

(2011) 09 MAD CK 0211

In the Madras High Court

Case No : Writ Petition No. 13454 of 2009

P.M. Ramadass

APPELLANT

Vs

The Director General, Railway Protection Force, Railway Board, New Delhi, The Chief Security Commissioner, Railway Protection Force, 6th Floor, Moore Market Complex, Chennai-600 003, The Deputy Chief Security Commissioner, Railway Protection Force, 6th Floor, Moore Market Complex, Chennai-600 003 and The Senior Divisional Security Commissioner, Railway Protection Force, v. Floor, NGO Annexe, Southern Railway, Chennai-600 003

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Citation : (2011) 09 MAD CK 0211

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Balasubramanian for Mr. C. Regurajan, for the Appellant; M. Vellaisamy for Railways, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The Petitioner has filed the present writ petition seeking to challenge an order dated 20.4.2009 passed by the second Respondent and after setting aside the same seeks for a direction to the second Respondent to regularize the period from 14.6.1993 to 1.5.2001 as duty and for consequential monetary benefits arising therefrom.

2. Notice of motion was ordered on the writ petition on 17.7.2009. Subsequently, it was recorded on 19.12.2009 that a counter affidavit dated 16.12.2009 was filed before this Court. When the matter came up on 15.3.2010, the date of final hearing was fixed on 22.03.2010. However, when the matter came up on 24.8.2010, the writ petition was admitted by this Court.

3. By the impugned order dated 20.4.2009, the Petitioner was informed that his period of non employment from 14.6.1993 to 1.5.2001 was regularized in the following manner:

(i) From 14.06.93 to 30.08.93 -78 days LAP

(ii) From 31.08.93 to 01.05.01 -2801 days EOL on LWP.

It is challenging this order, the writ petition came to be filed.

4. The Petitioner who was working as a Head Constable in the Railway Protection Force, was dismissed from service by an order dated 14.6.1993. But without challenging the said order, feigning ignorance about the said order, he filed the writ petition before this Court being W.P. No. 11883 of 1993 and challenged the charge memos, dated 16.10.1992 and 23.2.1993. In the meanwhile, he was served with a dismissal order. He had filed a statutory appeal on 5.4.1999. Therefore, the earlier writ petition came to be disposed of on 24.3.2000 with a direction to dispose of his appeal on merits and in accordance with law. The appellate authority by his order dated 15.6.2000 dismissed the appeal stating that there is no ground for interfering with the punishment awarded. The Petitioner thereafter preferred an appeal to the Director General of Railway Protection Force, New Delhi. The appellate authority by an order dated 17.4.2001 had directed the reinstatement of the Petitioner, but the intervening period from the date of dismissal from service till the date of reinstatement was to be decided by the competent authority as per the relevant rules. It was thereafter, the Petitioner started sending representations for regulating the interregnum period. The appellate authority had also directed the disciplinary authority to pass a separate order on the two separate charge sheets.

5. Subsequently, the Petitioner was imposed with penalty of reduction in scale of pay by two stages for a period of one year with cumulative effect which will also have the effect of postponing his future increment. The period of absence from 17.8.1991 to 10.10.1991 was treated as leave without pay. The operative portion of the speaking order passed by the Divisional Security Commissioner reads as follows:

I am therefore, inclined to agree with the EO. However, in view of the fact that he was referred to GH by RH/ICF for treatment and he was given medicines on 16.8.91 and 27.9.91 by RH/ICF, I am inclined to take a lenient view and impose the penalty of reduction in time scale of pay by two stages in scale 3200 -4900/- i.e Present pay Rs. 3880/- to Rs. 3710/- for a period of one year with cumulative effect which in my opinion shall meet the ends of justice. The period of absence is treated as Leave without pay.

6. The Petitioner further sent a representation and by an order dated 11.10.2002, the order was modified which is as follows:

In terms of CSC/S. Rly. order dt. 5.10.2002 on the appeal of Sri.P.M. Ramadoss, HC/30/BBQ, the penalty of withholding of annual increment from Rs. 3880/- to

Rs. 3965/- in scale Rs. 3200-4900 due on completion of 12 months qualifying service from 02.05.01 for a period of 2 years with non cumulative effect imposed by the undersigned is modified to that of withholding of annual increment for a period of one year with non cumulative effect w.e.f. 02.05.01.

7. Subsequently, the Petitioner sent a further representation. The petitioner was informed that in case if he is aggrieved, he has to file an appeal to the appellate authority. The appellate authority by an order dated 19.5.2004 had modified the penalty, which is as follows:

In terms of CSC 's proceedings dt. 14.5.04 on the revision petition dt. 24.3.04 of Sri P.M. Ramadoss HC/30/BBQ, the penalty of reduction in time scale of pay by one stage (i.e.) from Rs. 3880/- to Rs. 3795/- for a period of one year with cumulative effect w.e.f.7.8.03 imposed by Dy.CSC/S. Rly on his appeal is modified to that of reduction in time scale of pay by one stage for a period of six months (NR) w.e.f. 07.08.03.

