

The General Manager vs R.Harindrakumar

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Court : Kerala

Decided On : Sep-30-2022

Judge : Honourable Dr. Justice a.K.Jayasankaran Nambiar,Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : OP (CAT)/14/2022

Appellant : The General Manager

Respondent : R.Harindrakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944 OP (CAT) NO. 14 OF 2022 AGAINST THE ORDER IN OA 885/2018 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH PETITIONERS/RESPONDENTS: 1 THE GENERAL MANAGER SOUTHERN RAILWAY, PARK TOWN, CHENNAI 600 003 2 THE CHIEF PERSONNEL OFFICER SOUTHERN RAILWAY, PARK TOWN, CHENNAI 600 003 3 THE SENIOR DIVISIONAL FINANCE MANAGER SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT 678 002 4

THE SENIOR DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT DIVISION, PALGHAT 678 002 BY ADVS. N.K.SUBRAMANIAN MANU S. DSG OF INDIA RESPONDENT/APPLICANT: R.HARINDRAKUMAR, AGED 56 YEARS, S/O.RAMAKRISHNA PANICKER, EX-SENIOR CLERK, SR.DPO OFFICE, SOUTHERN RAILWAY, PALGHAT RESIDING AT SIVSAKTHI, PATHIRINAGAR, RAILWAY COLONY, DHONI, PALGHAT-678003 BY SRI.MARTIN G.THOTTAM THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 26.09.2022, THE COURT ON 30.09.2022 DELIVERED THE FOLLOWING: C.R. A.K.JAYASANKARAN NAMBIAR & MOHAMMED NIAS C.P., JJ -----
----- Dated this the 30th day of September, 2022

JUDGMENT

Mohammed Nias.C.P.J The General Manager, Southern Railway, Chennai, and its officials are the petitioners in the above Original Petition

(CAT) challenging the order in the Original Application filed by

the respondent herein that set aside Annexures A3 and A6 orders sanctioning 2/3rd pension and 2/3rd gratuity as Compensation Pension respectively and directed the petitioners to pay to the applicant the full pension with effect from 26.10.2004, date of compulsory retirement.

2. The short facts necessary for the disposal of this original petition are as follows:-

The respondent herein, the applicant before the Tribunal was working as a Senior Clerk in Southern Railway and was given a penalty of compulsory retirement from service with effect from 25.10.2004, pursuant to a disciplinary proceeding that alleged that the applicant had obtained employment in the Railways under the Sports Quota by producing a fraudulent sports certificate. The punishment granted to the first respondent herein was questioned by him by filing OA No. 781/2005

before the Central Administrative Tribunal (CAT) Ernakulam, which dismissed the same by Annexure R1 order. The review attempted as RA No.52/2008 was also dismissed by the Tribunal by Annexure R2 order. Both these orders were challenged before this Court in WP(C)No.12315 of 2019, which was also dismissed confirming the orders of the Tribunal by Annexure R3. After the culmination of the proceedings as above mentioned, the petitioners settled the retirement benefits and as per the orders impugned sanctioned

Railway Services (Pension) Rules 1993 (for short 'the Rules') were passed. Those orders restricting the pension and gratuity were challenged before the CAT by filing OA No. 180/00885/2018. The Tribunal on the basis of the judgment of this Court in WP(C)No.24260 of 2006 dated 12.03.2007 held that the grant of compulsory retirement pension ought to have been simultaneously made along with the order of compulsory retirement and that not having been done, it must be treated that the applicant is entitled to full pension as the disciplinary authority in the original instance in Annexure A1 did not choose to pass any orders reducing the pension. It is the said order of the Tribunal that is challenged in this original petition.

