant the penalty of removal from service as per order dated 14.03.2005 (vide Annexure-III, page-13 to OA). After considering the representation of the applicant, the Disciplinary Authority by order dated 07.07.2005 (as per Annexure-IV, page-17 to OA) modifying the said penalty of removal from service of the applicant as Compulsory Retirement. Subsequently the order of acquittal in favour of the applicant was passed by the Hon'ble High Court in Criminal Revision judgment dated 23.01.2013. Thereafter, on 04.11.2013 the applicant submitted application to 2nd Respondent for issuing appointment order ie for reinstatement into service. The applicant was instructed as per letter dated 13.11.2013 and as such the Criminal case did not attained finality. It was also mentioned in the said letter, although all the settlement benefits have been received by the

applicant from the Department after reduction of penalty to that of Compulsory Retirement and the applicant has got no dues payable to him. Being aggrieved by the said order of the Respondents, the applicant has filed this case before this Tribunal.

6. The Respondents have not come up with any submission and has not filed any document to show that the order of the Hon'ble High Court passed in Criminal Revision has been challenged by them in any Court. Therefore, for all purposes the said order of Hon'ble High Court had attained finality.

7. The order passed by 2nd Respondent vide Annexure-III to OA dated 14.03.2005 and the subsequent order passed by the Disciplinary Authority vide Annexure-IV, dated 07.07.2005 do not show that any adverse ACR, other misconduct against the applicant except the fact that the conviction of the applicant by the Trial Court, that the Criminal Case was considered or relied upon before passing the said order.

8. In the absence of any specific averments by the Respondents and in the absence of any other material on record, this Tribunal finds that the conviction of the applicant in the Criminal Case was the sole basis for passing the order of penalty of Compulsory Retirement on the applicant. Therefore, as a necessary corollary, this Tribunal finds that there is no legal impediment in reinstating the applicant with effect the date on which the order of Compulsory Retirement was passed. There is no material on record and there is no averment from the side of the applicant that he was not

gainfully employed from date of his Compulsory Retirement from service till he was acquitted by the Hon'ble High Court. Besides that, once the applicant was convicted in one Criminal Case for alleged theft of Railway property under section 3(a) of RPUP Act which amounts to moral turpitude of the applicant, therefore the Respondents could not have taken him back to service. During the period when the said conviction order was in force, claiming of back wages for the said period by the applicant is not permissible under the law in view of the decision of the Hon'ble Supreme Court in the case of Union of India & Ors Vs. Jaipal Singh [2004 (1) SCC 121], State Bank of India & Anr Vs. Mohammed Abdul Rahim [2013 (11) SCC 67]. In the circumstances, this Tribunal finds that the applicant is entitled for all back wages with consequential benefits with effect from the date on which he filed the original copy of the judgment of the Hon'ble High Court by which he was acquitted in the Criminal Case ie from 19.11.2013. But for the purpose of his service career ie pensionary benefits and continuity of service he should be treated as on duty from the date on which order of Compulsory Retirement is passed against him ie from 07.07.2005. Accordingly the order passed by 2nd Respondent dated 12.09.2014 (Annexure-10, Page-33 to OA) is found to be illegal and the same is set aside.

9. In view of the findings already given the Respondents are directed to reinstate the applicant in service within two months from the date of receipt of a copy of this order. The applicant is entitled to back wages and consequential benefits with effect from 19.11.2013 and not for the previous

period ie from 07.07.2005 to 18.11.2013. The Respondents to pay the said dues to the applicant within two months from the date of receipt of a copy of this order.

10. The Original Application is accordingly allowed to the extent indicated above. No order as to costs.

Dated : 4th September, 2018.

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