

Shri P. Vasudeva Reddy Vs. the Chief Rolling Stock Engineer, South Central Railway and Others

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Court : Central Administrative Tribunal CAT Hyderabad

Decided On : Feb-17-2009

Judge : The Honourable Mrs. Bharati Ray Member (Judl.) & the Honourable Mr. Hriday Narain Member (Admn.)

Appeal No. : ORIGINAL APPLICATION NO.626 OF 2006

Appellant : Shri P. Vasudeva Reddy

Respondent : The Chief Rolling Stock Engineer, South Central Railway and Others

Advocate for Pet/Ap. : Counsel for the Applicant : K.S. Murthy, Advocate.
Counsel for the Respondents : V. Rajeswara Rao, Sc For Rlys.

Judgement :

SHRI HRIDAY NARAIN, MEMBER (ADMN.)

This OA has been filed by the applicant with a prayer to set aside the Orders of the Revisionary authority dated 14.12.2005, appellate authority dated 22.3.2005 and disciplinary authority dated 20.10.2004 with all consequential benefits.

2. The brief facts of the case, as stated by the applicant in the OA, are that the applicant was appointed as Casual Labour in the year 1969 in South Central

Railway, Kavali. He was subsequently appointed as Khalasi in CandW Department and posted under CTR, Bitragunta vide proceedings dated 27.10.1975 of the Senior Divisional Personnel Officer. The applicant states that due to sudden demise of his wife, he fell sick and suffered mental shock from 18.5.1977 and continued to be under treatment till 3.7.1977 at Bitragunta. Thereafter, since there was no improvement in his health condition, he was taken to Chennai for treatment under Dr.R.Ramadas, Reader in Psychiatrist of Madras Medical College and Psychiatry Department of the Institute of Mental Health and he was under the treatment of the said Doctor till 24.8.1986.

3. After obtaining the medical certificate of fitness, the applicant reported to duty along with all certificates before the CTR, Bitragunta, but he was not allowed to join duty. On his representation, the DRM vide letter dated 17.3.1987 intimated that there is no question of putting him back to duty. The applicant filed OA No.744/1988 which was disposed on 1.6.1990 with a direction to reinstate the applicant and it was made clear that due procedure has to be followed to decide about the period of absence and final punishment, if any, and then decide about the benefits. The applicant was taken back on duty on 17.12.1990. Since the applicant was not paid arrears of salary, he filed OA No.1688/2001 which was disposed vide Order dated 1.1.2002 with a direction that his representations should be considered within three months from the date of that order. The respondents disposed of his representation vide letter dated 20.6.2002 stating that the applicant is not entitled to back wages. The said letter dated 20.6.2002 was challenged in OA No.978/2002 which was disposed of vide order dated 9.8.2002 setting aside the letter dated 20.6.2002 and directing the respondents to look into the matter afresh and give an opportunity to the applicant and pass an order afresh following proper procedure and decide about the unauthorized absence of the applicant from 19.5.1977 to 24.8.1986 within a period of three months from the date of receipt of a copy of that order.

4. A charge memo dated 18.11.2002 was issued to the applicant in respect of the alleged unauthorized absence during the period from 4.7.1977 to 19.8.1977 against which the applicant filed O.A.No.948/2003 which was disposed of vide order dated 17.9.2003 directing the respondents to take into consideration all the

documents and other issues raised by the applicant and then go ahead with the inquiry. The Enquiry Officer held the charge not proved. But the disciplinary authority, disagreeing with the report of the Enquiry Officer, sent a dissent note against which the applicant filed O.A.No.1309/2003 which was disposed of vide order dated 12.11.2003 with a direction to the disciplinary authority to consider the judgments placed before him and the medical certificate etc. Thereafter, the 3rd respondent passed final orders dated 20.10.2004 imposing punishment of withholding of annual increment for a period of one year (non-recurring) and treating the intervening period from 19.8.1977 (date of termination) to 18.12.1990 (date of reinstatement) as dies-non. The applicant's appeal dated 16.11.2004 was rejected vide order dated 22.3.2005 upholding the punishment imposed by the disciplinary authority. The applicant filed revision representation dated 4.5.2005 which was also dismissed confirming the order of the disciplinary authority through order dated 14.12.2005 which is impugned in the present OA..

