
(2018) 03 CAT CK 0064

In the Central Administrative Tribunal

Case No : Original Application No. 2368 Of 2015, Miscellaneous Application No. 2109 Of 2015

Bhanu Pratap

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Railway Servants (Discipline And Appeal) Rules 1968 — Rule 14(2)
Central Civil Services (Pension) Rules 1972 — Rule 41

Citation : (2018) 03 CAT CK 0064

Hon'ble Judges : Jasmine Ahmed, J

Bench : Single Bench

Advocate : Yogesh Sharma, Kripa Shankar Prasad

Final Decision : Disposed Of

Judgement

Jasmine Ahmed, J

1. The applicant was initially appointed with the respondent department on 24.05.1962 to the post of Mechanical Fitter in Loco Shed, Kasganj in North Eastern Railway. In the year 1980-81, there was a strike of employees and the applicant participated in that. The railway authorities took a decision to remove/dismiss those railway employees who had participated in the strike under Rule 14 (2) of the Railway Servants (Discipline and Appeal) Rules 1968. Accordingly, the applicant was also removed from service under Rule 14 (2) of the aforesaid Rules vide order dated 14.07.1981.

2. It is the contention of the learned counsel for the applicant that a number of employees who were dismissed/ removed from service along with the applicant, filed their cases before the competent Courts of Law, which were subsequently transferred to the Tribunal and ultimately the matter reached before the Hon'ble Apex Court in Civil Appeal No.4681-82/1992 along with other connected civil appeals. The same were subsequently decided by the Hon'ble Apex Court vide judgment dated 5.08.1993 in the case of Union of India and ors. Vs. R.

Reddappa and Anr., 1993 (3) SCALE 351 with a direction to restore the services of the employees who were dismissed/ removed from service under Rule 14 (2) of the Railway Servants (Discipline and Appeal) Rules 1968.

3. Learned counsel for the applicant states that all the similarly situated persons were reinstated in service and they served the department till their retirement but the applicant was never reinstated in service only for the reason that he could not approach the Court due to financial problems. He also stated that the applicant submitted a detailed representation dated 10.07.2014 to the competent authority to consider his case and to grant benefit of compassionate allowance to him. As no reply was received by the applicant, he filed an application under RTI dated 10.03.2015 seeking information regarding the action taken on his representation. In reply to this RTI application, it was informed to the applicant that compassionate allowances could be granted to the removed employee if a representation/ application was submitted in time.

4. Learned counsel for the applicant further states that as the removal took place without conducting any inquiry or proceeding, only on the allegation of participation in loco strike, therefore, such dismissal/ removal is illegal in view of the law laid down by the Hon'ble Apex Court. Thus, it is a fit case for considering the applicant for grant of compassionate allowance. It is contended that during the pendency of the present OA, the respondents have passed order dated 13.08.2015 rejecting the request of the applicant for grant of compassionate allowance, without passing a reasoned and speaking order.

5. Per contra, the learned counsel for the respondents vehemently argued that the applicant has approached this Tribunal after a long gap of 33 years. He stated that the applicant was removed from service on 14.07.1981 and he even did not prefer an appeal against the removal order. It was contended that the applicant was in deep slumber and has suddenly woken up to prefer this OA before the Tribunal. The learned counsel for the respondents also contended that the applicant had made no effort on his part to approach this Tribunal in time and, therefore, there will be no sanctity or purpose of limitation if this OA is entertained. It has been stated that the case of the applicant is hit by delay and laches. The Hon'ble Apex Court has laid down the ratio in a catena of judgments that if somebody was sleeping over his rights, he was not entitled to any relief at a belated stage. It was submitted that only on the ground of delay and laches, this OA deserves to be dismissed.

6. In support of applicant's case, the learned counsel for the applicant relied on Shadi Ram (Ex. ASI) Vs. Government of NCT of Delhi & Ors., 2008 V (DELHI) 3 decided on 22.02.2008 by the Hon'ble High Court wherein there was a delay of 17 years and it was directed to grant the appellant therein compassionate allowance. He also placed reliance on a judgment passed by this Tribunal in the case of Smt. Kashmiri Vs. All India Institute of Medical Science, OA No.2210/2013 and tried to establish that in case of pension or any allowance, limitation has no role to play.

