

(2011) 10 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54316 of 2011

Union of India and Others

APPELLANT

Vs

Kailash Chandra Beherwal and Another

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 6, 9, 9(2)
Constitution of India, 1950 — Article 226

Citation : (2011) 10 ADJ 652

Hon'ble Judges : Vineet Saran, J; Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This case has a chequered history. Briefly the facts are that the respondent No. 1 (Kailash Chandra Beherwal) was a Labour Enforcement Officer. A charge-sheet was issued to the respondent No. 1 on 1.12.1980 and consequently he was dismissed from service on 8.10.1982. Challenging the same, the respondent No. 1 filed an appeal, which was dismissed by the competent authority on 6.7.1984. Aggrieved by the said order, the respondent No. 1 preferred writ petition No. 5244 of 1985, which was transferred to the Central Administrative Tribunal and registered as Transfer Application No. 998 of 1986. By order dated 15.12.1987, the Tribunal allowed the Transfer Application and set aside the dismissal order of the respondent No. 1 dated 8.10.1982 leaving it open to the petitioners to hold departmental proceedings in accordance with law. Pursuant thereto on 4.1.1988 the respondent No. 1 was allowed to join his services.

2. Then started the second innings and within a few weeks of his reinstatement on 28.1.1988 the respondent No. 1 was placed under suspension with effect from 8.10.1982. Challenging the said order of suspension, the respondent No. 1 preferred an Original Application No. 206 of 1988 before the Tribunal, which was dismissed on 12.5.1988. Aggrieved by the same, the respondent No. 1 preferred a SLP No. 8876 of 1988 before the Apex Court. By order dated 1.2.1989,

Hon"ble Supreme Court allowed the petition filed by the respondent No. 1.

3. The matter did not rest at peace and third round began and on 7.4.1989, which was barely three weeks before the retirement of the respondent No. 1 (which was on 30.4.1989), he was again dismissed from service. Challenging the said order, the respondent No. 1 filed Original Application No. 278 of 1991 before the Tribunal. The said Original Application No. 278 of 1991 was allowed by the Tribunal by detailed reasoned order dated 18.10.1996. The operative portions contained in paragraphs 18 and 19 of the said order are quoted below:

18. In view of the foregoing, the impugned order dated 7.4.1988 by which the penalty of dismissal from service was imposed on the applicant is quashed. We see no need to specifically quash the appellate order, which was passed during the pendency of this application since in any case it is a non-est, we have noted that the applicant was due to retire within a very short time from the date of his dismissal from service. In these circumstances, we give the following directions:

(1) The applicant shall be deemed to have continued in service till the date of his superannuation as if he was never dismissed from service.

(2) He shall be paid pay and allowance for the period from the date of the aforesaid dismissal till the date of his retirement within a period of 3 months from the date of communication of this order.

(3) He shall be entitled to all terminal benefits, which is available to an employee, who retires from service on superannuation.

(4) He shall be paid arrears of pension within a period of three months from the date of communication of this order.

19. Keeping, however, in view the seriousness of charges levelled against the applicant, we grant liberty to the respondents to proceed de-novo against the applicant from the stage of enquiry with a view to taking action against him, if so warranted in terms of Rule 9 of CCS (Pension) rules. For the purposes of the said rule, the de-novo proceeding shall be deemed to be in continuance of the proceeding initiated against the applicant while he was in service, in terms of the provision contained in sub-rule 2(a) of Rule 9 *ibid*.

4. A perusal of the said directions would make it clear that the respondent No. 1 was entitled to all consequential benefits as if he was never dismissed from service and all such benefits were to be given to the respondent No. 1 within three months. Such order of the Tribunal dated 18.10.96 was neither challenged nor complied with, even though the respondent No. 1 had moved a representation before the petitioners on 3.3.1997.

5. When no action was taken by the petitioners, the respondent No. 1 was compelled to file another Original Application No. 520 of 1998 before the Tribunal, which was the beginning of the fourth innings. The said Original Application was disposed of on 26.4.2011 with the direction to the petitioners to

consider the representation of the respondent No. 1 dated 3.3.1997 within two months. This petition is silent with regard to the compliance of the order dated 26.4.2011, that is to say whether the representation of the respondent No. 1 dated 3.3.1997 has been decided or not but what is mentioned in the petition is that the subsequent representation of the respondent No. 1 to drop the disciplinary proceedings against him was rejected on 27.8.2001.

6. After the passing of the order dated 18.10.1996 by the Tribunal in Original Application No. 278 of 1991 whereby detailed directions have been given in favour of the respondent No. 1 (and also observation made giving liberty to the petitioners to proceed de-novo against the respondent No. 1 from the stage of enquiry with a view to taking action against him, if so warranted) the petitioners herein have not stated in the writ petition that the compliance of the directions given in paragraph 18 of the judgment of the Tribunal has been made. It is also noteworthy that after the passing of the order on 18.10.1996 no further enquiry or disciplinary proceedings were initiated against the respondent No. 1 for five years until the respondent No. 1 filed a representation and thereafter filed an Original Application, which was decided on 26.4.2001. No explanation of any kind has been given in the petition as to why disciplinary proceedings were re-initiated after more than five years and also why the directions for the benefits to be given to the respondent No. 1 were not complied with by the petitioners.

