

(2024) 02 CAT CK 0021

In the Central Administrative Tribunal

Case No : Original Application No. 330, 01324 Of 2019

Man Mohan Lal

APPELLANT

Vs

Union Of India, Through General Manager, North Central
Railway, Headquarter Office Subedarganj, (Allahabad)
Prayagraj.

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Code Of Criminal Procedure, 1973 — Section 164, 344
Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 14(ii)

Citation : (2024) 02 CAT CK 0021

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : R.K. Dixit, M.K. Sharma

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

“(i) The Hon’ble Tribunal may graciously be pleased to quash the impugned punishment order dated 13.08.2018 (Annexure A-1 of OA) and impugned appellate order dated 17.11.2018 (Annexure A-2 of OA) with all consequential benefits in respect of applicant and direct the respondents to reinstate in service of the applicant with immediate effect.

(ii) The Hon’ble Tribunal may graciously be pleased to direct the respondents to treat the whole period from the date of removal from service to reinstatement as service for all purpose.

(iii) To issue any other suitable order or direction which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) To award the cost of the application in favour of the applicant”.

2. The brief facts of the case are that the applicant was initially appointed on the post of Safaiwala in the year 2009 and thereafter he was promoted on the post of Dresser in the year 2013. Mother of the applicant was seriously ill and therefore applicant admitted his mother in Railway Central Hospital, Allahabad and mother of the applicant gone through the operation due to Tumor disease which was operated on 24.05.2018 in the Central Hospital and respondent No. 7 deliberately did not give the proper treatment to her and used unparliamentary language against her, which is not permissible in any corner of law. Due to such act of respondent No.7, applicant submitted his representation on 30.05.2018 through Union Secretary North Central Railway Works Union, Allahabad. After receipt of complaint against the respondent No.7, he was annoyed from the applicant and threatened him to spoil his service career. Due to ill-will, respondent No.6 has filed an FIR against the applicant lodging that he was involved in the gang rape occurred in the premises of Hospital and on the basis of aforesaid FIR, police on 11.8.2018 thrashed the applicant in the mid-night and made the pressure to write letter as has been wanted by respondents. Respondents without conducting any fact finding enquiry issued suspension order dated 11.8.2018 against the applicant. After suspension of the applicant, respondents conducted fact finding enquiry and submitted enquiry report on 12.8.2018. On the basis of enquiry report, disciplinary authority issued impugned order dated 13.08.2018 whereby applicant was removed from service. Applicant preferred statutory appeal to the appellate authority against the order of disciplinary authority, which was rejected by the appellate authority vide order dated 17.11.2018, which were assailed in this O.A.

3. We have heard the learned counsel for the parties and perused the record.

4. Learned counsel for the applicant argued that applicant was involved in a false criminal case but he was completely exonerated from the charges by judicial order after trial. On the basis of false complaint filed by the respondents, applicant was arrested and released on bail and he was discharged from the charges vide final report No. 142/2020. Learned counsel for the applicant further argued that against final report, respondents filed protest application before Chief Judicial Magistrate, Allahabad, which was also dismissed vide order dated 7.9.2021. He also argued that after dismissal of protest application, respondents are duty bound to reinstate the applicant with all consequential benefits without any further delay but respondents never considered the case of the applicant which is against the rule. Therefore, the respondents be directed to treat the whole period from the date of removal from service to reinstatement as service for all purposes. Learned counsel for the applicant placed on record a judgment of Hon'ble Allahabad High Court in the case of Sumit Kumar Vs. State of U.P and 3 others in Writ A No. 62661 of 2014 passed on 10.07.2019.

5. Learned counsel for respondents argued that applicant was punished having been involved in a case of rape in the hospital premises and was punished under

Rule 14 (ii) of Railway Servants (Discipline and Appeal) Rules, 1968. Learned counsel further argued that punishment upon the applicant for removal from service was commensurate to the gravity of charges because he was involved in a gang rape case, which is heinous crime. He contended that applicant has admitted that he was involved in the aforesaid crime, therefore, on the basis of admission of applicant the order of removal from service has been passed.

