
(2002) 03 DEL CK 0114
In the Delhi High Court
Case No : C.W.P. No. 862 of 2001

Patras

APPELLANT

Vs

Chairman, Railway Board and Others

RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:

Constitution of India, 1950 — Article 139(A)

Payment of Wages Act, 1936 — Section 2

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 102, 14, 14(2), 25

Citation : (2002) 03 DEL CK 0114

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Mahesh Srivastava, for the Appellant; Jagjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Whether the petitioner herein is entitled to the benefit of a judgment of the Apex Court despite the fact that his earlier applications were rejected is the short question involved in this writ petition.

2. The petitioner was a railway servant. He was dismissed from service in terms of Rule 14(2) of Railway Servants (Discipline and Appeal) Rules, 1968 (in short, "the Rules") without initiating any disciplinary proceeding. He filed a writ petition in the Allahabad High Court questioning the validity of the said order.

3. However, having regard to the fact that several writ petitions were pending in different High Courts, Union of India made an application under Article 139(A) of the Constitution of India (in short, "the Constitution") for transferring the petitions pending before the Supreme Court, which was allowed.

4. The Apex Court in Union of India and Another Vs. Tulsiram Patel and Others, while upholding the validity of Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules held that even an enquiry as contemplated there under could be

held at the appellate as well as revisional stage.

5. Pursuant to and in furtherance of the observations made by the Apex Court, the petitioner filed an appeal before Divisional Railway Manager, North Eastern Railway, Izzat Nagar, Bareilly. According to the petitioner as no order was passed thereon he filed an application before the Tribunal being O.A. No. 300 of 1987. The said appeal appears to be dismissed by an order dated 18.08.1981.

6. The petitioner thereafter filed a revision petition before the revisional authority purported to be under Rule 25 of the Rules praying therein for quashing the order of removal dated 03.02.1981 as also the order of appellate authority dated 18.08.1981 in the light of the judgments of the Apex Court in Tulsiram Patel (Supra) and Satyavir Singh and Others Vs. Union of India (UOI) and Others, .

7. As allegedly, the said revision petition was not decided, the petitioner again filed an original application before the Central Administrative Tribunal, New Delhi (in short, "the Tribunal"), which was marked as O.A. No. 2361 of 1998. The said original application was dismissed but an order dated 19.01.1994.

8. The petitioner contends that as the counsel for the petitioner did not appear before the Tribunal, the judgment of the apex Court in Union of India (UOI) and Others Vs. R. Reddappa and Another, could not be brought to the notice of the Tribunal.

9. On legal advice, a representation to the Railway Board for consideration and grant of similar relief was made by the petitioner on 19.02.1995. No reply thereto having been received, the petitioner filed another original application before the Tribunal on 31.10.1995, which was marked as O.A. No. 49 of 1996. By reason of the impugned order dated 19.03.1999, the said application has been dismissed. Hence this writ petition.

10. Mr. Mahesh Srivastava, the learned counsel appearing on behalf of the petitioner, would contend that the case of the petitioner is similarly situated to all the employees, who had been employed in Chandigarh.

11. According to the learned counsel having regard to the fact that similar relief having been granted to the employees similarly situated, the petitioner should also be held to be entitled thereto.

12. In this connection, or attention has been drawn to an unreported decision of the Apex Court in A. Devadanam v. Railway Board and Ors., Civil Appeal No. 759 of 1998, wherein it has been held thus:-

"There is no doubt considerable force in the arguments advanced by Mr. Malhotra that these applicants not having assailed the order of dismissal of their Writ petition by Andhra Pradesh High Court should not be entitled to any relief. But on reading the judgment of this Court, we find that the relief which is granted on a finding that the exercise of power to termination was found to be arbitrary and the Court observed that there cannot be any justification for taking the benefit to

the employee concerned. The Court noted that it is satisfied that the participants in the strike were unjustly treated and it went on to observe that the Court is not only competent but has an obligation to act in a manner which may be just and fair. It is this approach of the Court, which Mr. Sachhar invokes in the present case. Having regard to the facts and circumstances in these appeals, we Therefore dispose of these appeals with the direction that the applicants in C.A. Nos. 758, 759 and 761/1998 would be re-instated in service and continue in service till they are superannuated or otherwise terminated in accordance with law. Needless to mention they would not be entitled to any back wages. The applicants in C.A. Nos. 760 and 762/1998, who have already superannuated, question of nay direction for re-instatement would not arise but following the direction of this court in the earlier case, we would also direct that they be paid 3 years salary as compensation and this should be paid within 3 months from today. The applicant in C.A. No. 763/1998 having already died their dependents also would be entitled to receive 3 years salary as was directed by this Court in the case referred to earlier and this should be paid within 3 months from today.

So far as those in whose favor we are issuing direction for re-instatement though they would not be entitled to any back wages but they would be entitled to get the continuity of service for the purposes of calculation their pensionary benefits, if any, If any of these applicants have received the ex-gratia payment made pursuance to the direction of the Board by order dated 18.9.1992 they will refund/adjust the same.

