

(2013) 09 RAJ CK 0061
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3951 of 2002

Rajendra Kumar Pareek

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 09 RAJ CK 0061

Hon'ble Judges : Narendra Kumar Jain, J;Arun Bhansali, J

Bench : Division Bench

Advocate : J.K. Kaushik, for the Appellant; Kamal Dave, for the Respondent

Final Decision : Disposed Off

Judgement

1. Briefly stated the facts of the case are that a charge-sheet dated 1.2.1985 was served upon the petitioner by the respondents for major penalty as petitioner remained wilfully absent from duty from 8.2.1983 to 5.4.1985. After completion of enquiry, the disciplinary authority passed an order for removal of the petitioner from service. Learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur vide its order dated 27.6.2000 in Original Application No. 330/1986, allowed the Original Application of the petitioner in part. The impugned removal order dated 18.6.1986 was modified to the extent that the penalty of removal from service was substituted by stoppage of three grade increments without cumulative effect. Para No. 24 of the order of Tribunal dated 27.4.2000 is reproduced as under:--

24. The O.A. is, therefore, partly accepted. The impugned removal order dated 18.6.86, Annex.A/7, is modified to the extent that the penalty of removal from service is substituted by stoppage of three grade increments without cumulative effect. This penalty would, however, not have any effect of postponing future increments. Consequently, the appellate order dated 31.10.86, Annex.A/8 stands set aside. The respondents are directed to reinstate the applicant in service on the pay in the grade and on the post, he was working on the date of removal or

its equivalent, within a period of three months from today but in the circumstances, without any back wages. The period of absence from 8.2.83 to 11.4.85 and from the date of removal till reinstatement, shall be regulated as per rules by grant of leave due and admissible to the applicant and if no leave is due then the period shall be treated as leave without pay.

2. Being aggrieved with the aforesaid order, the petitioner has preferred this writ petition, which was admitted way back on 20.11.2002.

3. The only submission made by Mr. J.K. Kaushik, learned counsel appearing on behalf of the petitioner is that despite direction by the Tribunal to regularise the absence period of petitioner from 8.2.1983 to 11.4.1985 and from the date of removal till reinstatement, the respondents are not counting the said period for the purpose of qualifying service, as required for granting pension and pensionary benefits, therefore, necessary direction be issued to the respondents to make it clear that the said period which has been ordered to be regularised by the Tribunal, has to be and should be counted for pension and pensionary benefits.

4. Learned counsel for the respondents supported the impugned order passed by the Tribunal and submitted that since there was no arrear of leave to the petitioner, it could not be counted, therefore, he is not entitled for the said relief.

5. We have considered the submissions of the learned counsel for the parties.

6. From the order of Tribunal, the operative portion of which has been reproduced above, it is clear that the order of removal of petitioner from service was set aside and he was directed to be reinstated in service without any back wages.

7. So far as period of absence is concerned, it was specifically directed that the same shall be regulated as per rules by grant of leave due and admissible to the applicant and if no leave is due then the period shall be treated as leave without pay.

8. It is relevant to mention that the impugned order passed by the Tribunal dated 27.6.2000 was also challenged by the respondents before this Court in D.B.C.W.P. No. 715/2001 (Union of India & Ors. vs. Rajendra Kumar Pareek & Another). The said writ petition was dismissed by this Court on 22.2.2001. The operative portion of the order of this Court dated 22.2.2001, is reproduced as under:--

Under the aforesaid circumstances if the Tribunal has thought it fit to exercise its original jurisdiction in favour of the applicant and substituted the penalty then certainly this court would not interfere with such discretionary power in its supervisory jurisdiction under Article 227 of the Constitution of India as held by the Hon"ble Supreme Court in case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, the High Court should not exercise its supervisory jurisdiction against the order passed by the subordinate courts or the Tribunal even if there is an error

committed on the fact or law. In fact in the instant case the learned Tribunal has neither committed any mistake on law or fact which calls for interference by this court in its supervisory jurisdiction under Article 227 of the Constitution of India.

In view of the above discussion, this petition fails and dismissed.

9. From the impugned order of Tribunal, it is clear, beyond any reasonable doubt, that the petitioner was ordered to be reinstated without back wages and a specific direction was given to regularise his absence period by grant of leave due and admissible to the applicant and if no leave is due, then the period shall be treated as leave without pay. The order of Tribunal has attained finality. The writ petition filed by Union of India & Ors., registered as DBCWP No. 715/2001 has also been dismissed by this Court way back in the year 2001. When the absence period has been ordered to be regularised by grant of leave due and admissible to the applicant and if no leave was due then to treat the period as leave without pay, then there is no reason for not treating the said period as in continuation of service. The said absence period is, therefore, to be counted for calculating the qualifying service, so as to make the petitioner eligible for grant of pension and other pensionary benefits. Since there is already a direction by the Central Administrative Tribunal, therefore, there is no need to give any further direction in this regard by this Court. No other point has been pressed by learned counsel. With the aforesaid clarification, the writ petition stands disposed of.