7. On the re-initiation of enquiry, the respondent No. 1 was compelled to file yet another Original Application No. 255 of 2007 with the prayer for setting aside the orders by which fresh enquiry and disciplinary proceedings had been initiated and also for a direction commanding the respondents to grant notional promotion pursuant to the order dated 18.10.1996 passed by the Tribunal in Original Application No. 278 of 1991 and to grant him all consequential benefits attached therewith. This was the fifth and final round of litigation for which the respondent No. 1 appears to have been forced into. By a detailed and reasoned order dated 6.1.2011, the Original Application No. 255 of 2007 filed by the respondent No. 1 has been allowed by the Tribunal, which is impugned in this petition.

8. We have heard Sri. R.B. Singhal, learned Assistant Solicitor General of India alongwith Sri Ashok Singh, learned Additional Standing Counsel appearing for the petitioners as well as Sri T.S. Pandey, learned counsel appearing for the sole respondent and have perused the record.

9. The submission of Sri R.B. Singhal, learned Assistant Solicitor General of India is that by the impugned order, the Tribunal could not quash the enquiry proceedings for which liberty had been granted by the Tribunal vide its order dated 18.10.1996 passed in Original Application No. 278 of 1991. It is also submitted by Sri Singhal that the Tribunal has wrongly held that under Rule 9 (2) (a) of CCS (Pension) Rules, the sanction of the President was necessary. In support of his submission, he has placed reliance on sub-rule 6 of Rule 9 whereby it is provided that the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is served to the

Government Servant or pensioner. In the submission of the learned counsel for the petitioners, the charge-sheet was submitted to the respondent No. 1 on 1.12.1980 while the respondent No. 1 was in service and enquiry proceeded against him.

10. We have perused the records. The facts of this case are that the charges against the respondent No. 1 relate back to the year 1977-78 for which a charge-sheet was served on the respondent No. 1 in the year 1980 and thereafter proceedings have been dragging on for more than three decades and have continued for more than two decades after the retirement of the respondent No. 1. It is noticeable that specific directions were given by the CAT to the petitioners to extend the benefit to the respondent No. 1 as back as on 18.10.1996 which were to be complied within three months but the petitioners did not take any steps.

11. It is an unfortunate case where the respondent No. 1 has been fighting for his rights before the Tribunal, the High Court as well as the Supreme Court and has got relief from all Courts but in fact has not got any material benefit of the directions given by the Tribunal time and again as these directions were not implemented. We find that the dismissal of the respondent No. 1 was set aside by the Tribunal in the year 1987 and though immediately within three weeks of the passing of the said order the respondent No. 1 was permitted to join the service but within a month thereafter he was again placed under suspension with effect from the date of the initial dismissal order, which had already been set aside by the Tribunal. Then the suspension of the respondent No. 1 was set aside by the Apex Court in the year 1989. Then the respondent No. 1 was again dismissed from service barely three weeks before his retirement. The dismissal of the respondent No. 1 was set aside by the Tribunal by a detailed and reasoned order dated 18.10.1996 and the said order was not challenged by the petitioners and thus the same had become final between the parties. The directions contained in the said order of the Tribunal have not yet been complied with. The respondent No. 1 has not yet been given the benefits of his salary, pension and other terminal benefits available to an employee who retires from service, though the same were all to be given within three months of the passing of the order dated 18.10.1996.

12. In the aforesaid circumstances, the impugned order dated 6.1.2011 whereby a specific direction has been given to the petitioners to promote the respondent No. 1 notionally from the date when his juniors were promoted and comply with the judgment and order of the Tribunal dated 18.10.1996 delivered in O.A. No. 278 of 1991 in letter and spirit within three months from the date of receipt of a copy of the order, does not require any interference under Article 226 of the Constitution of India.

13. In the aforesaid facts, we are of the view that this writ petition deserves to be dismissed with exemplary cost as the respondent No. 1 has been fighting from pillar to post and approaching the authorities, Tribunal and Courts for

enforcement of his rights, which the petitioners have denied him for over three decades and more than twenty two years after his retirement.

14. However, since Sri R.B. Singhal, learned Assistant Solicitor General of India has, on instructions received from Hemant Singh, Assistant Labour Commissioner (Central), informed the Court that the petitioners have already filed an application before the Tribunal in the pending contempt petition that the petitioners would comply with the directions given in the order dated 6.1.2011 within three months, we do not propose to impose any cost.

15. This writ petition is thus dismissed without imposing any cost.