7. Learned counsel for the applicant has also filed rejoinder reiterating the contentions raised in the OA.

8. Heard the learned counsel for the parties and perused the documents on record.

9. It is not a disputed fact that the applicant was removed from service on 14.07.1981 for participating in a strike and along with a number of other employees, he was also removed from service. It is seen that in the case of Union of India Vs. R. Reddappa (supra), the Hon'ble Apex Court directed as follows:

"(i) Employees who were dismissed under Rule 14(2) for having participated in the Loco Staff strike of 1981 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 purpose 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.

All the appeals and petitions are disposed of accordingly. Since the employees are being directed to be compensated there shall be no order as to costs."

10. On the basis of directions given by the Hon'ble Apex Court, quoted above the similarly situated persons who participated in the strike were reinstated in service and served the department till their retirement but the applicant herein was not reinstated in service as he could not approach the Court due to financial hardship, as stated by him. The bare reading of para (i) quoted above reflects that the order was a blanket order for all the employees who were dismissed under Rule 14 (2) for participating in the strike. Hence the order of reinstatement was applicable to the applicant herein also. The contention raised by the learned counsel for the respondents as well as order dated 13.08.2015 passed by the respondents that the applicant has approached the Tribunal after 33 years and therefore, his case cannot be considered for compassionate allowance is not justified as the very direction of the Hon'ble Apex Court was to restore all the employees who participated in the strike to their respective posts

within a period of three months from the date of pronouncement of the judgment i.e. 5.08.1993. Accordingly, whether the applicant appealed before the respondents or not is immaterial as the entire dismissal order for all the employees who participated in the strike has been declared illegal by the Hon'ble Apex Court. Hence, restoration to the respective post was automatic as per the judgment of the Hon'ble Apex Court.

11. In the case of Shadi Ram (Ex. ASI) Vs. Government of NCT of Delhi (supra), the Hon'ble High Court has in an unequivocal language held that while deciding a case under rule 41 of CCS (Pension) Rules 1972, the main issue to be taken into account is whether the dismissal accrued/originated from an incident of dishonesty or not. Para 9 of the judgment of the Hon'ble High Court is quoted below:

"9. In support of his case before the Tribunal, the petitioner also relied upon the, "Guiding Principles for Grant of Compassionate Allowance", formulated by the Govt. of India in OM dated 22nd April 1940 for applying the aforesaid Rule 41 CCS (Pension) Rules, under which all applications for Compassionate Allowance are to be considered. This OM (which is hereinafter referred to as the "Guidelines") is reproduced below for convenience:

"Guiding principles for the grant of Compassionate Allowance It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question, it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a Compassionate Allowance. Poverty is not an essential condition precedent to grant of a Compassionate Allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a Compassionate Allowance.

[G.I., F.D., Office Memo. No. 3 (2)-R-II/40, dated the 22nd April, 1940.]"

Accordingly the respondents, before rejecting the case of the applicant, should have applied the aforesaid guidelines as per their true scope and intent while deciding his application under Rule 41 and his prayer should not have been summarily rejected only because he had participated in a strike, which was the only single incident of misconduct for which he had already been punished

being dismissed from service and the dismissal ultimately had been declared illegal by the Hon'ble Apex Court. It was also to be kept in mind that the guiding principles for grant of compassionate allowance had to be considered on merits of each and every case distinctly and the question which was to be decided by the competent authority was whether punishment awarded had been unduly hard on the dismissed employee. This was in consonance with the mandate of Rule 41 which authorizes the competent authority for sanctioning compassionate allowance if the case was deserving of special consideration.

