

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ [W.P. (C) 329 OF 2001]
&
W.P. (C) 7245 OF 2000

% JUDGMENT DELIVERED ON: 11.08.2011

(1) W.P. (C) 329 OF 2001

JAI RAM DASS . . . PETITIONER

Through: Mr. Sarvesh Bisaria, Advocate.

VERSUS

THE GENERAL MANAGER, . . .RESPONDENTS
NORTHERN RAILWAY & ORS.

Through: Mr. Kumar Rajesh Singh,
Advocate.

(2) W.P. (C) 7245 OF 2000

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CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (oral)

1. The petitioner was posted and was working as parcel Clerk at Delhi main junction with the respondents. The petitioner was charge sheeted on the alleged ground that the petitioner demanded illegal gratification from one Shri Ashok Arora. The petitioner denied all the charges. However, the respondents nominated an Enquiry Officer, the Enquiry Officer upheld the charges against the petitioner in his enquiry report. The Disciplinary Authority did not agree with the findings of the Enquiry Officer and exonerated the petitioner from the charges of corruption but brought out some technicalities of procedure in handling of Government cash by the petitioner as well as for unauthorized persons handling the Government cash and accordingly the Disciplinary Authority by order dated 13.7.1982 awarded the following punishment to the petitioner:-

- (i) Reduction from grade ₹ 330-560 to 260-400 for a period of 3 years with permanent effect in loss of increments and seniority.
- (ii) Reduction in Basic Pay from 500/- to ₹ 430/- for 3 years.

The petitioner submitted an appeal before the Appellate Authority. However, instead of considering the appeal, the Appellate Authority issued a show cause on 29th August, 1982 for enhancement of punishment from reduction to removal from service. The petitioner submitted the reply of the said show cause notice. The Appellate Authority vide order dated 8th February, 1983 removed the petitioner from service. The petitioner submitted a statutory appeal on 21st March, 1983 against the order of removal from service. That appeal was rejected by the appellate authority. The petitioner submitted revision petition to the Secretary, Railway Board. The said revision petition also met the same fate as it was by the General Manager, Northern Railway on 20th March, 1987. The petitioner challenged the order of punishment, appellate order and the revisional order by filing an O.A. before the Central Administrative Tribunal, New Delhi. After hearing, the Tribunal vide O.A. No. 570 of 1987 on 12th August, 1991 set aside the orders of the appellate authority, revision authority and remanded the matter back to the respondent for

fresh proceedings. The relevant portion of the judgment is as under:-

“As a result, by partly accepting the present O.A., we quash the order dated 8th February, 1983 enhancing the punishment from reduction to lower grade to that of removal from service and also the order dated 6th September, 1983 and 30th March, 1987 rejecting the appeal as well as revision, filed by the applicant. We understand that the applicant has yet to serve for a few years more, before he attains the age of superannuation. The case is accordingly remanded to the respondents for fresh proceedings, against the applicant, in accordance with the provisions of law, from the stage of the order passed by the appellate authority, onwards. The result thereof shall determine the ultimate action, if any, against the applicant, which may be taken by the Competent Authority, in accordance with the rules, including F.R. 54. Needless to say that since sufficient time has already elapsed, the respondents will do well to expedite action in the matter, and possible finalise the same within a period of 5 months, from the date of receipt of a copy of this order, O.A. is decided on the above lines, with no order as to costs.”

After the judgment of the CAT, the petitioner requested the respondent several times to reinstate him back in service and ultimately the petitioner submitted his joining report on 5th September, 1991 alongwith the copy of the judgment but all in vain. Much thereafter, vide orders dated 28th July, 1992 the petitioner was placed under ‘deemed suspension’. The Disciplinary

Authority, after considering the directions contained in orders recorded as under:-

“Now, therefore the undersigned hereby:

- i. Sets aside the said order of removal, from service.
- ii. Directs that a fresh proceedings should be held against Sh. Jai Ram Dass Ex.-PC/Kalka on the allegations which lot to disciplinary action against him and consequent removal from service from the stage of the orders passed by the Appellate Authority onwards.
- iii. Directs that Sh. Jai Ram Das shall under sub-rule (4) of rule 5 of RS (D & A) rules-1968 be deemed to have been placed under suspension with effect from 15.2.83 till further orders.”

2. While this O.A. was pending, the Appellate Authority passed orders of compulsory retirement of the petitioner from service on 23rd September, 1991. The petitioner submitted petition thereagainst which was also dismissed. As a result, the petitioner filed another O.A. 735/95 challenging the order of compulsory retirement.

3. When O.A.2148/92 came up for hearing before the Tribunal, it was disposed of by the Tribunal on 4th November, 1997 stating that since O.A. 735/95 has now been preferred by the petitioner

questioning the punishment of compulsory retirement and the legality of the order of 'deemed suspension'.

