
(2000) 06 CAL CK 0029
In the Calcutta High Court
Case No : W.P.C.T. No. 375 of 1998

Hari Charan Shaw

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-06-2000

Acts Referred:

Citation : 104 CWN 826 : (2001) 88 FLR 280 : (2000) 2 LLJ 1306

Hon'ble Judges : S.B. Sinha, J;H. Banerjee, J

Bench : Division Bench

Advocate : A.S. Roy, Manas Kumar Ghosh and Debjani Roy, for the Appellant;U.K. Majumdar, for the Respondent

Judgement

S. B. Sinha, J.—This application raises an interesting question of law as regards the period from which an order of punishment takes effect.

2. The petitioner is an employee of Eastern Railway Administration. On the ground of commission on certain misconduct, he was placed under suspension on January 8, 1998, which was revoked by an order dated April 20, 1999 and a disciplinary proceeding was initiated and by an order dated July 28, 1989 he was directed to be removed from services with effect from July 31, 1989 A/N. The petitioner preferred an appeal against the said order which was rejected by the Appellate Authority by an order dated October 16, 1989. Aggrieved by and dissatisfied with the said order, the petitioner filed an application before the learned Central Administrative Tribunal which was marked as O.A No. 29 of 1989. By an order dated May 4, 1994, the learned Tribunal directed the appellate authority to consider the matter afresh as the said order was not a reasoned one. Upon giving another opportunity of hearing to the petitioner, by an order dated September 11, 1994, the appellate authority set aside the order of removal and substituted the punishment imposed upon the petitioner by reducing him to the rank of shuntman-A for a period of three years with cumulative effect. As against the said order a review application was filed before the Chief Works Manager which was not entertained. Again an application in revision was filed on April 15,

1996 and the said revisional application (sic) was rejected on April 21, 1996. The petitioner preferred a mercy appeal before the General Manager, and by an order dated June 2, 1997 the General Manager passed the following order:

"I have considered the mercy appeal. In view of the seriousness of the charge established the punishment given by C.W.N. on appeal is justified. However, on humanitarian grounds I reduce the same to two years cumulative from 3 years cumulative."

3. However, the Assistant Welfare Officer, Eastern Railway, Liluah, issued an office order on July 3, 1997 which is to the following effect:

"Shri H. C. Shaw, T. No. YM-62 was undergoing punishment for reduction to lower post from Shunting Master Gr. II pay Rs. 1350/- in scale Rs. 1300/- 2040/- (RP) to Shunt Man "A" on pay Rs. 1010/- in scale Rs. 950-1500/- (RP) for 3 years with cumulative effect."

The punishment for 3 years (a) is reduced to 2 years by G.M./ E.Rly. on mercy appeal submitted by Sri Shaw, YM-62 and the necessary order was issued, under No. LE. 68/DA/YM-62/H.C. Shaw dated June 2, 1997. As the punishment period for 2 years completed on September 10, 1996 (i.e. from September 11, 1994 to September 10, 1996), he is restored to post of Shunting Master Grade II on pay Rs. 1350/- in scale Rs. 1200-2040/- (RP) w.e.f. September 10, 1996."

4. Aggrieved by and dissatisfied with the said order, the petitioner filed another application before the Central Administrative Tribunal. By a reasoned judgment and order dated April 7, 1998 which has been impugned before this Court, the learned Tribunal directed:

"a)The applicant may be given liberty to exercise his option for getting the period during which he stood removed from service to be converted into leave of any kind due and admissible to the applicant. If any such request is made by the applicant, the respondents shall take a decision thereupon in accordance with law within a period of two months from the date of receipt of such request.

b) In case, no order has been passed as to how the period of suspension shall be treated the respondents shall, within a period of two months from the date of communication of this order, pass appropriate order in that regard: If however, any such order has already been passed, no further action need be taken in this direction."

5. The appellate order dated September 11, 1994 reads thus:

"Now, the undersigned in exercise of power conferred upon it, as per directive of Hon"ble CAT/Cal. freshly determining the appeal of H.C. Shaw dated August 8, 1989 and after giving him a personal hearing on August 14, 1994 and August 16, 1994 passes the following order:

(a) The removal order being cancelled, the service grade of Sri Hari Charan Shaw Ex. YM-62 is reduced to Shuntman "A" on pay Rs. 1010/-p.m. in scale Rs.

950-1500/-(RP) for three years with cumulative effect:

(b) The period of inaction i. e. from July 31, 1989 (date of removal) to the date he will resume should be regularised for the purpose of all pensionary benefits."

6. In this view of the matter, the order of punishment shall take effect from the original order dated July 28, 1989 and the period of 3 years must be reckoned from that date. Particularly, in view of the fact that even the appellate authority has directed that this period of inaction should be regularised for the purpose of all pensionary benefits, that order for all intent and purport has been substituted by an order dated June 2, 1997 in terms whereof instead and in place of the punishment of reduction in rank for a period of 3 years the same had been substituted by 2 years. In that view of the matter, there cannot be any doubt that the order of punishment imposed against the petitioner, namely reduction of rank to Shuntman-A would be deemed to be for a period of 2 years from the date of the original order of punishment dated July 28, 1989. How and in what manner the period during which the petitioner did not render and service has already been dealt with by the appellate authority in its order dated September 11, 1994. Such a direction passed by the appellate authority having not been questioned by Union of India, in our opinion, the learned Tribunal went wrong in directing that the period of absence should be converted into leave of any kind due and admissible to the petitioner. If there exists any rule, such period may be considered in terms thereof, in absence of any rule, the authorities concerned will have to consider the matter in accordance with law.

7. In that view of the matter, that part of the order whereby and whereunder punishment period for 2 years had completed on September 10, 1996 could not have been sustained inasmuch as the effect thereof as noticed hereinbefore would be reckoned from July 28, 1989. We have not entered into the question as to whether the petitioner has worked and that too in what capacity after the order was passed by the appellate authority. It is for the department to consider the said fact and pass an appropriate order. But having regard to the position of law as noticed hereinbefore, the impugned order of the learned Tribunal cannot be sustained. It is set aside accordingly.

8. This application is thus disposed of.

9. Urgent xerox certified copy of this order if applied for may be given on priority basis.

H. Banerji, J.

10. I agree.