

Sub-Divisional Inspector (Postal) and Others

Vs

K. K. Pavitharan

Civil Appeals Nos. 13115-13116 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

30.09.1996

ORDER

1. Delay condoned.
2. Leave granted.
3. Heard learned counsel on both sides.
4. The respondent while in service as Extra-Departmental Agent was charge-sheeted, for misconduct of temporary absence from duty, under Rule 8 of the P&T Extra-Departmental Agents (Conduct and Services) Rules, 1964 on 6-6-1985. By order dated 31-3-1986, the enquiry was cancelled and fresh enquiry was conducted. Later, on conclusion of the departmental enquiry proceedings, by order dated 9-7-1990, the respondent was removed from service. He filed an application before the Tribunal. By order dated 28-5-1992, the Tribunal remitted the matter for reconsideration on the nature of punishment. That order was unsuccessfully challenged in this Court and had become final. Subsequently, when the order of removal was passed again, it was challenged in the Tribunal. The Tribunal by order dated 4-9-1993 quashed the proceedings and directed reconsideration of the quantum of punishment on the basis of amended rules. Again, it was challenged in the special leave petition before this Court which was dismissed. Consequently, the respondent was reinstated. He again filed an application. In the impugned order dated 5-12-1995 made in OA No. 787 of 1994, the Tribunal has directed payment of back wages. Thus, these appeals by special leave.
5. This Court in Rajasthan SRTC v. Bhagyo Mal [1994 Supp (1) SCC 573 : 1994 SCC (L&S) 647 : (1994) 26 ATC 939] held that while the High Court had found that the respondent-employee deserved punishment on account on his misconduct, and awarded lesser punishment, it is not liable to grant back wages particularly when the Tribunal had converted the order of dismissal into stoppage of two increments with cumulative effect. Therefore, the order of the High Court was set aside to that effect. It is now settled law that imposition of punishment is in the discretion of the disciplinary authority. But the authority is expected to exercise the discretion properly taking into consideration all the relevant facts and circumstances. In this case, the punishment of removal was found to be not justified for the reason that the respondent was temporarily absent from duty. But the order of dismissal having been converted into one of reinstatement with lesser punishment, the question arises where the respondent is entitled to back wages ? The Tribunal was not right in directing payment of back wages for the reason that the respondent was found to be responsible for misconduct though lesser punishment was imposed. Under these circumstances and following the above judgment, we hold that respondent is not entitled to back wages.

6. The appeals are accordingly allowed. No costs.