12. Here, in this case, the only misconduct which could be attributed to the applicant herein was participation in the strike. There were no other misconducts which could be attributed to the applicant by the respondents. The argument of the learned counsel for the respondents about limitation has been dealt with by the Hon'ble Apex Court in the case of Mahinder Dutt Sharma Vs. Union of India and others, Civil Appeal No.2111/2009 decided on 11.04.2014. The Hon'ble Apex Court, while giving thoughtful consideration on the issue of rejection of grant of compassionate allowance, viewed as under:

"13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned persons duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be

aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employees authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

14. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, ...if the case is deserving of special consideration.... Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term deserving special consideration used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration."

13. The analysis of the Hon'ble Apex Court is in relation to the punishment qua the applicant. Here, in this case, it can very well be said that the applicant's case does not fall in any of the five considerations quoted above. The applicant had only participated in the strike along with the other employees, which resulted in their dismissal and ultimately the said dismissal was declared illegal by the Hon'ble Apex Court.

14. The main emphasis in a case of compassionate allowance is to be given on the financial condition of the government servant's family. In the case of Shadi

Ram (supra), the Hon'ble High Court has in para 31 considered the case of grant of compassionate allowance after 17 years of his dismissal and observed as under:

"31. In addition to this, the learned Tribunal has also upheld the impugned order of the third respondent on the ground that the petitioner has applied for grant of Compassionate Allowance nearly 17 years after his dismissal, and that such a long lapse of time, demonstrates that the petitioner has managed to survive all this while without pension, and therefore he could not possibly require this allowance henceforth. In other words, the fact of the petitioner applying after nearly 17 years, has persuaded the Tribunal to conclude that the penalty of dismissal, and the consequent forfeiture of his pension and gratuity, was not unduly hard on him. To my mind, this is a completely erroneous approach. People manage to survive the most oppressive circumstances in life. That does not mean that since their adverse circumstances have not actually killed them, and they have managed to somehow survive, therefore it must be presumed that the circumstances through which they have passed have not been unduly harsh. Similarly, simply because the petitioner managed to stay alive all these years after his dismissal bereft of pension and gratuity, doesn't automatically warrant the conclusion that the punishment was not unusually harsh on him. It is entirely possible that the applicant has struggled all these years to make ends meet and felt ashamed to beg for a Compassionate Allowance, but his current circumstances have reduced him to such a state that he had no alternative but to throw himself at the mercy of his former employer's compassion. It is also conceivable that for some years after his dismissal, the petitioner was not so badly off, and that his condition has deteriorated only much later."

15. The Hon'ble Apex Court, while deciding the case of M.R. Gupta Vs. Union of India, (1995) 5 SCC 628 observed that the payment of salary, pension or any allowance is a continuous cause of action as the same is required to be paid month after month and the principle of limitation has no role to play in such a case.

16. In view of the judicial pronouncements by the Hon'ble Apex Court and also by the Hon'ble High Court, though there is a delay on the part of the applicant and though there are several judgments on delay, the Hon'ble Apex Court, while deciding the case of dismissal of employees who participated in the strike, has held the action of the respondents as illegal and directed that the respondents should have restored the appellants on their own to their respective posts.

17. It is not disputed that the applicant has not approached the respondents in a proper time but taking into consideration the observations of the Hon'ble High Court in the case of Shadi Ram (supra), it may happen that after a long lapse of time, the applicant may be in a hard position and not having any other options, could approach the respondents for grant of compassionate allowance. Accordingly, in my view, the respondents should have taken into consideration the judgment passed by the Hon'ble Apex Court in the case of R. Reddappa

(supra) while deciding the case of the applicant herein. The impugned order dated 13.08.2015 is, therefore, quashed and set aside and the respondents are directed to give a second thought to the matter and decide the applicant's case taking into consideration the judgments of the Hon'ble Apex Court and the Hon'ble High Court, discussed above. The applicant is also directed to give a fresh representation to the respondents incorporating all the facts involved in his case within one month and on receipt of such a representation, the respondents shall take a decision within two months thereafter in the light of the facts stated as also in view of the judicial pronouncements quoted above. The OA stands disposed of with the above directions. No costs.