

(1996) 09 SC CK 0057

In the Supreme Court Of India

Case No : Civil Appeal No's. 13115-13116 of 1996

Sub-Divisional Inspector (Postal) and Others

APPELLANT

Vs

K.K. Pavitharan

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Citation : (1996) 9 AD 177 : (1996) 7 SCALE 726 : (1996) 11 SCC 695 : (1997) SCC(L&S) 501 : (1996) 7 SCR 95 Supp

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : A.S. Nambiar, T.C. Sharma and C.V.S. Rao, for the Appellant; K.M.K. Nair, for the Respondent

Final Decision : Allowed

Judgement

1. Delay condoned.
2. Leave granted.
3. Heard learned Counsel on both sides.
4. The respondent while in service as Extra-Departmental Agent was charge-sheeted, for misconduct of temporary absence from duty, under Rule 8 of the P & T Extra Departmental Agents (Conduct and Services) Rules, 1964 on June 6, 1985. By order dated March 31, 1986, the enquiry was cancelled and fresh enquiry was conducted. Later, on conclusion of the departmental enquiry proceedings, by order dated July 9, 1990, the respondent was removed from service. He filed an application in the Tribunal. By order dated May 28, 1992, the Tribunal remitted the matter for reconsideration on the nature of punishment. That order was unsuccessfully challenged in this Court and had become final. Subsequently, when the order of removal was passed again, it was challenged in the Tribunal. The Tribunal by order dated September 4, 1993 quashed the proceedings and directed reconsideration of the quantum of punishment on the basis of amended rules. Again, it was challenged in the SLP before this Court

which was dismissed. Consequently, the respondent was reinstated. He again filed an application. In the impugned order dated December 5, 1995 made in O.A. No. 787/94, the Tribunal has directed payment of back-wages. Thus, these appeals by special leave.

5. This Court in *Raj. State Road Corporation v. Bhagyomal and Ors.*, 1994 Suppl (1) SCC 573 held that while the High Court had found that the respondent-employee deserved punishment on account of his misconduct, and awarded lesser punishment, it is not liable to grant back-wages particularly when the Tribunal had converted the order of dismissal into stoppage of two increments with cumulative effect. Therefore, the order of the High Court was set aside to that effect. It is now settled law that imposition of punishment is in the discretion of the disciplinary authority. But the authority is expected to exercise the discretion properly taking into consideration all the relevant facts and circumstances. In this case, the punishment of removal was found to be not justified for the reason that the respondent was temporarily absent from duty. But the order of dismissal having been converted into one of reinstatement with lesser punishment, the question arises whether the respondent is entitled to back-wages? The Tribunal was not right in directing payment of back-wages for the reason that the respondent was found to be responsible for misconduct though lesser punishment was imposed. Under these circumstances and following the above judgment, we hold that the respondent is not entitled to back-wages.

6. The appeals are accordingly allowed. No costs