
(2012) 06 JH CK 0067

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6178 of 2010

Manoj Mahto

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:

Citation : (2012) 4 JCR 338 : (2012) 3 JLJR 513

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : H.K. Mahato, for the Appellant; Ram Nivas Roy, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble The Chief Justice Hon''ble Mrs. Justice Jaya Roy

1. Heard the counsel for the parties. The petitioner is aggrieved against the order dated 27.1.2005 passed in O.A. No. 1 of 2005, by which the petitioner's O.A. was dismissed. The petitioner is also aggrieved against the order dated 20.8.2008, by which his application for recalling the order dated 27.1.2005 has been rejected by the Central Administrative Tribunal (CAT), Circuit Bench, Ranchi.

2. The petitioner remained absent from his duty from 30.10.1991 to 7.9.1992, and he did not seek prior permission or post facto permission for granting of the leave for above period. In the Departmental inquiry, the petitioner was ordered to be removed from service vide order dated 19.10.1992. The petitioner challenged the order of removal dated 19.10.1992 by preferring appeal which was dismissed vide order dated 14.4.1998. After delay of about five years, the petitioner preferred and submitted an O.A. before the Central Administrative Tribunal, circuit Bench, at Ranchi being O.A. No. 94 of 2003, which was disposed of on 8.5.2003 with a direction to the respondent to pass an speaking order on the representation of the petitioner within a period of 15 days. After this order of remand, again the petitioner was found to be guilty for remaining absent from the duty for the aforesaid period. However, the punishment of removal from

service was reduced to reversal to the post of Khalasi in the Scale of 2550-3200(RSRO) with Pay Rs. 2551/- with loss of seniority and pay and the petitioner was placed at the bottom of seniority on the date of resumption of duty and earn increment and promotion thereafter, for the intervening period i.e. the period from removal from service to resumption in service is treated as dies non.

3. The petitioner has preferred O.A. No. 1 of 2005 against the said order dated 22.8.2003 passed after the earlier O.A. was dismissed. It is submitted by the counsel for the petitioner the petitioner's O.A. Was dismissed ex parte, and therefore, the petitioner submitted application for review and recalling the order dated 27.1.2005, but that too was dismissed.

4. Learned counsel for the petitioner has submitted that the petitioner was holding the post of Khalasi and he was not understanding the legal complicity, but in any case, his order of removal from service was set aside by the Tribunal in O.A. No. 94 of 2003 vide order dated 8.5.2003, and in that situation, the petitioner was entitled to all the back wages and the service benefit could not have been forfeited so as to deny the seniority etc. It is also submitted that the petitioner gave his explanation for his absent from duty but the respondent prejudicially decided the case of the writ petitioner.

5. We have considered the submission of the counsel for the petitioner and perused the facts of his case as well as the order passed by the Department dated 22.8.2003, whereby the petitioner was again held guilty. However, the punishment has been reduced from removal from service to the reversal to the post of Khalasi and loss of seniority and pay by putting the petitioner at the bottom of the seniority on the date of resumption of duty.

6. It appears that the petitioner remained absent from 30.10.1991 to 7.9.1992 and his only explanation was that he was sick. The petitioner produced three medical certificates of the doctors, where in it has been mentioned that the petitioner was suffering from gas trouble and back pain in all the three certificates. The petitioner was residing three kilometres from the place of his posting.

7. In view of the above, the petitioner was rightly held guilty for remaining absent from duty for the aforesaid period. So far as denial of benefits to the petitioner is concerned, we do not find any reason to interfere at this stage as the petitioner himself challenged the order of punishment and preferred O.A. after delay of about six years, and thereafter again, after the order of second time punishment dated 22.8.2003 preferred the O.A. in the year 2005 i.e. after a delay of two years. Then the petitioner submitted application for reviewing the order dated 27.1.2005 of the Tribunal which was dismissed on 20.8.2008. Then again the petitioner preferred writ petition after a delay of two years. Therefore, the conduct of the petitioner clearly indicates that for the delay the petitioner himself was more responsible, therefore also, the petitioner is not entitled to the

benefits. Accordingly, this petition is dismissed.