In case of applicants who have already superannuated or who has died, apart from getting compensation as already stated, they would also get the benefit of continuity of service notionally till their superannuation or death as the case may be and if they are entitled to any retiral benefit on that basis, according to the rules, then the same be given.

It is stated by Mr. Malhotra that this order may open a flood gate for several other employees similarly situated. We make it clear that any person who has not approached any Tribunal or any Court as on today will not be entitled to get the benefit of this order.

The appeals are disposed of with the aforesaid directions."

13. Mr. Jagjit Singh, the learned counsel appearing on behalf of the respondent on the other hand, would contend that the original application filed by the petitioner herein was barred under the principles of res judicata.

14. It is beyond any cavil of doubt that the principles of res judicata would apply in a proceeding before the Central Administrative Tribunal. The petitioner's application was dismissed by the Tribunal by a speaking order. The petitioner did not question the said order before the appropriate forum. The said order, Therefore, attained finality.

15. The final order passed by a competent court of law may be right or wrong,

but once it attains finality, the same cannot be reopened. Only because a decision of the Apex Court could not be brought to the notice of the Tribunal, the same by itself, in our opinion, cannot be held to be a ground for giving any further relief to a party.

16. It is trite that when a proceeding has attained finality, an application claiming further relief, is not permissible.

17. In *Rajendra Deva Vs. Hari Fertilizers Sahupuri, Varanasi*, , the Apex Court held thus :-

"7. On a perusal of the order dated 18-1-1996 and the consideration of the matter in the context of the facts and circumstances of the case emerging from the records, we are of the view that the contention raised by Shri Dwivedi has substance. By making the observation in the order that the question of law is left open this Court did not lay down that the petitioner should be given another opportunity to lay further claim under the same head after receiving the amount as directed in the order. In all probability, taking into consideration the fact that the petitioner was a person who had lost service due to closure of the industrial unit and the bonus claimed by him was a small amount of Rs. 3,860/- this Court was not inclined to consider the question of law whether the minimum bonus provided u/s 10 of the Payment of Bonus Act comes within the purview of the definition of the term "wages" u/s 2(vi) of the Payment of Wages Act and directed payment of law open for to the petitioner leaving the question of law open for decision in an appropriate case. The petitioner appears to be under a misconception that under the observations made by this Court another opportunity has been granted to him to file a fresh case for the same purpose."

18. In the aforementioned situation, we are of the opinion that the decision of the Apex Court in *A. Devadanam (supra)* is not attracted in the instant case.

19. It is true that in *A. Devadanam (Supra)*, the Apex Court in view of its earlier decision in *R. Reddappa (Supra)*, granted some relief. Such a relief can be granted by the Apex Court in exercise of its jurisdiction under Article 142 of the Constitution, which power this Court does not possess. Furthermore in *A. Devadanam (Supra)*, an appeal was filed before the Apex Court after a long time whereas in this case, the petitioner intends to re-open a proceeding by filing repeated application although the entire order of the Tribunal attained finality.

20. Furthermore, the Apex Court did not have any occasion to consider the question where the claim has been dismissed by the Tribunal on the ground of its being barred under principles of *res judicata*.

21. While exercising its power to judicial review under Article 226 of the Constitution having regard to the decision of the Apex Court in *L. Chandra Kumar Vs. Union of India and others*, , this Court is concerned only with the question as to whether the judgment of the Tribunal suffers from illegality, irrationality or procedural impropriety.

22. In the aforementioned situation, the only question, which arises for consideration in this writ petition, is as to whether the judgment of the Tribunal can be said to be contrary to law. In our opinion, it is not.

23. Furthermore, the petitioner was dismissed from service from 03.02.1981 and his original application was dismissed not only by the Allahabad High Court on 06.05.1987, but also by the Tribunal on 19.01.1994.

24. The petitioner sent a representation to the Railway Board only on 26.06.1985, which was not maintainable. A new cause of action for approaching the Tribunal did not arise only because the petitioner had chosen to file a representation.

25. In Narayan Singh Solanki Vs. Union of India (UOI) and Others, , the Apex Court held as under :-

"3. Learned counsel for the appellant reiterated the argument urged before the Tribunal. His case is that the case of the appellant is covered by Rule 102 of the Rules. We are not inclined to go into the merits of the matter as we are of the view that the appellant having resigned from the service and accepted his provident fund in the year 1963 and thereafter remained silent for nearly 28 years, and Therefore, demand for change in option in the year 1992 did not deserve to be entertained. In fact the appellant was guilty of laches and, Therefore, not entitled to change his option for pension. On this short question, we dismiss this appeal. There shall be no order as to costs."

26. In Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, , the Apex Court observed as under :-

"We do not think, that, merely by filing repeated or delayed representations, a petitioner can get over the obstacles which delay in approaching the Court creates because equitable rights of others have arisen."

27. For the reasons aforementioned, we are of the opinion that no case has been made out for interference with the impugned judgment.

28. This writ petition is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.