

Court No. - 34

Case :- WRIT - A No. - 34391 of 2004

Petitioner :- Chandra Dev Singh

Respondent :- Div. Security Commissioner Rpf Eastern Railway
And Others

Counsel for Petitioner :- O.P. Pandey

Counsel for Respondent :- Tarun Verma,S.C.

Hon'ble Sudhir Agarwal,J.

1. Heard Sri O.P. Pandey, learned counsel for petitioner, Sri Praveen Kumar, learned counsel for respondents and learned Standing Counsel for State.

2. It is contended that petitioner was working as *Rakshak* under Railway Protection Force and terminated from service vide order dated 05.04.1983. Against termination order, petitioner preferred Writ Petition No. 7189 of 1983 which was allowed vide order dated 02.08.1999 which is quoted hereinbelow :-

"The petitioner is a Rakshak under Railway Protection Force. He was on duty at Manpur Railway Station, in the night intervening 24/25.3.1983. There was a theft on that date. It was alleged that the petitioner was averse to his duties on that date. It was because of this that his services were terminated on 5.4.1983. No enquiry was conducted, it was disposed with under Rule 47 of the Railway Protection Force Rules, on the ground that, it is not reasonable and practicable to hold the enquiry. This matter was considered by the full bench of decision this Court on the case of Maksudan Pathak Vs. Security Officer, Eastern Railway, Mughalsarai, 1981 Labour Industrial Case 881 and it was held that enquiry could not be dispensed with. This case is covered by the aforesaid full bench decision of the Court. In view of the same the order dated 05.04.1983 is quashed and writ petition is allowed with costs."

3. During pendency of aforesaid writ petition, petitioner attained age of superannuation of 58 years on 31.05.1991. Thereafter, Divisional Security Commissioner Railway

Protection Force Eastern Railway, Moradabad passed impugned order dated 30/31.03.2000 in purported exercise of power, under Rule 1344 of Indian Railway Establishment Code [pari materia to Fundamental Rule 54 B (ii)] stating that petitioner since has attained age of superannuation on 31.05.1991, therefore, period from removal to superannuation i.e. 05.04.1983 to 31.05.1991 shall be treated as suspension.

4. It is contended that once order of termination in dispensation of enquiry under Rule 47 of Railway Protection Force Rules, 1959 has been set aside by this Court, consequence thereof is that petitioner continued in service and said consequence could not have been altered by respondent-1 by directing that period from the date of order of termination till superannuation shall be treated as suspension. It is further contended that impugned order has been passed having civil and adverse consequence against petitioner but without giving any show-cause notice or opportunity, it is clearly in violation of principles of natural justice.

5. I find force in both the submissions. This Court set aside order of termination dated 05.04.1983 vide judgment dated 02.08.1999. Petitioner had already attained age of superannuation on 31.05.1991. After retirement, even if any fresh enquiry would have been held, petitioner could not have been placed under suspension. He was also not under suspension before termination order was passed on 05.04.1983, therefore, his period of absence forced upon him on account of illegal order of termination, which has been set aside by Court by declaring that period of absence would be suspension, is illegal. Similarly, contention with respect to non giving of any show-cause notice or opportunity, learned counsel for

respondents could not dispute that no opportunity or show-cause was given to petitioner. Hence, on both these aspects, my findings are in favour of petitioner.

6. In the result, writ petition deserves to succeed and it is accordingly allowed. Impugned order dated 30/31.03.2000 is hereby set aside.

7. However, this order shall not preclude respondent-competent authority from passing a fresh order in accordance with law within one month from the date of production of a certified copy of this order after giving due opportunity of hearing to all concerned parties.

Order Date :- 23.8.2018

Siddhant Sahu