5. The main ground urged by the applicant is that the respondent erred in not considering the judgment of the Central Administrative Tribunal, Madras Bench in O.A.No.73/1987 dated 22.3.1988 which is applicable to the present case and they have also not considered the medical certificate submitted by the applicant. The applicant states that the appellate and revisionary authorities have not dealt with the contention raised in the appeal and the revision, which action is arbitrary, violative of Article 14 and 16 of the Constitution of India. The applicant further states that the issue of initiating proceedings against the applicant after 25 years was not considered by the respondents and the appeal was not disposed of on merits. The applicant states that the various orders issued against him would show how he has been driven to the court several times for small issues too and there seems to be institutional prejudice against him.

6. The respondents have filed reply statement on 11.6.2007 stating that the applicant was unauthorisedly absent from duty from 19.5.1977. As he was a temporary employee, by invoking the then Rule-732 (Exception-II, Note-2), his services were terminated with effect from 19.8.1978. On his representation dated 19.1.1987 (i.e., after a lapse of 9 years and 5 months from the date of termination for taking him back to duty), he was replied on 17.3.1987 stating that his services

were terminated.

7. The respondents state that pursuant to the directions dated 1.6.1990 in O.A.No.744/1988, the applicant was reinstated as Carriage and Wagon Khalasi vide Order dated 17.12.1990 without prejudice to further departmental action. The applicant submitted representation seeking payment of salary for the period between 19.1.1987 to 17.12.1990 and then filed O.A.No.1688/2001 which was disposed of on 1.1.2002 with a direction to decide the representation of the applicant within three months from the date of the order. The applicant was advised on 20.6.2002 that he was under unauthorized absence from 15.5.1977 and since he had not followed the Railway Medical Attendance Rules, the period is treated as unauthorized absence and as such he was not entitled to any benefits. Against this the applicant filed OA No.978/2002 which was disposed of vide order dated 9.8.2002 observing that the direction given in O.A.No.744/1988 has not been strictly followed and complied with, that while passing order dated 20.6.2002, no proper procedure was followed by the respondents and that no opportunity whatsoever was given to the applicant to explain his case and the order dated 20.6.2002 passed by the respondents was quashed directing the respondents to look into the matter afresh and give an opportunity to the applicant and pass afresh an order after following proper procedure and decide about the unauthorized absence of the applicant from 19.5.1977 to 24.8.1986 within a period of three months from the date of receipt of a copy of that order. It is stated that in order to comply with the directions of the Tribunal in OA No.978/2002, it is suggested to initiate DAR action to provide reasonable opportunity to the applicant to explain his case.

8. The respondents further state that a major penalty charge sheet has been issued vide letter dated 18.11.2002 for the absence period from 4.7.1977 to 19.8.1977 (47 days) i.e., from the date of private medical certificate to the date of discharge from service. DAR inquiry was conducted and the disciplinary authority disagreed with the findings of the Enquiry Officer that the charge was not proved and imposed the penalty of withholding of annual increment from Rs.3170/- to Rs.3235/- in scale Rs.2650-4000 due on 1.12.2004 for a period of one year (NR) duly giving a dissent note. The order of the disciplinary authority was

communicated vide Memo dated 20.10.2004.

9. It is stated that the applicant preferred an appeal to the appellate authority who upheld the penalty imposed by the disciplinary authority, which was communicated to the applicant vide Memo dated 22.3.2005. The revision petition filed by the applicant dated 4.5.2005 was considered by the revising authority who had confirmed the penalty imposed by the disciplinary authority, vide order dated 14.12.2005.

10. The respondents further state that according to the directives of the Tribunal in OA No.1309/2003 and on the medical certificate produced by the applicant, the disciplinary authority, after duly applying his mind, decided the case of the applicant by passing a speaking order, while imposing minor penalty of withholding annual increment for the period of one year (Non-recurring) and the intervening period from 19.8.1977 (date of termination) to 18.12.1990 (date of reinstatement) is treated as dies-non. The respondents state that although major penalty charge sheet was issued to the applicant, on humanitarian grounds, the disciplinary authority had decided to impose the minor penalty. Hence, the contention of the applicant that the respondents have not applied mind and did not follow the judgment in O.A.No.1309/2003 is incorrect. The issue of major penalty charge sheet after 25 years is only to comply with the directives of the Tribunal in O.A.No.744/1988.

