

(2014) 11 DEL CK 0341
In the Delhi High Court
Case No : Writ Petition (Civil) 6935/2012

Laxman Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Citation : (2014) 11 DEL CK 0341

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : G.D. Bhandari, Advocate for the Appellant; J.K. Singh, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by the order of the Central Administrative Tribunal (CAT/ Tribunal) dated 02.05.2012 dismissing O.A. No. 1546/2011. In that application, he had questioned the rejection of the revision, preferred by him consequent upon his acquittal recorded by the Criminal Court in the proceedings launched against him in the aftermath of a fatal accident, which resulted in loss of lives. The Criminal Court's judgment was rendered on 21.11.2008.

2. The facts are that the petitioner was working as Diesel Assistant when on 15.12.1992 in an accident, between two stations Munda Pandey and Rampur, several people died; they were travelling in buses. In major penalty proceedings initiated against the petitioner, it was contended on behalf of the delinquent employee that there was poor visibility; that the signal was not visible; and that the accident was unintended. The petitioner was placed initially under suspension, which was subsequently revoked. By the initial penalty order, he was sought to be removed on 28.02.1994; his appeal succeeded partly in that penalty of removal from service was substituted to reversion to the post of Fitter (Loco) in the grade of Rs. 950-1500 with permanent effect. The appellate order stated as follows:

"For matters of further promotion his seniority will be determined as if he has been appointed on date. However, the service rendered by him until now will be counted for all other benefits for which the Railway employees are eligible."

3. The further revision of the petitioner was rejected on 20.01.1995. He was consequently deployed as Ticket Collector in the Commercial Department and the penalty order granting him grade of Rs. 950-1500 was given effect to. He was later promoted as Senior Ticket Examiner and as Head Ticket Examiner in the Commercial Department.

4. The criminal prosecution initiated against the Driver and the petitioner concluded on 21.11.2008. The Additional Sessions Judge convicted the Driver and sentenced him to undergo imprisonment; the petitioner was, however, acquitted.

5. He consequently appealed to the respondent employer requesting that they ought to treat the period of suspension from 18.12.1992 to 27.03.1993 as well as the period of removal from service between 03.03.1994 to 15.06.1994, as on duty. These were conceded, however, no further orders as to his seniority, etc. were issued.

6. He represented again requesting that his seniority should be properly decided and payments for the aforesaid period should be made to him. This was rejected on 21.10.2010, in the following terms:

"As informed by the Division, vide letter dated 25.05.2010, Shri Laxman Singh, Fireman (Now, HTTE/MB) was appointed on 11.09.86 in grade Rs. 290-350/950-1500. He was removed from service in a D&AR case on 28.02.94. On appeal, his punishment reduced to reverted to the post of Fitter/Loco in grade Rs. 950-1500 at initial stage of pay with permanent effect. He was reinstated as Fitter grade Rs. 950-1500 on 18.06.94. On rendered surplus, redeployed as TC in scale Rs. 950-1500 on 25.08.95, after passing P-6 Training Course. He has been paid wages for the suspension period from 16.12.92 to 29.03.93 and intervening period of removal to reinstatement from 28.02.94 to 17.06.94, as regularized by DME/MB, vide letter dated 25.11.09. His revision petition was rejected by COM on 20.01.95.

Since the employee was not reinstated as DSL Asstt from the punishment of removal, as such, his claim of seniority in the running category and comparison with junior, is not maintainable as per rules."

7. Being aggrieved, he approached the Tribunal for setting aside of the order dated 28.02.1994 and quashing the subsequent determination by the General Manager rejecting his representation given in the wake of his acquittal by the Criminal Court. The application was rejected by the Tribunal, which observed as follows:

"6. We observe that the first relief sought by the applicant is for setting aside and quashing of the impugned orders dated 28.02.1994, whereas the OA has

been filed on 26.04.2011, therefore, at first glance itself, the OA seems to be highly time barred. But, during the course of arguments, learned counsel for the applicant stated that the applicant was claiming seniority only from the date of his posting in the Commercial Department i.e. 25.08.1995.

7. We are convinced that in view of relief (i) claimed by the applicant, the OA is raising up a stale claim which is also time barred. Even if we look at the case on merits, we are satisfied that no case has been made out by the applicant for intervention in the matter. There is no infirmity in the procedure followed by the respondents. Regarding his punishment as a consequence to the order of the appellate authority dated 16.06.1994, it is very clear that necessary orders as to how his seniority would be treated, have been passed by the appellate authority. The aforesaid order has not been challenged at that time and the applicant accepted the terms and conditions of being given the post of Fitter (Loco) in the grade of Rs. 950-1500/- with the condition that "For matters of further promotion his seniority will be determined as if he has been appointed on date. However, the service rendered by him until now will be counted for all other benefits for which the Railway employees are eligible.""

