

Vikal Kumar Vs. Union of India Through General Manager, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Nov-23-2011

Judge : The Honourable Mrs. Meera Chhibber, Judicial Member & the Honourable Shailendra Pandey, Administrative Member

Appeal No. : O.A. No. 4371 of 2010

Appellant : Vikal Kumar

Respondent : Union of India Through General Manager, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Yogesh Sharma, Advocate. For the Respondents: Shailendra Tiwary, Advocate.

Judgement :

(ORAL)

Mrs. Meera Chhibber, Member (J)

1. OA has been filed by the son of the deceased employee who had been dismissed from service vide order dated 27.06.2002 (page 15) on the following charges:

“(i) He remained absent without permission from the competent authority w.e.f. 22.4.1999 till date.

(ii) He failed to hand over the charge of his cash box to D.C. Incharge before proceeding on leave as per the extant instructions.

(iii) He made embezzlement of Rs.1,51,476/- in the Govt. cash entrusted to him for making payment to staff.

(iv) He failed to close his cash book for ‘A’, ‘B’ and ‘C’ tour of April, 1999 as per standing instructions”.

2. Being aggrieved, applicant had filed an appeal before the Appellate Authority stating therein that his father had been missing since 28.04.1999. The Police report was also lodged for this purpose on 15.05.1999 and the matter was reported to the authorities. He had requested the Appellate Authority to help him in tracing his father and the disciplinary enquiry may be deferred. However, without considering these pleas, Appellate Authority rejected his appeal vide order dated 24.02.2006 (page 14) on the ground that his father was found responsible for embezzlement of Govt. cash amounting to Rs.1,51,476/- which was given to him for making payments to the Railway staff, besides other charges of unauthorized absence since 22.04.1999. The charges were later proved in the Inquiry. He had also observed that his father has been declared absconder by the Court of Special Judge, CBI, Jodhpur in letter dated 11.09.2000, therefore, he cannot be declared as missing person as requested by Shri Netra Pal Singh, S/o Shri Ran Singh, the deceased employee.

3. Being aggrieved, applicant filed revision (page 49) wherein he had specifically stated that his father has been declared as dead by the Civil Court vide its order dated 08.04.2008 and copy of the judgment was also annexed with the revision with a further request that looking at the facts of the case, the case may be referred to the Railway Rates Tribunal for advice as per Rule 24(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 (page 58), but neither the case was referred to the Railway Rates Tribunal nor the points raised by the applicant were considered nor it was considered by the revisionary authority that his father had

been missing and has been declared as dead. Vide order dated 18.10.2009, the revision was also rejected on the ground that the charges have already been proved against his father.

4. Counsel for the applicant has challenged these orders on the ground that the case has not been referred to the Railway Rates Tribunal as required under Rule 24(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. Applicant's contentions have not been dealt with that proceeding against a missing person itself is void ab-initio as held by Calcutta Bench of the Tribunal in the case of Smt. Kanchan Chinna and Another Vs. Union of India and Ors., reported in 1995 (1) ATJ 347, therefore, the orders passed by the authority may be quashed and set aside.

5. Respondents have opposed this OA. They have stated that the charges against the applicant's father have been proved in the enquiry after due notice was given to his father and the matter was also published in the newspapers as an abandoned caution in order to give full opportunity to the father of the applicant to defend himself. Since he never appeared and had been absented and declared as absconder by the CBI Court, therefore, he has rightly been given the punishment. Hence, the OA may be dismissed.

6. We have heard both the counsel and perused the pleadings.

7. Applicant has specifically stated in his revision that his father had been declared as dead by the Civil Judge (CD), Firozabad vide judgment dated 08.04.2008 as he had been missing since 28.04.1999. He had also annexed the said judgment with his revision and had requested the revisionary authority to refer his case to the Railway Rates Tribunal as per Rule 24(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. But perusal of the revisionary authority order shows that neither the contentions of the applicant have been dealt with nor the matter was referred to the Railway Rates Tribunal.

8. Counsel for the respondents submitted that it is not a mandatory provision, therefore, it is not necessary for revisionary authority to refer the matter to the Railway Rates Tribunal for advice. However, it would be relevant to refer to Rule

24(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, which for ready reference reads as under:

“Rule 24

(2) A Group 'C' Railway servant who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of, and within 45 days thereafter, apply to the General Manager for a revision of the penalty imposed on him. In this application, he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes of the revision petition. On receipt of such a request, the General Manager shall refer the case to the Chairman, Railway Rates Tribunal for advice sending all the relevant papers. 22 On receipt of the revision application by the General Manager, or on receipt of advice from the Railway Rates Tribunal, as the case may be, the General Manager shall dispose of the application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule shall not apply in cases where the General Manager or the Railway Board are the Appellate Authority:

Provided further that where a revision application has been disposed of by the General Manager under this sub-rule, no further revision shall lie under Rule 25.”

9. Perusal of the above shows that it is mandatory for the General Manager to refer the case to the Chairman, Railway Rates Tribunal for advice sending him all the relevant papers in case such a request is made by a person who is dismissed, removed or compulsorily retired from service. This contention has admittedly not been dealt with by the revisionary authority while rejecting the revision nor the order as stated to have been passed by the Civil Judge. Subsequently declaring the employee as dead was taken into consideration as mentioned by the applicant in his revision petition. We, therefore, remit the matter back to the revisionary authority with a direction to consider all the points as referred to in the revision petition including the order passed by the Civil Judge, if any annexed by the applicant, and decide the matter after referring the same to the Railway Rates

Tribunal as required under Rule 24(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 within a period of four months from the date of receipt of a copy of this order under intimation to the applicant.

10. With the above directions, OA stands disposed of. No order as to costs.

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