

S. P. Viswanathan (II)

Vs

Union of India and Others

Write Petition No. 1151 & SLP No. 4079 of 1988

(P. B. Sawant, K. N. Singh JJ)

06.03.1991

ORDER

1. By means of this writ petition under Article 32 and the special leave petition the petitioner has challenged the validity of Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968.
2. The petitioner was a railway employee. Certain charges were framed against him and he was dismissed from service by order dated November 19, 1981. He challenged the validity of the order by means of a petition under Article 226 of the Constitution before the High Court which was subsequently transferred to the Central Administrative Tribunal. By its order dated October 27, 1986 the Central Administrative Tribunal set aside the order of dismissal and remanded the matter to the railway authorities for fresh enquiry. The railway authorities held fresh enquiry but the petitioner was treated to be under deemed suspension in accordance with the provisions of Rule 5(4) of the aforesaid Rules. After completion of the enquiry, the petitioner's services were terminated against which he filed writ petition before this Court under Article 32 of the Constitution. We have dismissed the same today by a separate order.
3. During the pendency of the enquiry the petitioner challenged validity of his suspension order under Rule 5(4) before the Tribunal. The Tribunal, by its order dated December 16, 1987, rejected the petitioner's application on the ground that the railway authorities were justified in placing the petitioner under suspension with retrospective effect in view of Rule 5(4). The petitioner has challenged the order of the Tribunal by means of the special leave petition. The petitioner has further filed a petition under Article 32 of the Constitution challenging validity of Rule 5(4).
4. After hearing learned counsel for the petitioner we do not find any merit in either of the two petitions. In the counter-affidavit filed on behalf of the respondents a positive statement has been made that the petitioner had been placed under suspension on March 24, 1981 i.e. before his services were terminated in 1981 and, therefore, on his reinstatement under the orders of the Central Administrative Tribunal he was deemed to be under suspension in accordance with Rule 5(4) of the Rules. We find no illegality in treating the petitioner under deemed suspension on his reinstatement pursuant to the orders of the Tribunal.
5. As regards the validity of Rule 5(4) is concerned we find no merit in the same as a similar rule has already been upheld by the Constitution Bench of this Court in *Khem Chand v. Union of India* [1963 Supp (1) SCR 229 : AIR 1963 SC 687 : (1963) 1 LLJ 665].
6. During the course of hearing it was brought to our notice that the petitioner has not been paid subsistence allowance for the period, March 24, 1981 to December 1, 1981. In our opinion the

petitioner is entitled to subsistence allowance for the period March 24, 1981 to December 1, 1981. We accordingly direct the respondent railway authorities to pay the substance allowance for the aforesaid period to the petitioner within six weeks from today.

7. The special leave petition as well as the writ petition are dismissed with the above observations but there will be no order as to costs.

</html