



W.P. No.31998 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.31998 of 2012
and W.M.P. No.1 of 2012 and 1 of 2013

The General Manager (Southern Railway),
Southern Railway,
Chennai-600 003.

..
vs.

Petitioner

1. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court, Chennai.

2. S.K. Jaiganesh C/o. Mr. S. Bakthavatchalam. ..

Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the entire records of the 1st respondent in I.D. No.40 of 2011 including the award dated 15.05.2012 and to quash the same.

For Petitioner : Mr. P.T. Ramkumar,
Standing Counsel.

For Respondents : R1 - Tribunal.

Mr. M. Krishnamurthy [for R2]

ORDER



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This Writ Petition has been filed by the petitioner to call for the entire records in I.D. No.40 of 2011 pending on the file of the 1st respondent Court including the award dated 15.05.2012 and to quash the same.

2. The petitioner is the General Manager, Southern Railway, Chennai. According to the petitioner, the 2nd respondent was recruited as a Khalasi in the Carriage and Wagon Works, Perambur on 01.09.1988. Thereafter, he was promoted as Crane Driver. While so, he was charge sheeted for cumulative unauthorized absence for a period of 225.5 days in different spells during the year 2000, thereby proceedings were initiated under the Railway Servants (Discipline and Appeal) Rules 1968 and charge for major penalty was issued on 24.05.2001. After due enquiry, he was imposed with punishment of removal from service under Penalty Advice dated 14.09.2002. Thereafter, the 2nd respondent preferred an appeal against the said penalty on 14.02.2003 and the Appellate Authority has modified the punishment of removal from service to that of compulsory retirement through an order dated 02.09.2003. Thereafter, the 2nd respondent has not preferred any revision as against the order passed by the Appellate Authority and he also relieved from service on compulsory retirement and he got retirement benefits and he is also now getting pension as per rules. While so, after 8 years, he raised an industrial



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dispute before the Labour Court challenging the punishment imposed by the Appellate Authority modified from termination of service to that of compulsory retirement. The Labour Court, allowed the petition and directed to set aside the punishment of compulsory retirement and ordered to reinstate the 2nd respondent with 15% backwages and all other attendant benefits. The superannuation benefits and the pension already sanctioned and paid to the 2nd respondent were directed to be restructured in accordance with the rules by suitable adjustments consistent with the practice and rules in vogue in the department. The forfeiture of the 85% of the back wages was held to be punishment on the 2nd respondent. Now, the Southern Railway Management has challenged the said order through this Writ petition.

3. The learned counsel appearing for the petitioner would submit that the 2nd respondent was working as Crane driver. While so, in the year 2000, he was unauthorizedly absent for a period of 225.5 days in different spells, thereby, disciplinary proceedings were initiated against him and also after following the proceedings, punishment of removal from service was awarded by the disciplinary authority. The 2nd respondent challenged the said punishment through an appeal before the Appellate Authority and the Appellate Authority modified the punishment from termination to compulsory



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retirement through an order dated 02.09.2003. Thereafter, the 2nd respondent has not filed any revision before the appropriate authority challenging the modification order passed by the Appellate Authority. Thereafter, in the year 2011 i.e., after 8 years, he raised an industrial dispute before the Presiding Officer, The Central Government Industrial Tribunal-cum-Labour Court, Chennai and the same was allowed. The Labour Court failed to consider that no any revision was filed by the 2nd respondent as against the order passed in Appeal by the Appellate Authority as per the rules and there is a delay of 8 years and already retirement benefits were settled to the 2nd respondent and during the enquiry proceedings, the 2nd respondent admitted his unauthorized absence and the punishment was not awarded by the Labour Court in terms of the disciplinary rules. The Labour Court has misunderstood the facts and the Labour Court has passed an order under the impression that the punishment was awarded as removal from service and there is no discussion about the punishment of compulsory retirement and only in the last para of the order, stated about the compulsory retirement. Therefore, the Labour Court has not applied the mind and passed an erroneous order and therefore, the order passed by the Labour Court is liable to be quashed.

4. The learned counsel appearing for the 2nd respondent would submit



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that the petitioner was unauthorizedly absent due to his family dispute and he explained his inability and at the time of enquiry, sufficient opportunity was given to him and the punishment awarded by the disciplinary authority is disputed and thereby, he filed an appeal before the Appellate Authority and the Appellate Authority modified the punishment from termination of service to compulsory retirement. Though he received retirement benefits and pension, there is no limitation to file writ petition for challenging the order and the Labour Court has correctly ordered for reinstatement with 15% backwages and forfeiture of 85% of the backwages were awarded as punishment. Therefore, the present Writ petition is liable to be dismissed.

