
(2013) 05 AHC CK 0163

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28291 of 2013

Union of India and Others

APPELLANT

Vs

Chakradhar Mani Tripathi

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 24 : (2013) 99 ALR 596 : (2013) 6 AWC 5542 : (2013) 3 UPLBEC 1992

Hon'ble Judges : Vineet Saran, J;B. Amit Sthalekar, J

Bench : Division Bench

Advocate : A.K. Gaur, for the Appellant;

Final Decision : Dismissed

Judgement

1. This is a writ petition by the North Eastern Railway Administration challenging the order of the Central Administrative Tribunal dated 30.11.2012 passed in Original Application No. 216 of 2011. Briefly stated the facts of the case are that the respondent on the fateful day on 14.8.2004 was functioning as a Booking Clerk in the Kaptanganj Railway Station. Certain Vigilance Authorities approached him disclosed their identity and alleged that he had demanded and accepted extra money through one Sri Ram Dawan, Khalasi, working in that Railway Station from one Sri Cholai, who was a Vigilance Khalasi deployed as a decoy customer on verification of the cash position an amount of Rs. 254/- was found in excess. The respondent tried to explain the difference by stating that the said amount was the sale proceeds of sale of 37 tickets for Bagha Railway Station and this fact is also reflected in the Daily Transaction Cash book. The case further was that the decoy Vigilance Customer, Sri Cholai had approached Ram Dawan, Khalasi and inquired about the tariff for booking a motorcycle and he was informed that the actual tariff was Rs. 150/- but extra amount was demanded by Ram Dawan which was paid by Cholai to Ram Dawan. Ram Dawan then is supposed to have given the said Rs. 150/- to the respondent for which the respondent had also issued necessary receipt. This payment was in 50 Rs. notes

which was marked currency and which was recovered from the respondent.

2. The departmental enquiry was held against the respondent and on the basis of the report of the Enquiry Officer an order of compulsory retirement dated 20.6.2006 was passed against the respondent. The respondent preferred an appeal which was rejected by the order dated 9.4.2007. Against the appellate order the respondent has also preferred a revision as provided under the Railway Servant (Discipline and Appeal) Rules, 1968. Aggrieved, the respondent filed an Original Application No. 1330 of 2010 which was disposed of by the Tribunal with a direction to the Revisional Authority to dispose of the pending revision of the respondent. When the revision petition was dismissed the respondent filed the Original Application No. 216 of 2011 seeking quashing of the order of compulsory retirement dated 20.6.2006 and the appellate order 9.4.2007 with a further prayer for a direction to the respondent to reinstate him in service on the post of Booking Clerk with entire arrears of salary, seniority etc. and other consequential benefits.

3. The grounds inter alia for sustaining the Original Application were that while conducting the vigilance raid the provisions of paragraphs 704 and 705 of the Vigilance Manual had not been observed and there were no independent witnesses; the Enquiry Officer belonged to the Vigilance Department and therefore, the enquiry was vitiated and was stained by the element of bias and could not be said to be fair and impartial; that there was no direct evidence showing the involvement of the respondent in the charging of extra money by Ram Dawan from Sri Cholai the decoy vigilance customer.

4. We have heard Sri A.K. Gaur, learned counsel for the petitioner-railway administration and Sri Sanjay Kumar Om, learned counsel for the respondent.

5. In the Tribunal affidavits were exchanged and after hearing the counsel for the parties, the Tribunal held that earlier an Enquiry Officer one Sri A.K. Chatterji had been appointed and he had closed the enquiry in favour of the applicant (respondent herein). Averments to this effect were made in para 20 of the Original Application to which the reply of the Railway Administration in their counter reply was that "the contents of para 20 of the Original Application being matter of record, call for no comments." The Tribunal, therefore, held that in such a situation the second Enquiry Officer could not have been appointed as the Railway Servant (Discipline and Appeal) Rules, 1968 only contemplated remitting the matter for further enquiry in special cases but did not mean appointing a fresh Enquiry Officer and obtaining a second enquiry report proving the charge against the respondent.

