
(2021) 02 JH CK 0200
In the Jharkhand High Court
Case No : Writ Petition(S) No. 2942 of 2010

M. Govind Raju

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 25-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 311(2)

Citation : (2021) 02 JH CK 0200

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : M. M. Pal, Aprajita Sinha, Md. Jalisur Rahman

Final Decision : Disposed Of

Judgement

1. Heard learned Senior counsel for the petitioner Mrs. M. M. Pal and Md. Jalisur Rahman, learned counsel appearing on behalf of the respondent railways.

2. This writ petition relates to claim of either full salary or subsistence allowance for the period from 22.03.1995 to 18.08.2003 i.e. the date on which

he was reinstated by order dated 18.08.2003 (Annexure-3) passed by Assistant Personnel Officer, Chakradharpur in obedience to the order of learned

CAT in O.A. No. 410/97 dated 23rd April, 2003. By Annexure -3, the Sr. DOM/CKP, APO(W)/TATA, OS (Optg) Bill/CKP/ARM/TATA were

requested to decide the intervening period i.e. the period from the date of removal to the date of re-instatement on his back wages.

Learned CAT has dismissed the Original Application No. 38 of 2009 by the impugned order dated 04.02.2010 holding as under:

â??9. As per the law, the only thing for which the benefit of this order of reinstatement dated 18.8.2003 shall be available to the applicant for the

period from 22.3.1995 to 18.8.2003 shall be the deemed continuation of service over this period, which could count towards his entitlement for

pensionary benefits, and that the applicant is not at all entitled to either full salary as if in employment, or for subsistence allowance as if under

suspension for the period from 22.3.1995 to 17.8.2003, the date of his reinstatement.â??

3. Respondents, in their counter-affidavit at para 23 have made statement that the intervening period from 22.03.1995 to 20.08.2003 has been decided

by the competent authority as dies-non. However, no such order has been enclosed. In the supplementary-affidavit dated 27.09.2016, the petitioner

has made statement that no such order was issued or served upon the petitioner. In the O.A. also, no such order was brought on record though as per

the petitioner a prayer was made to that effect.

4. Learned Senior counsel for the petitioner has relied upon the decision of the apex court in the case of â??Deepali Gundu Surwase Vs. Kranti

Junior Adhyapak Mahavidyalaya (D.Ed.) and Othersâ? reported in (2013) 10 SCC 324 (para 22, 38.5 and 38.6) as also in the case of â??Union of

India Vs. Madhu Sudan Prasadâ? reported in 2003 (4) JCR 231 SC (para 5 and 6). Learned Senior counsel for the petitioner has also referred to Rule

2044-A (FR-54(A)2(1) of the fundamental rules at para 8 of the writ petition, which according to her has not been categorically answered at para 27

of the counteraffidavit.

5. The learned counsel for the respondent railways was allowed time vide order dated 20.01.2021 to obtain categorical instructions whether any such

order on the intervening period from the date of his removal till the date of his re-instatement has been passed or not. He was asked to place such

order on record by the next date. The matter was again adjourned on 04.02.2021 on his request as instructions were awaited, with the categorical

observation that in case the affidavit in respect of the query made by this Court vide order dated 20.01.2021 is not filed by 09.02.2021, it would be

presumed that the respondents do not have anything to say on that.

6. Learned counsel for the railways has not got any instructions on this particular query nor any such order of dies-non has been produced or brought

on record. According to him, the office of the Area Personnel Officer was shifted from Jamshedpur to Chakradharpur in the year 2018 and therefore,

such documents could not be traced.

7. Learned counsel for the respondents has also submitted that after his reinstatement pursuant to the order dated 23.04.2003 passed in O.A. No. 410

of 1997, disciplinary authority has, after due show-cause and notice, passed a fresh order of removal from service dated 16.04.2004 which stood

modified to an order of removal by the appellate authority dated 05.06.2004 with 50% terminal benefits. Petitioner approached the learned CAT in

O.A. No. 223 of 2004 challenging the order of the disciplinary authority and the appellate authority. The learned CAT refused to interfere in the order

of the disciplinary and appellate authority vide order dated 09.09.2008 which is subject matter of W.P.(S) No. 1832 of 2009 also on board today.