3. The learned Deputy Solicitor General, Sri.Manu submits that the very basis of the order of the Tribunal was the

judgment of this Court in WP(C)No.24260 of 2006 which held

that the order reducing pension must be simultaneously passed along with the order of the disciplinary authority imposing the punishment. This view of the Court was held to be per incurium by a later judgment of this Court in WP(C)No.27942 of 2007 and therefore, the very basis of the order of the Tribunal has vanished. It is his further submission that this Court by Annexure R3 judgment had clearly found that the petitioner ought to have been granted the punishment of dismissal and that

leniency was shown by the petitioners herein while granting a lesser punishment of compulsory retirement. He also argues that there is nothing in Rule 64 that contemplates passing of orders under the said Rule simultaneously with the order of the disciplinary authority and therefore the latter Division Bench has correctly interpreted the said Rule and held that the earlier decision is per incurium.

4. The learned counsel for the applicant-first

respondent, however contends that the punishment of compulsory retirement given is distinct from dismissal or removal, and therefore it cannot lead to forfeiture of past service. Reliance is placed on Rule 41 and 42 of the Rules, 1993. According to the learned counsel, since there is no provision for forfeiting the past service in cases of compulsory retirement, and in the absence of the disciplinary authority reducing the pension while imposing punishment, a second exercise of power under Rule 64 tantamounts to a second punishment, and therefore the said action of reducing the pension is illegal. The learned counsel further argues that Rule 64 can only be interpreted as an enabling provision which confers the power on the disciplinary authority to give more rigor to the punishment by reducing the pension and gratuity up to 2/3 rd to which one is normally entitled as per the qualifying service. On the facts of the case the disciplinary authority having chosen not to restrict/reduce the pension while passing even order dated 20.02.2004, the impugned order reducing the pension after 11 years of imposition of compulsory retirement and much after the cessation of the jural relationship is impermissible and virtually inflicting a second enhanced punishment. He also argues that he is entitled to full pension and the order of the Tribunal need not be interfered with.

5. Before proceeding further, it is profitable to extract

Rule 40, 41 and 64 of the Rules. 40. Forfeiture of service on dismissal or removal- Dismissal or removal of a railway servant from a service or post shall lead to

forfeiture of his past service.

41. Forfeiture of service on resignation - (1) Resignation

by a railway servant from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service. xxxxxx

64. Compulsory retirement pension - (1) A railway servant

compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement

4. A reading of the above rules would clearly indicate

that, a railway servant compulsorily retired from service as a penalty may be granted pension or gratuity or both at the rate not less than $\frac{2}{3}$ rd and not more than full compensation pension or gratuity, which clearly shows that the quantum is completely at the discretion of the competent authority to grant either $\frac{2}{3}$ rd or full pension and within the band of $\frac{2}{3}$ rd to full which is an absolute discretion of the employer and the applicant does not have any vested right to stake claim for the entire pension or gratuity in cases where he is imposed a penalty of compulsory retirement. Thus, past service can be forfeited or pension withheld to the extent the Regulations so permit. This exercise of discretion under the rules cannot be termed as a second punishment for more reasons than one.

5. Secondly, it has been noticed that the above rules

contemplate the exercise of discretion after the punishment is imposed thereby indicating the stage of exercise of discretion. As rightly held by the co-ordinate Bench in the judgment in WP(C) No.27942 of 2007, that

the imposing of punishment and the exercise of discretion determining the quantum payable as pension or gratuity need not be simultaneous differing from the earlier view and holding the earlier view as per incurium. Resultantly, the very basis of the order of the Tribunal cannot be sustained. We are also not impressed with the argument of the learned counsel for the respondents that not imposing a reduction in pension or gratuity at the time of inflicting the punishment should mean that he is entitled to full pension. As held earlier the question of grant of pension or its quantum is determined only after the punishment is imposed after the culmination of the disciplinary proceedings. We are in respectful agreement with the view expressed in the judgment in WP(C)No. 27942 of 2007.

6. Further it is to be noted that a punishment following

the disciplinary proceedings are governed by Railway Services (Conduct) Rules 1966 and Railway Servants (Discipline and Appeal) Rules, 1968 while action of withholding of 25% of the pension is taken under the provisions of the Railway Services (Pension) Rules, 1993 Thus, both the actions i.e. imposing the penalty of compulsory retirement and withholding of 25% of the pension are under different Rules and Regulations. This also compels us to reject the argument on behalf of the respondent that the imposition of punishment as well as the decision under Rule 1964 has to be simultaneously made.