6. The second ground on which the Tribunal allowed the Original Application was that the Enquiry Officer belonged to the Vigilance Department and therefore, as held by the Supreme Court in the case in Union of India (UOI) and Others Vs. Prakash Kumar Tandon, , such enquiry held by the Vigilance Department could not be said to be fair to the delinquent officer.

7. The third ground which weighed with the Tribunal for setting aside the order of compulsory retirement and the appellate order was that the provisions of paras 704 and 705 of the Vigilance Manual had not been kept in mind while conducting the vigilance raid as there was no independent witness. Reliance was placed upon the decision of the Supreme Court reported in the case of *Moni Shankar Vs. Union of India (UOI) and Another*, . Further inspite of the above findings the Tribunal held that the appellate order was dated 9.4.2007 and the respondent could have approached the Tribunal immediately but instead he preferred a revision petition and only the revision petition was not finalized that he filed the Original Application No. 130 of 2010 which was disposed of by the Tribunal with a direction to the Revisional Authority to decide the revision petition. It is only after the revision petition was dismissed that the respondent filed the Original Application No. 216 of 2011, therefore, the Tribunal while setting aside the order of compulsory retirement, the appellate order and the revisional order has directed that the intervening period i.e. from the date of compulsory retirement till the date of reinstatement shall be treated as duty for all purposes but because the respondent had approached the Tribunal only after the rejection of his revision petition therefore, the amount paid to him by way of pension on account of his compulsory retirement during the intervening period, shall be treated as back wages but the respondent will not be entitled to any further amount towards pay and allowances. A further direction was given to the respondent to remit the amount of other terminal benefits received by him at the time of compulsory retirement to the railway administration in easy installments.

8. The only submission made by Sri A.K. Gaur, learned counsel for the petitioners while assailing the impugned order of the Tribunal is that since the Tribunal had set aside the order of compulsory retirement and the other orders on technical grounds, therefore, no direction could have been given for treating the amount paid by way of pension as back wages, on the compulsory retirement of the respondent.

9. The submission of the learned counsel for the petitioner is absolutely fallacious and misconceived and contrary to law. Admittedly the railway administration had passed an order of compulsory retirement on 20.6.2006 compulsorily retiring the respondent. The respondent was also being paid pension. The petitioner-railway administration had no objection to the payment of pension and. even otherwise in law no such objection could have been taken by the railway administration since the payment of pension was consequential to the order of compulsory retirement. The grievance now being raised is only to the effect that the amount which has been paid towards pension has been converted into back wages by the Tribunal after setting aside the order of compulsory retirement and the enquiry proceeding on technical grounds. The railway administration cannot be permitted to equivocate with regard to the amount paid as pension on account of compulsory retirement of the respondent merely because the same has now been termed as back wages.

10. Even otherwise this Court will have to balance law with equity and in the present case both law and equity are in favour of the respondent. The full Bench of the Supreme Court in the case in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , has in para 31 of the judgment held that when the departmental proceedings are set aside on technical grounds the employee is entitled for reinstatement. Para 31 of the said judgment reads as follows:

31. Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment. Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.

11. The Supreme Court in the case in *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, , in paragraph 26 of the judgment has in fact set aside the judgment of the Single Judge as affirmed by the Division Bench and has directed

that the enquiry be completed within a period of four months starting from the stage of service of show-cause notice and consideration of reply if any filed by the delinquent employee and has also directed that the employee shall be reinstated in service but without back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings and his entitlements, if any, shall be adjudicated by the authority depending upon the result of the disciplinary proceedings. The relevant paragraph 26 of the said judgment reads as under:

26. In view of above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months the enquiry shall be completed by starting from the stage of service of show-cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. The respondent No. 1 shall be re-instated to service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings.

Even when a direct question was put to Sri Gaur as to how the respondent could be expected to survive if he was to be denied the emoluments paid to him by way of pension treating it to be back wages when the railway administration had not even placed him under suspension which would have entitled him to receive subsistence allowance at least, Sri Gaur had no answer. Thus, on a conspectus of facts of the case and law laid down by the Constitution Bench of the Supreme Court in B. Karunakar (Supra) which has also been subsequently followed by the Supreme Court in R.S. Pandey (Supra), we find no merit in the writ petition and the same is accordingly dismissed.