8. We have considered the submissions of learned counsel for the parties. In the instant writ petition, the issue involved is relating to claim of salary or

subsistence allowance for the period 22.03.1995 to 18.08.2003 i.e. the date on which applicant was reinstated by order dated 18.08.2003 passed by

Assistant Personnel Officer, Chakradharpur in obedience to the order of the learned CAT in O.A. No. 410 of 1997 dated 23.04.2003. The operative

portion of the order of the learned CAT dated 23.04.2003 is as under:

â??5. After hearing both the sides lawyers, the other side lawyer Mr. Gautam Bose, even submitting that it was expected of the disciplinary authority

as to issue show cause notice prior to passing the order (Annexure-2) when he decided as to differ with the inquiry report, as to meet the ends of

justice, we also feel satisfied that this opportunity was not so given to the applicant which has caused prejudice to the applicant and to give an

opportunity to the applicant to show cause, it is hereby ordered that the orders under challenge i.e., Annexure-2, Annexure-3 & AnnexureR/4 i.e., the

orders dated 27.02.1995, 01.06.1995 & 26.02.1998 respectively stand set-aside. The matter is remanded to the disciplinary authority who had passed

the order at Annexure-2 as to issue fresh show cause notice to the applicant and after receiving reply from the applicant as to pass necessary orders

in accordance with law within a period of four months from the date of receipt/production of a copy of this order by passing a speaking and reasoned

orders. Needless to say that if in any way the applicant is aggrieved by the order so passed by the disciplinary authority, he will have the liberty to file

an appeal before the concerned appellate authority.

This OA stands disposed of in terms of direction as above with no order as to costs.â??

9. Apparently, the order of dismissal passed by the disciplinary authority and affirmed in appeal in the first round of litigation was interfered on the

ground that no show-cause notice containing the difference of opinion by the disciplinary authority from the report of the inquiry officer was furnished

to the applicant delinquent. The learned CAT held that the order of dismissal was bad for non-issuance of show-cause notice. The order of dismissal

was set aside and the matter was remanded to the disciplinary authority to pass an order in accordance with law after fresh show-cause notice to the

applicant and on consideration of his reply within a stipulated period by a speaking order. Applicant was granted liberty to assail the order so passed, if

aggrieved thereby before the appellate authority. The second round of disciplinary proceedings after remand, has ended up in an order of removal as

modified by the appellate authority which was subject matter of O.A. No. 223 of 2004 and W.P.(S) No. 1832 of 2009 before this Court. Apparently,

no decision in relation to the intervening period from 22.03.1995 to 18.08.2003 had been taken by the disciplinary authority as no such order has been

brought on record despite time granted to the respondent railways. Rule 2044-A (FR-54(A)2(1) quoted in rejoinder affidavit reads as under:

â??2(i) Where the removal or compulsory retirement of a Railway servant is aside by the Court solely on the ground of non-compliance with the

requirement of clause (2) of the 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 compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case

may be, as the competent authority may determined, 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 the

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 on which the judgment of the Court was passed, or the date

of retirement on superannuation of such Railway servant, as the case may be.â??

10. Petitioner has placed reliance upon the decision of the apex court in the case of â??Deepali Gundu Surwase Vs. Kranti Junior Adhyapak

Mahavidyalaya (D.Ed.) and Othersâ? reported in (2013) 10 SCC 324 (para 22, 38.5 and 38.6) as also in the case of â??Union of India Vs. Madhu

Sudan Prasadâ?? reported in 2003 (4) JCR 231 SC (para 5 and 6).

11. Having taken note of the aforesaid facts and circumstances, it appears that for the intervening period, upon his reinstatement with effect from

22.03.1995 till 18.08.2003, no decision has been taken by the disciplinary authority though applicant was proceeded against after reinstatement and

punished also. The order of punishment in the disciplinary proceeding resumed after his reinstatement from the stage of show-cause notice is a subject

matter of W.P.(S) No. 1832 of 2009.

12. In those circumstances, the disciplinary authority is directed to take a fresh decision on the claim of the petitioner for salary/subsistence allowance

for the period from 22.03.1995 to 18.08.2003 in accordance with law, rules applicable to the organization and the decisions rendered by the apex court

within a period of 12 weeks from the date of receipt of copy of this order. Depending upon such decision, the admissible amount, if any, be paid within

a reasonable time thereafter preferably within 8 weeks therefrom.

13. The order of the learned CAT dated 04.02.2010 is accordingly set aside. The writ petition is disposed of.