
(2004) 04 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 33475 of 2000

The Deputy Chief Engineer and Others	APPELLANT
Vs	
R.S. Ramanath	RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 9

Citation : (2004) 102 FLR 908 : (2004) ILR (Kar) 2540 : (2004) 5 KarLJ 275 : (2004) 3 KCCR 227 SN : (2005) 3 SLJ 318

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : N.S. Prasad, ACGSC, for the Appellant; Vagdevi Associates, for the Respondent

Final Decision : Allowed

Judgement

Srinivasa Reddy, J.—The respondent, an official of the railways, filed application before the Tribunal seeking for the relief of quashing the enquiry instituted against him and the charge sheet dated 22.9.1994. The Tribunal by its order dated 13.7.2000 allowed the application and quashed the disciplinary proceedings deeming it as abandoned. The petitioners being aggrieved by the said order have preferred this petition questioning the legality and correctness of the impugned order.

2. We have heard Sri N.S. Prasad, ACGSC for the petitioners and M/s. Vagdevi Associates for the respondent.

3. The Tribunal was of the view that there has been inordinate delay in giving a finality to the departmental enquiry and as this delay is entirely on account of the lax approach by the department, the respondent is entitled to the relief claimed by him.

4. Mr. Prasad, learned Addl. CGSC, cited for our consideration Rule 9 of the Railway Services (Pension) Rules and submitted that the delay is not prejudicial

to the respondent as even if the enquiry proceedings are to be quashed the petitioner would still not be able to derive his pensionary benefits because of the pendency of the criminal case filed by the CBI. The Tribunal has failed to take note of this important aspect. He submitted that the delay is not intentional and the delay that has occurred is only on account of the fact that the ultimate order of punishment has to be imposed on the respondent by the President of India and that takes time. He submits that the impugned order passed by the Tribunal completely overlooks the fact that quashing of the enquiry proceedings could in no way hasten the disbursement of the service benefits and the pension because of the pendency of the criminal case against the respondent and, therefore, there was no justification for the Tribunal, either in law or on the principles of natural justice, to have quashed the enquiry proceedings.

5. The learned Counsel for respondent, however, defended the impugned order and submitted that the inordinate delay in finalising the enquiry proceedings fully justifies the passing of the impugned order and the same does not require any interference by this Court in exercise of the powers conferred under Article 226 of the Constitution.

6. Rule 9 of the Railway Services (Pension) Rules, 1993 caters to a situation where the departmental proceedings is instituted when the servant was in service and was continued after his final retirement. The relevant Rule reads:

"9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, If, in any departmental or Judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

.....

(2) The departmental proceedings referred to in Sub-rule (1)-

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

(b)

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial

proceedings are instituted or where departmental proceedings are continued under Sub-rule (2), a provisional pension as provided in Rule 96 shall be sanctioned.

....."

7. The respondent though raised a plea in his application before the Tribunal for sanction of pension had later on given it up and limited his claim only to the quashing of the inquiry and the charge-sheet treating the inquiry proceedings as deemed to have been abandoned. As we are not dealing with the grant of pension, the case of the respondent need not be examined with reference to Sub-rule 3 of Rule 9. Clause (a) of Sub-rule (2) stipulates that a departmental proceedings instituted before retirement shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

8. Therefore, the question that arises for our consideration in this petition is, whether in the light of the aforesaid Rule, the impugned order quashing the enquiry proceedings and the charge-sheet could be sustained.

9. Having given our anxious consideration to the facts and circumstances of the case we are of the considered opinion that the Tribunal has erred in law in quashing the charge-sheet and the enquiry proceedings. There can be no set principles in such matters as each case is different from another and therefore, the conclusion reached by the Tribunal by placing reliance on rulings of the Apex Court in similar cases is not, in our opinion, appropriate. Each case turns on its own facts, it is impermissible in law to hold that a principle laid down in a particular case will hold good in all cases of myriad facts and circumstances. It is a basic principle of administrative law that, an officer entrusted with a particular job and for which he is paid, has to perform his duties efficiently and according to the rules. The petitioners having found that the respondent has deviated from that path; have instituted the proceedings which is also concluded holding the respondent guilty of the charge. What remains still to be done is the imposition of the punishment by the President of India in whom the right is reserved under Rule 9 of the said Rules. It is at this stage that the respondent moved the application before the Tribunal. The Tribunal on noticing that the enquiry was concluded should have refrained from quashing the proceedings and the charge-sheet when the charge itself had been held proved. It would have been a different matter altogether if the enquiry proceedings were pending before the enquiry officer. The idea of quashing proceedings when it had concluded cannot be appreciated in service matters. Departmental enquiries have different stages. A concluded departmental enquiry can be interfered with only on grounds of mala fides, procedural irregularities and for want of sufficient opportunity to defend oneself. When none of these grounds were taken or urged before the Tribunal, the Tribunal erred in law in quashing the proceedings in toto. The impugned order is illegal and therefore liable to be set aside.

10. But before we part with this petition, it will not be out of place for us to direct the petitioners to disburse the respondent a provisional pension in accordance with Sub-rule (3) of Rule 9 of the Rules. Though such a prayer was made by the respondent before the Tribunal he chose to give it up and pressed only the relief of quashing of the enquiry proceedings. We have had the benefit of examining Rule 9 thoroughly and we find that there could be no justification for the petitioners to put on hold the disbursement of provisional pension because Sub-rule (3) of Rule 9 leaves no scope for any discretion on the part of the petitioners in the matter of extending this benefit to him. The interest of Justice demands that they give effect to Sub-rule (3) of Rule 9 both in letter and spirit.

11. In the result, we allow this Writ Petition and set aside the impugned order. The petitioners are directed to hasten the completion of the formalities and ensure that a decision is taken at the earliest in terms of Rule 9 of the Rules.