11. The respondents further state that since the charge of unauthorized absence is proved against the applicant, he is not entitled for back wages as directed by the Tribunal. Further, the Hon'ble Supreme Court in the case of Shri J.K.Synthetics v. K.P.Agarwal reported at 2007(2) SCC 433 held that when punishment is substituted by a lesser punishment and is reinstated, he is not entitled for back wages at all. The respondents state that the OA is liable to be dismissed.

12. The applicant has filed rejoinder on 11.12.2008 reiterating the submissions made in the OA. It is stated that the Tribunal had disposed of the earlier OA directing the authorities to take him back to duty and gave further directions. It was further directed that if the private medical certificate produced by the applicant was accepted, the wages from the date he reported to duty and the date on which he

was taken to duty must be paid and this period comes to four years. While imposing the penalty, the disciplinary authority declared that in view of the ailment as could be seen from the certificate, a lenient view was taken. This implies that the certificate produced by the applicant was not rejected but accepted. Therefore, the applicant states that wages have to be paid. The applicant further states that the enquiry cannot be initiated after long gap of time. It is stated that the history of the case from 1988 will show that there was institutional prejudice against him.

13. During the course of arguments, the learned counsel for the applicant mainly relied upon the arguments mentioned in the OA as well as in the rejoinder. The counsel for the respondents mainly relied upon the reply statement and submitted that the OA deserved to be dismissed.

14. We have carefully considered the rival submissions and the materials on record. We find that the respondents have not followed the directions of this Tribunal given in OA No.948/2003 in its order dated 17.9.2003 and the directions of this Tribunal in OA No.1309/2003 in its order dated 12.11.2003. In OA No.948/2003, the Tribunal had observed as under:-

“6. Having regard to the fact that inquiry is being held on the basis of the directions given by this Tribunal in the earlier OA No.744/88 in order to afford an opportunity to the applicant to substantiate his defence that only due to his ill-health, he could not attend office and his absence during the above said period was not unauthorised, we find that it is neither permissible nor advisable for us to interfere with the proceedings of the inquiry, particularly when the inquiry has been concluded. However, we find it necessary to give liberty to the applicant to raise the above said ground of delay in initiating the inquiry proceedings at the appropriate stage and we do not find it necessary to consider this question at this stage since the applicant has approached this Tribunal at a belated stage after the inquiry has been concluded. We feel that the applicant is not entitled to the relief prayed for in the present OA at this stage. OA is disposed of accordingly giving liberty to the applicant to challenge the orders that may be passed by the authorities on all the grounds open to him including the ground of delay now raised by him in the present OA. Further, we direct the Inquiring Authority to permit the

applicant to produce any documentary evidence which may be available with him in support of his defence and to afford an opportunity to him to summon any documents for the said purpose. There shall be no order as to costs.”

In OA No.1309/2003 the Tribunal had observed as under:-

“2. We, therefore, find it necessary to observe that the disciplinary authority has to consider the said decision rendered in OA 73/87 by CAT, Madras Bench and the medical certificate produced by the applicant to find out whether the ratio decided in the said case can be applied to the applicant also while passing the appropriate speaking order. With these observations, the OA is disposed of giving liberty to the applicant to approach this Tribunal at an appropriate stage after final orders are passed if he feels aggrieved by the orders passed.”

15. We find that neither the disciplinary authority nor the appellate authority nor the revisionary authority has considered the ground of delay and the decision of the Madras Bench of this Tribunal in OA 73/1987. In fact, neither the order of the Madras Bench of this Tribunal is mentioned anywhere in any of the orders nor the point of delay is mentioned anywhere in any of the orders. We, therefore, consider it proper to set aside the orders of the disciplinary authority, appellate authority as well as the revisionary authority and restore the matter to the file of the disciplinary authority to be decided denovo after taking into account the above observations of this Tribunal given in the two orders mentioned above. We direct that the disciplinary authority shall decide the matter within three months of the receipt of this order. The applicant is also directed to cooperate with the disciplinary authority. The OA is thus disposed of with no order as to costs.

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