

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.26552 of 2016

and

WMP No.22721 of 2016

1. Senior Divisional Mechanical Engineer,
Chennai Division,
Southern Railway,
Chennai - 600 003.

2. Additional Divisional Railway Manager,
Chennai Division,
Southern Railway,
Chennai - 600 003.

3. Union of India,
Rep. by its General Manager,
Southern Railway,
Chennai - 600 003

.. Petitioners

versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.

2. Mr.V.Sriramulu

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for a Writ of Certiorari, calling for the entire records of the 1st
respondent in O.A.No.1791 of 2013 including the Order dated 15.02.2016
and quash the same.

For Petitioner	: Mr.V.G.Suresh Kumar
For Respondents	: Mr.G.Sankaran (for R1)
	Mr.A.Zakir Hussain

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Challenge in this writ petition is to an order made in O.A.No.1791 of 2013 dated 15.02.2016, by which, the Central Administrative Tribunal, Madras Bench, has directed the writ petitioners to provide a just and reasonable opportunity to Mr.V.Sriramulu, the 2nd respondent herein, to join the post-Khalasi in Mechanical Department, within a time frame and in so far as the period between 18.10.2002 to 20.06.2003, the tribunal has excluded the said period for counting of his service. As regards the period from 20.06.2003, till the 2nd respondent joins the post of Khalasi in Mechanical Department, the tribunal directed the disciplinary authority to apply his mind and pass a speaking order, after giving a personal hearing to the 2nd respondent.

2. Facts leading to the writ petition are that, the 2nd respondent, a Khalasi in Mechanical Department unauthorisedly absented and therefore, disciplinary proceedings were taken. He was found guilty of the charges and vide order dated 18.10.2002, was terminated from service. Thereafter, he preferred an appeal to the Additional Divisional Railway Manager, Chennai Division, Southern Railway, Chennai, the appellate authority. Vide

order dated 20.06.2013, the appellate authority set aside the punishment of termination and ordered reinstatement, as hereunder.

No.M/P 90(a) 12/2002-03

Div. Rly. Manager's Office.
Personnel Br. Chennai Divn.
Chennai - 3, Dt. 20.06.2003.

Shri.V.Sriramulu,
Ex.Khalasi / RPM,
No.6, West Mada Street,
Kolathur, Chennai - 600 099.

Sub: Your appeal dated 11.10.2002

I have considered your appeal dated 11.10.2002 along with the relevant records in terms of Rule 22(2) of RS(D&A) Rules 1969.

I have gone through the entire case. You have been removed for a cumulative unauthorised absence of 133 days in various spells with a continuous absence of 100 days in one spell.

I also observe that you had undergone treatment for anxiety and depression under a Railway Doctor. Keeping the above fact in view and also considering the facts submitted by you in your appeal. I take a sympathetic and lenient view of this case and modify the punishment imposed by the Disciplinary Authority as follows:

a) Reduction to the lower stage in the time scale of Rs.2550-3200 at Rs.2660/- for a period of 24 months (Recurring)

b) The period of absence from duty for which the SF-5 was issued will be treated as EXL.

c) The period from the date of removal from duty to the date of reinstatement will be treated as period not spent on duty.

Accordingly, the penalty of removal from services with effect from 18.10.2002 imposed on you by SR.DME/MAS Vide Penalty Advice No.M/M/226/DAR/RPM dated 03.10.2002 is set aside and you are reinstated in service. On reinstatement, your

pay is fixed at Rs.2660/- in scale Rs.2550-3200 for a period of 24 months (Recurring).

Please note and acknowledge receipt.

Signature:

Name : (G.R.K.Raju)

Design : ADRM//MAS &

Appellate Authority

Copy : Sr.DFM/MAS

Sr.DME/MAS with reference to his penalty advice under reference

SSE/C & W/RPM & Ch.OS/OS/Mech.I Cadre and Bills for information and necessary action."

3. Contending interalia that after the order of reinstatement dated 20.06.2003, representation dated 13.07.2004 was made to the competent authority for reinstatement with reminders till 05.02.2013, but not responded, the 2nd respondent viz. V.Sriramulu, has filed O.A.No.606 of 2013 for a direction to the writ petitioners herein to re-transfer the 2nd respondent to his parent cadre i.e. Mechanical Cadre from Diesel cadre by implementing the order in OA No.372/1990 and OA No.684/2002 as confirmed by the Hon'ble Supreme Court in SLP by passing orders on the representation dated 18.10.2012 made by the 2nd respondent within a specified time.