4. O.A. 735/95 came up for final hearing before the Tribunal on 17th April, 2000. Nobody appeared on behalf of the petitioner on that day on the ground that lawyers were abstaining the work on the call given by the Bar Council of Delhi. The petition was considered on merits by the Tribunal and was dismissed vide orders dated 17th April, 2000. The Tribunal sustained the order of the compulsory retirement passed by the respondent and also held that the petitioner could be kept under deemed suspension and the order of deemed suspension was also upheld. The petitioner filed an M.A. No. 1171/2000 before the Tribunal for recalling of the order on the ground that his counsel could not appear because of the aforesaid strike. This application was, however, dismissed by the Tribunal. In the aforesaid circumstances, present writ petition is filed challenging the orders dated 17th April, 2000 and 13th September, 2000 passed by the Tribunal.

5. During the arguments, learned counsel for the petitioner confined his challenge only to that part of the order of the Tribunal vide which the order of deemed suspension has been

held as valid. Contention of the learned counsel for the petitioner in this behalf was that the petitioner did not look into the rules governing the suspension and failed to appreciate that the suspension was contrary to Rule 5 (4) of the Railway Servants Discipline & Appeal Rules, 1968. Rule 5 deals with the suspension under which a railway servant can be placed under suspension or can be deemed to have been placed under suspension. As we are concerned with the sub Rule (4) of Rule 5. We deem it appropriate to reproduce the same in order to appreciate the contention of the learned counsel for the petitioner.

“(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement, was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.”

6. It is not in dispute that in the instant case on the first occasion the penalty of dismissal was imposed on the petitioner

and the said penalty had been set aside by the Tribunal vide orders dated 12th August, 1991. However, the provision of “deemed suspension” under this rule would arise only when Disciplinary Authority decides to hold a further inquiry against the railway servant on the allegation on which penalty of dismissal, removal and compulsory retirement was originally imposed.

7. We have reproduced the order of the Disciplinary Authority which even directed for fresh proceedings to be held against the petitioner. However, this direction was totally uncalled for and meaningless as no such further enquiry was to be held. Obviously, therefore, it was not acted upon. As pointed out above, the Tribunal had, while quashing the order of enhancement of punishment and removal from service imposed upon the petitioner vide orders dated 8th February, 1983; had remanded the case back to the respondents/Disciplinary Authorities with the categorical instructions that it would proceed from the stage of the order passed by the appellate authority. Clear mandate, therefore, was for the Appellate Authority to reconsider the imposition of penalty. Insofar as, departmental enquiry is concerned, that was over.

8. In a case like this, there was no question of holding any further enquiry. For this reason, as stated above, no further enquiry could be held. Ultimately, it is the Appellate Authority which passed the fresh orders, this time imposing the penalty of compulsory retirement. In such a situation the provisions of sub Rule (4) of Rule 5 of Railway Servants (Discipline & Appeal) Rules, 1968 would not be attracted at all. Similar view is taken by the learned Single Judge of Gujarat High Court interpreting this very rule in the case of *Khodubba Hari Singh Vs. UOI*, 1980 (3) SLR 565 in the following manner:

“The deemed suspension which made effective from the date of the original order of removal under sub rule (4) presupposes the decision of the Disciplinary Authority to hold a further inquiry against the delinquent on the same allegations on which the earlier order of removal was passed *on consideration of circumstances of the case*. Now, in the present case, it has nowhere been shown that the Disciplinary Authority has fulfilled this requirement of the consideration of the circumstances of the case which, in his opinion, made it necessary to hold a further inquiry on the same allegations. In my opinion, therefore, sub-rule (4) of rule 5 would not be of any assistance of the cause of the Railways. No other provision has been pointed out to me which empowers the Railway Administration to put a railways employee under suspension retrospectively in case where the earlier order of penalty of dismissal; removal or retirement is set aside by the Court. In that view of the matter, the order of suspension is bad in law and void; and the said suspension

order is virtually contrary to the decree and is tantamount to reversing the decree.”

We are entirely in agreement with this view. The impugned order dated 28th July, 1992 placing the petitioner under deemed suspension is accordingly set aside. The judgment of the Tribunal on this aspect is also reversed holding that the petitioner could not have been placed under deemed suspension.

9. As a consequence, the petitioner shall be entitled to full salary from the date when the dismissal order was quashed by the Tribunal till 25th November, 1993 when the order of compulsory retirement was passed by the appellate authority. Since the petitioner is not exonerated in the enquiry and has been ultimately awarded the penalty of compulsory retirement, the period of suspension would be governed by FR 54. The Tribunal had also categorically stated in its order dated 12th August, 1991 that the aforesaid period would depend upon the ultimate outcome of the appeal to be decided by the appellate authority.

10. In these circumstances, the respondent/competent authority/disciplinary authority shall pass necessary orders under Rule 54 of FR within a period of two months from the date of receipt of this order.

11. Copy of this order be given dasti to the counsel for the parties.

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Dismissed as not pressed.

**(A.K. SIKRI)
JUDGE**

**(M.L. MEHTA)
JUDGE**

AUGUST 11,2011
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