6. We have gone through the rival submissions of learned counsel for the parties and have gone through the entire record.

7. In the case of Union of India Vs. K.V. Jankiraman 1993 SCC (L&S) 387, Hon'ble Apex Court has held that "If an employee is completely exonerated, he has to be given the benefit of salary of higher post. Rule of 'No work no pay' will not be applicable."

8. In the case of Dr. Vinod Shanker Dubey Vs. State of U.P. and others , reported in (2016) 3 UPLBEC 1871 (Civil Misc. No. 694/2014 decided on 9.5.2016, Hon'ble High Court observed as under.

"5. The petitioner was acquitted from a criminal case by a court of law. No appeal has been filed by the State Government against his acquittal. Once a Government servant is acquitted and in the absence of any department proceeding being initiated against him, it is imperative for the Department to grant full salary for the period in question. In similar circumstances in Dr.Ram Khelawan Singh v. State of U.P. and another, 2008 (8) ADJ 324 (DB) the Government servant was acquitted from the criminal charge. The Court held that the Government servant should be given all benefits of service including the arrears of salary during the suspension period. We are in complete agreement with the said decision and hold that once the petitioner is acquitted from criminal charges and in the absence of any departmental proceedings initiated against him, the petitioner would be entitled for full salary for the period when he was deemed to remain under suspension."

9. Before proceeding to discuss the submissions raised across the bar and analyzing the same in the light of the facts and circumstances of the case, we find it expedient to quote the relevant para of the case laws relied upon by the learned counsel for the applicant:-

"In the said and circumstances brought before the Court, relevant is to note that the allegations of abetting rape of a girl in the lock up, basis of the dismissal order, were found false in the criminal trial. The Court after appreciation of the evidence found that the allegation of rape of the victim was not proved as there was no evidence. Further, in her statement before the Court, she denied rape having been committed on her rather stated that in her statement recorded under Section 164 Cr.P.C. on 28.05.2012, she made allegations of rape under the pressure and coercion of some local leaders and police. Having recorded the said conduct of the victim, she was put to notice under Section 344 Cr.P.C. for making false statement before the Magistrate.

The complicity of the petitioner in abetting act of rape, therefore, is not proved. The basis of dismissal, therefore, itself goes. There was no departmental enquiry. The result being the dismissal order and orders of rejection of appeal and revision cannot be allowed to stand”.

10. It is not in dispute that the respondents lodged an FIR against the applicant for the reason that one unknown girl was allegedly raped in the premises of Hospital on 01.08.2018 at about 11.30 P.M. Fact finding enquiry was conducted by the Medical Director, Central Hospital, N.C.R., Allahabad on 11.08.2018. In the fact finding enquiry, statement of accused employees as well as witnesses were recorded and based on facts gathered on the basis of statement, it was found that 05 persons were involved in the incident of rape. Disciplinary Authority passed the impugned order dated 13.8.2018 whereby applicant has been removed from service. Appeal against the order of punishment has also been rejected.

11. From the perusal of record, it is evident that against the FIR dated 13.08.2018, police authority conducted detailed investigation and interrogated all the witnesses and after investigation, police authority submitted final report wherein it is noted that no incidence has taken place and applicant has not committed the offence and charges leveled against the applicant are not established, therefore, applicant was discharged from all the charges leveled against him by filing final report. Against the final report, respondents filed protest application and after hearing on the protest application, the competent court rejected the same by an order dated 7.9.2021 and accepted the final report. Since the applicant was exonerated from the criminal case, considering the law laid down in the cases quoted hereinabove, the court is of the view that the applicant is entitled for reinstatement in service.

12. Accordingly, Original Application is allowed. Impugned orders dated 13.8.2018 and 17.11.2018 are quashed. Respondents are directed to pass an order for reinstatement of the applicant in service. It is provided that the applicant will be entitled to salary for the period of working and no salary from the date of removal till the date of reinstatement shall be admissible to the applicant. There shall be no costs. All pending MAs are disposed of.