5. This Court heard both sides and perused the entire materials available on record.

6. In this case, there is no dispute that the 2nd respondent was working under the petitioner and he was in unauthorized absence for 225.5 days and the disciplinary proceedings were also initiated against him. During the enquiry in the disciplinary proceedings, the 2nd respondent admitted the guilt and thereby, the disciplinary authority, after following the due procedures, awarded punishment of removal from service. The said punishment was



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challenged by the 2nd respondent through an appeal and the Appellate Authority also modified the punishment of removal from service to compulsory retirement on humanitarian ground and the 2nd respondent after accepting the punishment awarded by the Appellate Authority, received the retirement benefits and he is drawing pension.

7. Section 24(2) of the Railway Servants (Discipline and Appeal)

Rules 1968 reads as follows:-

24. Special provisions for non-gazetted staff

(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.

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.

25. Revision -

(1) Notwithstanding anything contained in these rules -



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- (i) the President, or
 - (ii) the Railway Board, or
 - (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
 - (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
 - (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control
-

may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission, where such consultation is necessary, and may -

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit:

Provided that -

- (a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;
- (b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after -



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- (i) the expiry of the period of limitation for appeal; or
- (ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by -

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) -

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

8. As per the Railway Servants (Discipline and Appeal) Rules 1968, the 2nd respondent ought to have preferred revision before the revising authority / General Manager, Southern Railway under Rule 24(2) or 25 of the



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Railway Servants (Discipline and Appeal) Rules 1968, within 45 days from the date of receipt of the penalty advice dated 02.09.2003. But the 2nd respondent has not preferred any revision, as against the order dated 02.09.2003, before the concerned authorities as per the rule. Per contra, accepted the punishment and he received all the retirement benefits and also drawing pension. After lapse of 8 years, he raised an industrial dispute before the Labour Court and there is no any reasons for the delay in approaching the Labour Court. The 2nd respondent has not seriously disputed the enquiry proceedings and he admitted the guilt that due to his family dispute, he was unable to attend the duty. The Labour Court also rendered findings that there is no any irregularity or illegality or procedural violations in conducting the disciplinary proceedings. However, awarded punishment, which is shockingly disproportionate to the gravity of the offence and thereby, set aside the order of compulsory retirement and directed to reinstate the petitioner with 15% backwages and all other attendant benefits and forfeiture of 85% of the backwages is the punishment. Once the Labour Court rendered findings that there is nothing irregularity or illegality or procedural violations in conducting disciplinary proceedings and the same are only to be upheld, the punishment has to be awarded under the relevant disciplinary rules. But the Labour Court without considering the same, after referring judgments of



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various High Courts in respect of major penalties, set aside the entire order and directed to reinstate the 2nd respondent with 15% backwages and forfeiture of 85% backwages was the punishment to the 2nd respondent. The said 85% of backwages of the punishment is nowhere stated in the disciplinary proceedings as on if the punishment in the disciplinary proceedings. If the Labour Court came to the conclusion that the punishment is shockingly disproportionate to the gravity of offences, it is the duty of the Labour Court to remit back the case for awarding appropriate punishment or the Labour Court itself can award punishment as per rules. But without considering the same, the Labour Court has passed the impugned order.

9. As far as the punishment is concerned, the disciplinary authority initially imposed punishment of removal from service and the same was modified through an appeal as compulsory retirement by the Appellate Authority. As per the rules, the 2nd respondent ought to have challenged the order through revision, but he has not filed any revision and he accepted the penalty and acted upon and thereby, he received all the retirement benefits and he is drawing pension. The Labour Court failed to consider all the above said aspects and the 2nd respondent without challenging the order in accordance with the Railway rules, straight away filed the Writ petition after



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8 years from the date of order of the appeal. Once the 2nd respondent accepted the order of Appellate Authority and acted upon, he cannot challenge the same, after 8 years, that too without preferring any revision as per the rules. This petition is filed by principle of delay and laches. Therefore, the Labour court has failed to consider the above said aspects and the Labour Court failed to consider that once the disciplinary proceedings were conducted as per the rules, punishment has to be awarded as contemplated under the disciplinary rules, but the Labour Court failed to award the punishment as per rules. But strangely awarded forfeiture of 85% of backwages and directed to reinstate with 15% of backwages. Even on merits, the petitioner is not entitled to any relief through this Writ petition, since he already admitted the punishment and not challenged the same through revision and he also availed the retirement benefits after accepting the punishment and he is also drawing pension. There is a delay of 8 years and hence he is not entitled for any relief through the industrial dispute. Therefore, the order passed by the Labour Court is liable to be set aside.

10. In the result, this Writ petition is allowed and the order passed by the Presiding Officer, The Central Government Industrial Tribunal-cum-Labour Court, Chennai in I.D. No.40 of 2011 is set aside and the I.D. No.40



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of 2011 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order
mjs

To

The Presiding Officer,
The Central Government Industrial Tribunal-cum-Labour Court,
Chennai

P.DHANABAL, J.,

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