4. Vide order dated 23.04.2013, the tribunal directed the department/writ petitioners to pass a speaking order on the representation. Thereafter, the request of the 2nd respondent for reinstatement, has been rejected.

5. Challenging the same, another original application viz., OA.1791 of 2013 has been filed before the Central Administrative Tribunal, Madras Bench, praying for the relief to quash the order made in M/M/226/DAR/PRM dated 30.05.2013, passed by the Senior Divisional Mechanical Engineer, Chennai Division, Southern Railway, Chennai - 600 009, the 1st petitioner herein as null and void and consequently for a direction to the 1st petitioner herein to reinstate the 2nd respondent in service and sanction all the pay, back wages, and other benefits, with 12% interest from 20.06.2003 till 30.05.2013.

6. Before the tribunal, the writ petitioners/railways have contended that though the appellate authority vide order dated 20.06.2003 directed reinstatement, the 2nd respondent did not report for duty. He had not submitted any representation for reinstatement as contended. Original application, has been filed after 10 years from the date of order of reinstatement. For the abovesaid reasons, railways have sought for dismissal of the Original Application.

7. Adverting to the rival submissions and by observing that after the appellate authority's order directing reinstatement, no proceedings was issued by the disciplinary authority, calling upon the 2nd respondent to join

duty, within a time frame and if the 2nd respondent had failed to do so, then it could be presumed that he was not interested in joining duty and that his file would be closed and by further observing that when the 2nd respondent has approached for reinstatement, by making representation, he should be given an opportunity to join the post. Accordingly, the tribunal directed the disciplinary authority / writ petitioners, to permit him to join duty. On the aspect of regulating the period of absence and pay, the tribunal has directed the disciplinary authority to apply his mind and pass a speaking order after giving personal hearing to the applicant.

8. Mr.V.G.Suresh Kumar, learned counsel for the writ petitioners assailed the correctness of the order of the tribunal made in O.A.No.1791 of 2013 dated 15.02.2016, on the very same grounds raised before the tribunal.

9. Mr.G.Sankaran, learned counsel for the 2nd respondent made submissions to sustain the order of the tribunal. He also submitted that even after the disposal of the OA, dated 15.02.2016 a representation was made to permit him to join duty, but, there was no response.

10. Heard the learned counsel for the parties.

11. Adverting to the above, we are not inclined to interfere with the order of the tribunal, for the reason, that even taking for granted that the 2nd respondent failed to report for duty, as ordered by the Additional Divisional Railway Manager, Chennai Division, Southern Railway, Chennai, the appellate authority, for a long period, it was always open to the disciplinary authority to have taken action against the 2nd respondent for unauthorisedly remaining absent, despite the order of reinstatement.

12. Normally, whenever a punishment of termination, removal or dismissal, as the case may be is set aside, consequently, the appointing or any other competent authority would issue an order, posting the employee. No such order has been placed before the tribunal, or this Court. Further, as rightly pointed out by the tribunal, there is no order of the disciplinary authority, directing the 2nd respondent to report for duty. “Better late than never”, is the observation of the tribunal.

13. The 2nd respondent is stated to be a Khalasi and due to retire on 31.07.2017. No disciplinary action has been taken against him for not reporting for the duty. Admittedly, the 2nd respondent has approached the tribunal after ten years. But at the same time, the relation of employer and employee subsists, and in such circumstances, it would not be proper to

deny reinstatement. Period of absence can be regulated, as directed by the tribunal after providing an opportunity of hearing.

14. In the light of the above discussion, we are not inclined to interfere with the impugned order. Hence, the writ petition is dismissed. No costs. The 2nd respondent shall report to the Senior Divisional Mechanical Engineer, Chennai Division, Southern Railway, Chennai - 600 009, the 1st respondent, immediately. On the aspect of regulating the period of service, respondent No.2, is at liberty to make a representation,. Before parting with the case, we wish to observe that at this length of time, when the 2nd respondent is due to retire shortly, there need not be any fresh proceeding, as it would amount to delay in initiating departmental proceedings. Consequently, the connected Miscellaneous Petition is closed.

[S.M.K., J.] [N.A.N., J.]
01.11.2016

Index: Yes
Internet: Yes
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S. MANIKUMAR, J.
AND
N.AUTHINATHAN, J.

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