7. The learned counsel for the respondent argued that

there has been delay in passing orders granting the pensionary benefits due to him. We note that the respondent's request for pension was dated 18.2.2015, after the dismissal of the writ petition challenging the orders of the Tribunal confirming the punishment. The petitioner had directed the respondent to re-submit the duly filled pension papers which was done by the respondent only one year after the direction. In such

circumstances, we cannot attribute any delay on the part of the petitioners for the delay in the grant of pension.

8. Under such circumstances, we do not find any error in the

exercise of jurisdiction by the authority in fixing the pension and gratuity in Annexures A3 and A6. The said orders cannot be faulted on any count and they are upheld. In the light of the above finding, the judgment of the Tribunal needs to be set aside. Consequently, OA No180/00885/2018 filed before the Tribunal will stand dismissed.

The OP(CAT) is allowed as above . Sd/- A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/- MOHAMMED NIAS C.P., JUDGE dtk 1.9.2022 APPENDIX OF OP (CAT) 14/2022 PETITIONERS EXHIBITS Exhibit P1 TRUE COPY OF THE ORIGINAL APPLICATION IN O.A NO. 885 OF 2018 DATED 08-10-2018 ON THE FILE OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, ALONG WITH ANNEXURES Exhibit P2 TRUE COPY OF REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A ALONG WITH THE ANNEXURE RESPONDENT'S ANNEXURES

Annexure R1 TRUE COPY OF THE ORDER DATED 31-07-2008 IN OAA

IN WPC(C0 12315/2009 Annexure R4 TRUE COPY OF LETTER DATED 02-04-2015 OF CHIEF PERSONNEL OFFICER/MADRAS Annexure R5 TRUE COPY OF LETTER DATED 08-02-2015 OF THE APPLICANT Annexure R6 TRUE COPY OF LETTER DATED 17-03-2016 OF SR. DPO/PGT Annexure R7 TRUE COPY OF LETTER DATED 09-02-2017 OF THE APPLICANT PETITIONER EXHIBITS Exhibit P3 TRUE COPY OF JUDGMENT DATED 24-03-2011 IN W.P(C) NO. 27942/2007 Exhibit P4 TRUE COPY OF REJOINDER ALONG WITH M.A NO Exhibit P5 TRUE COPY OF ADDITIONAL REPLY STATEMENT DATED 10-12-2020 Exhibit P6 TRUE COPY OF ORDER DATED 18-02-2021 IN O.A NO. 180/00885/2018

Exhibit P7 TRUE COPY OF M.A NO. 590 OF 2021 DATED 08-09Annexure A3 TRUE COPY OF THE LETTER NO J/P.509/RHK, DATED

29-04-2015 Annexure A6 TRUE COPY OF THE LETTER NO. P(S) 227/A/12/115 DATED 11-12-2015 ISSUED BY 2ND RESPONDENT Annexure A7 TRUE COPY OF THE PENSIONARY BENEFITS-WORKING SHEET DATED 19-03-2018 ISSUED BY 4TH RESPONDENT Annexure A8 TRUE COPY OF PPO NO 0605224366 DATED 19-03- 2018 ISSUED BY THE 2ND RESPONDENT Annexure A1 TRUE COPY OF ORDER NO P(S) 227/A/12/115 DATED 20-10-2004 ISSUED BY THE 2ND RESPONDENT Annexure A2 TRUE COPY OF ORDER NO. P(S) 227/A/12/115 DATED 31-02-2005 ISSUED BY THE 1ST RESPONDENT Annexure A4 TRUE COPY OF THE LETTER NO. P(S) 227/A/12/1115 DATED 19-08-2015 Annexure A5 TRUE COPY OF THE APPEAL DATED 19-09-2015 SUBMITTED BY THE APPLICANT TO THE 1ST RESPONDENT Annexure A9 TRUE EXTRACTS OF RULES 63 AND 64 OF RAILWAY SERVICES (PENSION) RULES, 1993

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