

M. A. Raoof

Vs

Senior Divisional Signal Telecommunication Engineer and Another

Civil Appeal No. 870 of 1992

(Sujata V. Manohar, D. P. Wadhwa JJ)

06.11.1997

ORDER

1. Mr. B. Kanta Rao states that the appellant has died. He applies for substitution of the appellant by his wife Fatimabi, his heir and legal representative. He undertakes to file his appearance for and on behalf of the heir and legal representative of the deceased namely, Fatimabi, within one week from today. The application is allowed on the undertaking given by Mr. Rao to file his appearance on her behalf and to carry out consequential amendments within one week from today.

2. The appellant was at the material time Electrical and Signal Maintainer working with South Central Railways under the Divisional Signal and Telecommunication Engineer (Maintenance), Secunderabad. He was prematurely retired from service w.e.f. 20-2-1976 in public interest on completion of 30 years' qualifying service, after giving him three months' notice as required under the relevant rules. His compulsory retirement was with a view to strengthening administrative machinery and to ensure efficiency. However, on considering the representations received from the appellant, his case was reconsidered by the Railway Board. By order dated 12-5-1980 he was reinstated in service w.e.f. 26-5-1980. Under the said order the intervening period between the date of his premature retirement and the date of his reinstatement was treated as leave due and admissible. Since the appellant had 36 days' leave at average pay to his credit and 62 days of leave with half pay, he was paid leave salary accordingly and the balance period was treated as extraordinary leave without pay.

3. The appellant contends that in some other cases of such reinstatement the employees have been paid full salary and, therefore, he should also be paid full salary for the entire period between his premature retirement and reinstatement. The claim of the appellant has to be considered in the light of the Guidelines issued by the Railway Board dealing with such cases, as contained in the confidential letter dated 15-11-1979, addressed to the General Managers of all Indian Railways, which is Annexure I to the counter-affidavit filed by the respondents in the present proceedings. Part III of these Guidelines deals with the procedure for consideration of representations by employees who have been served with the order of premature retirement. Paras 4 and 5 of Part III of these Guidelines provide as follows :

"4. If in any case, it is decided to reinstate a prematurely retired railway employee in service after considering his representation in accordance with these instructions, the period intervening between the date of premature retirement and the date of reinstatement may be treated as duty, or as leave or as dies non as the case may be, taking into account the merits of each case.

5. Where the Review Representation Committee records a definitive finding that the premature retirement of the railway servant was on account of political or personal victimisation, the intervening period should be treated as duty with full pay and allowances. In other cases, it would not be appropriate to treat the period during which the employee had not worked, as on duty and allow him the duty pay for the same. In such cases, the period may hitherto be treated as leave due and admissible or dies non, as the authority ordering reinstatement may decide."

4. In para 8 of Part III there are certain directions with regard to employees who were retired prematurely during the period of emergency. The Board has directed the appropriate Committee in such cases to take special care to see that overrigorous standards were not applied when the order of compulsory retirement was passed and that such premature retirement was not resorted to for political or personal victimisation.

5. The appellant's case is not a case of political or personal victimisation. As per the Guidelines, in his case it would not be appropriate to treat the period during which he did not work as "on duty" or to allow him full salary for the period. As per the Guidelines this period has to be treated as leave due and admissible, which has been done in the present case. The authority ordering reinstatement has applied its mind to the facts of the appellant's case and has given appropriate directions as to how the intervening period is to be treated. We find no reason to interfere with the discretion so exercised.

6. The only ground urged by the appellant is that some other persons have been given the benefit of pay for the entire intervening period. This, by itself, is of no help to him. If the person who is reinstated with full pay during the intervening period was a victim of personal or political vendetta he would be entitled to full pay as per the Guidelines. In one case, it seems that the authority under the Payment of Wages Act directed that pay should be given to the reinstated employee for the intervening period. That order also cannot be considered as a precedent which should be applied in all the cases, much less when the Guidelines issued by the Railway Board are clear and the discretion has been properly exercised in the present case.

7. In the premises, the appeal is dismissed. There will, however, be no order as to costs.