8. Subsequently, an appeal was also rejected as time barred. Lastly, the penalty regarding reduction in time scale of pay was set aside by the Senior Divisional Security Commissioner on 18.10.2004. Subsequently, with reference to the question of regularization, the following order was passed by the Chief Security Commissioner:

I have gone through the representation and connected records. The rules provide to treat only the suspension period as duty, where the departmental proceedings against a suspended employee for the imposition of major penalty end with the imposition of minor penalty. A careful study of the above DAR case files reveal that the Petitioner was never placed under suspension and he was not in service from 17.6.93 to 6.5.01. Hence, as claimed by him, treating the period of suspension as duty does not arise in this case. The circular and the case referred by him relates to the employees who were under suspension and have no relevance to this case. He has not been clearly and completely exonerated from all the charges. I do not find any violation of Rules by the DA in deciding the intervening period. Hence, the order of the Disciplinary Authority dt. 17.2.04 is upheld.

9. The Petitioner made a further representation to the Director General, RPF for treating the period from 14.6.1993 to 1.5.2001 as duty. The Director General had passed the following order, dated 25.09.2007 which reads as follows:

I have considered the request made by the delinquent for treating his intervening period of dismissal from service to his reinstatement in service i.e. from 14.06.93 to 01.05.2001 as on duty. It does not appear to be fair and lawful. However, his period be regularized as leave of any kind due / EOL in accordance with the provisions contained in Para 1343(FR-54) of IREC - Vol.II.

(Emphasis added)

10. It is pursuant to the direction, the period was treated as noted above. The

contention of the Petitioner was that since he had already suffered minor penalty, which was also modified, the question of treating them as leave will not arise. Reliance was placed upon the recommendation of the JCM, wherein it was agreed that period of suspension has to be treated as duty if only minor penalty is imposed after conclusion of the disciplinary proceedings. The circular of the department of Personnel and Training, dated 3.12.1985 was also produced.

11. Mr.S. Balasubramanian, Learned Counsel leading Mr. C. Regurajan contended that the Petitioner has been unfairly treated and he should be given the benefit.

12. In the counter affidavit filed by the Respondent, it was contended that it was a case of unauthorized absence by the Petitioner and he was never kept under suspension. The appellate authority had only modified the penalty on technical ground and not on exoneration of charges. Under FR 54 which is equivalent to paragraph 1343 of the Indian Railways Establishment Manual Volume II, the power of the competent authority is absolute and no higher sanction shall be necessary for the grant of extraordinary leave of any kind in excess of five years in case of permanent railway servant. Under FR 54, where the authority competent to order reinstatement is of opinion that the railway servant who had been dismissed has been fully exonerated, the railway servant will be subject to the provisions of Sub-rule 6, be paid full pay and allowances to which he would have been entitled had he not been dismissed or suspended prior to such dismissal. It is also stated that the impugned order passed was in line with the FR adopted by the railways. The Petitioner's unauthorized absence was not found to be justified or legally valid by any authority.

13. In this context, it is necessary to refer to a recent judgment of the Supreme Court in *The Greater Hyderabad Municipal Corporation v. M. Prabhakar Rao* reported in AIR 2011 SCW 4498. The Supreme Court while analyzing the Sub-rule 3 of FR 54B, in paragraph 9 had observed as follows:

9. The rationale, on which Sub-rule (3) of F.R.54-B is based, is that during the period of suspension an employee does not work and, therefore, he is not entitled to any pay unless after the termination of the disciplinary proceedings or the criminal proceedings the competent authority is of the opinion that the suspension of the employee was wholly unjustified. This rationale has been explained in clear and lucid language by a three-Judge Bench of this Court in *Union of India Vs. K.V. Jankiraman, etc. etc.*, . At page 121 in Para 26, P.B. Sawant, J. writing the judgment for the Court in the aforesaid case further observed:

26.....However there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all

deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests.....

14. On the basis of relevant rule, when the competent authority had given an opinion, it does not call for any interference. In paragraph 11 in the very same judgment, the Supreme Court had observed as follows:

11...The approach of the Tribunal, in our considered opinion, was not correct. Sub rule (3) of F.R.54-B does not state that in case of acquittal in a criminal proceedings the employee is entitled to his salary and allowances for the period of suspension. Sub-rule (3) of F.R.54-B also does not state that in such case of acquittal the employee would be entitled to his salary and allowances for the period of suspension unless the charge of misconduct against him is proved in the disciplinary proceedings. Sub rule (3) of F.R.54-B vests power in the competent authority to order that the employee will be paid the full pay and allowances for the period of suspension if he is of the opinion that the suspension of the employee was wholly unjustified. Hence even where the employee is acquitted of the charges in the criminal trial for lack of evidence or otherwise, it is for the competent authority to form its opinion whether the suspension of the employee was wholly unjustified and so long as such opinion of the competent authority was a possible view in the facts and circumstances of the case and on the materials before him, such opinion of the competent authority would not be interfered by the Tribunal or the Court.

15. In the present case Rule 54 was adopted in the Railway Establishment Manual, the same language is used with reference to satisfaction of the competent authority. Further the additional reason was that in the present case, the Petitioner was not even kept under suspension and he had remained absence for a considerable period. It is only the appellate authority which had modified the penalty and he was restored to service. The penalty itself was removed by his successful appeals. But yet the fact remains that during the relevant period, the Petitioner had never worked.

16. Under these circumstances, the writ petition is liable to be dismissed. Accordingly, the writ petition will stand dismissed. No costs.