

Shiv Shanker and Another

Vs

Union of India and Others

Writ Petitions (Civil) Nos. 13705-06 of 1984

(O. Chinnappa Reddy, R. B. Misra JJ)

23.01.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. The question raised in these writ petitions is, for all practical purposes, already answered in an earlier case decided by this Court in Dayal Saran Sanan v. Union of India (AIR 1980 SC 554 : (1980) 3 SCC 25 : 1980 SCC (L&S) 287 : (1980) 1 SLR 507). On February 19, 1981, the Divisional Railway Manager, Western Railway, Ratlam Division, passed an order to the effect that there was a break in the service of the petitioners from the dates shown against each of them as they were participating in the illegal strike of the running staff of the Mechanical Department and were absenting themselves from duty without authority. The order further added :

This break-in-service involves forfeiture of all leave earned up to the strike, postponement of date of increment and commencement of service afresh on resumption of duty after the strike for the purpose of eligibility for leave, passes and sanction of SC to PF and pensionary benefits on retirement in terms of Railway Board's letter No. ELI(II) 79 ST-36 dated March 31, 1979 published in Eastern Railway monthly Gazette No. 3/1979-80 dated June 1, 1979.

Further they are also liable to be taken up under D.A.R.

Admittedly this order was made without any notice to the petitioners and without giving them any opportunity to show cause against the action. The contention of the petitioners before us is that there was a violation of the principles of natural justice and for that reason alone, the order was liable to be quashed. In Dayal Saran Sanan v. Union of India (AIR 1980 SC 554 : (1980) 3 SCC 25 : 1980 SCC (L&S) 287 : (1980) 1 SLR 507), this Court had pointed out that an order of forfeiture of past service cannot be made without observing the principles of natural justice. The principle of the case was applied by the High Court of Rajasthan to cases of break in service on account of participation also. In one of the cases, namely, Karan Singh v. Union of India (Civil Writ Petition No. 1889 of 1981), S. C. Agarwal, J., after referring to the decision of this Court in Dayal Saran Sanan v. Union of India (AIR 1980 SC 554 : (1980) 3 SCC 25 : 1980 SCC (L&S) 287 : (1980) 1 SLR 507), observed :

In view of the decisions aforesaid, it must be held that an order with regard to the break in service which results in forfeiture of the past service of a Railway employee, cannot be made without observing the principles of natural justice.

The learned counsel for the respondents urged that part 1301 of the Railway Establishment Manual read with para 1304 enabled the Railway authorities to forfeit the service of a Railway servant for participation in unless condoned by the competent authority. We are not now on the question of competence of the Railway authority to make an order of forfeiture of service. The question before us is whether the principles of natural justice should be observed when an order of forfeiture of service on the ground of participation in an illegal strike is to be made. Neither para 1301 nor para 1304 of the Railway Establishment Manual excludes the observance of the principles of natural justice either expressly or by necessary implication. We, therefore, allow the writ petitions and quash the orders dated February 19, 1981, February 21, 1981 and February 18, 1981 which have been filed as Annexures I, II and III of the writ petition. The writ petitions are allowed as indicated.

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