8. Learned counsel for the petitioner relies upon a circular issued by the Railway Board on 07.06.1995, which deals with the approach to be taken in the matter of employees dealt with initially in the departmental proceedings but later acquitted. The said circular reads as follows:

"RAILWAY BOARD'S ORDERS 1995

R.B.E. No. 54/95

Subject: Review of decision taken in departmental proceedings on acquittal of a railway servant in a court on the same charges.

[No. E (D&A) 95 RG 6-4, dated 7.6.95]

Arising out of demand made by AIRF in the PNM meeting the question whether a decision taken in departmental proceedings need to be reviewed following acquittal of the railway servant by a Court in a criminal case on the same charges has been examined.

2. It is clarified that there is no legal bar to the initiation of departmental disciplinary action where criminal prosecution is already in progress and generally there should be no apprehension of the outcome of the one affecting the other, because the ingredients of delinquency misconduct in criminal prosecution and departmental cases, as well as the standards of proof required in both cases are not identical. Thus, the departmental and criminal proceedings can also be continued and concluded without waiting for the conclusion of criminal case against the employee on the same charges.

3. However, if the facts, circumstances and the charges in the Departmental proceedings are exactly identical to those in the criminal case and the employee

is exonerated/ acquitted in the criminal case on merit (without benefit of doubt or non technical grounds) then the departmental case may be reviewed if the employee concerned makes a representation in this regard."

9. It was contended that having regard to the conspectus of circumstances in this case, the decision of the authorities to reject the petitioner's request for restoration of the seniority and other consequential service benefits was arbitrary. Underlining the fact that the petitioner was acquitted honourably - a fact noted by the CAT - learned counsel argued that in such circumstances, paragraph 3 of the above circular squarely applies and the authorities were bound to review the matter in an objective and non-discriminatory manner.

10. It was also contended that the penalty imposed, i.e. reversion and the total loss of seniority amounted to making the petitioner suffer multiple punishment orders, which is plainly discriminatory and whimsical. Learned counsel highlighted that the entire period of service from 1986 to 1994 as Diesel Assistant, in effect, for the purpose of seniority and such like benefits was wiped out by the order imposed by the revisional authority.

11. It was lastly contended that even though the respondents had sought to rely upon the report of the Commissioner of Safety, that document never saw the light of the day, and that there was some effort to suppress the findings, which had exonerated the petitioner.

12. This Court has carefully considered the submissions. The petitioner has not, at any stage, produced a copy of the judgment and order of the Criminal Court acquitting him. That apart, a reading of the circular of 07.06.1995 - especially paragraph 3 thereof, in the opinion of this Court does not compel revisional, or disciplinary authorities to conduct a blanket review of all penalty orders in the event of acquittal. To read such a circular in the manner contended by the petitioner would be to restrict the right of the public employer to take appropriate disciplinary action as the subjective circumstances might warrant. The authority of the public employer to take disciplinary action is, in fact, vested in statutory rules. To that extent, the said circulars - like the one dated 07.06.1995, merely guide the exercise of discretion but cannot entirely control it. This is in the light of the well- settled preposition in administrative law that the statutory authority's powers cannot be fettered, except in accordance with law. In other words, administrative, or executive instructions which fetter, or limit the use of discretion, can be disregarded by the authorities. Such being the case, it is open to the concerned authorities - having regard to the facts of each case, to pass appropriate orders while reviewing, or dealing with the request for review of previously issued penalty orders in the light of subsequently recorded acquittals.

13. So far as the merit of the petitioner's arguments that the respondents were bound to review his case is concerned, this Court is of the opinion that there is no rule, or statutory compulsion upon the respondents - in every case where the criminal acquittals were recorded, to review their decisions in favour of the

employee. It is well-known that the standard of proof in criminal proceedings differs from that in disciplinary proceedings. Reference may be made to High Court of Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, .

14. Consequently, unless it is shown that the disciplinary authority's findings recorded in the course of departmental proceedings are without jurisdiction, or not based upon any materials, the conclusiveness of a penalty order cannot ordinarily be re-opened. This is, of course, subject to the discretion of the reviewing authority - in appropriate and given cases having regard to the changed circumstances.

15. The contention of the petitioner that the reversion order, in fact, amounted to multiple penalties, in the opinion of this Court, cannot be gone into now, having regard to the fact that he accepted these penalties and even got subsequent promotions by two levels. Having done that, the subsequent event of his acquittal in the criminal proceedings was only a factor that could be taken into account in the light of his request for review. Having accepted the penalty and even got higher in the hierarchy, it is too late to say that he was prejudiced.

16. The delay in filing of the O.A. has too, not been explained. For invoking paragraph 3 of the circular dated 07.06.1995, it was incumbent upon the petitioner to establish that: (i) the facts, circumstances and changes in the departmental proceedings were "exactly identical" to those in the criminal case, and; (ii) the exoneration in the criminal case was on merits and not on the basis of benefit of doubt, or on technical grounds. The petitioner laid no material before the CAT to establish these conditions.

17. For the above discussion, we see no merit in the writ petition, it is, accordingly, dismissed.