
(2001) 04 AP CK 0133

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 15448 of 1999 and 3809 of 2000

General Manger, South Central Railway, Sec"bad and others	APPELLANT
Vs	
Syed Fareeduddin and another	RESPONDENT

Date of Decision : 18-04-2001

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2002) 1 ALD 594 : (2001) 3 ALD 751 : (2004) 7 ALT 313 : (2001) 90 FLR 611

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. Gouri Shankar Sanghi, SC for Railways, for the Appellant; Mr. B.G. Ravinder Reddy, for the Respondent

Judgement

1. These two writ petitions involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The basic fact of the matter is not in dispute. The original applicant-writ petitioner was removed from service. He filed OA No.352 of 1986 in terms of Section 19 of the Administrative Tribunal's Act, (hereinafter called as "the Act" for the sake of brevity) and by an order dated 29-8-1989 the said OA was allowed. A Special Leave Petition, registered as SLP No.2066 of 1990, however, filed by the Railway Administration there - against was dismissed by the Apex Court on 9-1-1995. A review application filed by the Railway Administration was also dismissed on 9-11-1995. As the authorities have failed to reinstate the applicant - writ petitioner into service and give the consequential benefits, he filed a Contempt Case, registered as CP No.81 of 1995 before the Tribunal. During the pendency of the contempt proceedings, the respondents passed an order dated 19-4-1996 reinstating the applicant-petitioner into service, pursuant thereto, the learned Tribunal, while disposing of the Contempt Petition on 4-7-1995, observed:

"We, therefore, make it clear that as we are disposing of this CP, it will be open to the applicant to file proper representation and in the event of being aggrieved with the decision on that representation to adopt such further legal remedies as he would be advised in accordance with law to challenge the correctness of the order dated 19-4-1996. That however does not require to initiate action in contempt. Petition is accordingly disposed of. No order as to costs."

3. As the representation filed by the applicant-petitioner was not disposed of by the authorities, he filed another OA, registered as OA No.587 of 1997, before the Tribunal and the same was disposed of directing the respondents to dispose of the representation filed by him. Subsequent to the order passed by the Tribunal in OA No.587 of 1997, the respondents, relying on the basis of Rule 1344 (2) R.II (FR 54-A), have released the salary of the applicant-petitioner for a period of three (3) years from September, 1986 to August, 1989 and treating the remaining period during which he was out of service, as non-duty. Questioning the said action of the respondents, the applicant-petitioner has filed another OA., registered as OA No.836 of 1998, in not paying the back wages from the date of removal till the date of reinstatement and in not giving promotion, and all other attendant benefits on par with his co-employees, and the same was dismissed by an order dated 5-10-1998. The applicant-petitioner, questioning the said order of dismissal, filed a review application, registered as RA No.60 of 1998, before the Tribunal and the same was allowed in part directing:

"10. Hence we pass the following order:

- a. RA is allowed.
- b. The order dated 5-10-1998 passed in the OA is set aside, only to the following extent.
- c. The respondents shall pay the wages to the applicant from 29-8-1989 to 18-4-1996 deducting any wages already paid to him.
- d. Time for compliance is 3 months from the date of receipt of a copy of this order".

4. The applicant and the Railway Administration, questioning the order passed by the Tribunal in the Review Application, have filed these two writ petitions.

5. Mr. Gouri Shankar Sanghi, the learned Counsel appearing on behalf of the Railway Administration submits that keeping in view the provisions of the aforementioned Rule 1344(2) of the Indian Railway Establishment Code, the delinquent-petitioner could not have been paid any back wages beyond the period of three (3) years.

6. Mr. Ravinder Reddy, the learned Counsel appearing on behalf of the delinquent, on the other hand submitted that in the instant case sub-rule (2) of Rule 1344 has no application and the petitioner was entitled to salary in terms of the proviso appended thereto. The aforementioned Rule 1344 reads thus:

"Rule 1344: When removal/dismissal is set aside by the Court :--Rule 2044-AR II (FR.54A), Rule 1344 RII 1987 ed.

1. Where the dismissal, removal or compulsory retirement of a Railway servant is set aside by a Court of law and such Railway servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Railway servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.

2. (i) Where the removal or compulsory retirement of a Railway servant, is set aside by the Court solely on the ground of non-compliance with the requirement of clause (2) of Article 311 of the Constitution and where he is not exonerated on merits, the Railway servant shall, subject to the provisions of sub-rule (7) of Rule 2044, be paid such amount (not being the whole) of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which shall in no case exceed 60 days from the date on which notice is served) as may be specified in the notice : Provided that any payment under this sub-rule to a Railway servant (other than a Railway servant who is governed by the provisions of Payment of Wages Act, 1936) shall be restricted to a period of 3 years immediately preceding the date of which the judgment of the Court was passed, or the date of retirement on superannuation of such Railway servant, as the case may be.

(ii) The period, intervening between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court shall be regularized in accordance with the provisions contained in sub-rule (5) of Rule 2044, given above.

x x x"

7. A bare perusal of the aforementioned rule would clearly show that the proviso is an independent provision and is an extension to the main provision. In a case of this nature, undoubtedly the proviso would apply. In this view of the matter, the delinquent was entitled to back wages to be calculated for the period three (3) years prior to the date of passing of the judgment viz., 29-8-1989.

8. The delinquent having been paid only three (3) years back wages, he has not been paid any other wages. There has been, thus, a clear violation of the provisions of the afore-mentioned rule. In this situation, we have no other option but to direct that the delinquent, petitioner in WP No. 3809 of 2000, would be entitled to the salary from 29-8-1986 till the date he was allowed to join in service i.e., 18-4-1996, subject to the reduction of such salary which has been already paid. Further more, the delinquent would be entitled to all other and incidental benefits in terms of the judgment dated 29-8-1989 of the Tribunal in

OA No.352 of 1986. The Railway authorities, in our opinion, did not act fairly in denying of such benefits to the delinquent. The delinquent might not be entitled, pursuant to the afore-mentioned rule, to the back wages except for the period as envisaged under the proviso to sub-rule (2) of Rule 1344. But, he would at least be entitled to the notional increment. This aspect of the matter has been considered by a Division Bench of this Court in Depot Manager, APSRTC v. S.S. Reddy Jamal Reddy, in which one amongst us (S.B. Sinha, CJ) while delivering the judgment of the Bench, held:

"3. But the same does not and cannot mean that the workman would be entitled to the benefit of notional increments for the purpose of computation of his retrial and other terminal benefits, as also payment of his salary from the date of his reinstatement. If any other meaning is attributed, the same, in our opinion, would amount to double punishment meaning thereby not only he becomes disentitled from receiving back wages and attendant benefits but also reduction in his salary, which is not contemplated under the statute".

9. For the reasons aforementioned, WP No. 15448 of 1999 is dismissed and WP No.3809 of 2000 is allowed. However, having regard to the facts and circumstances of this case, there shall be no order as to costs.