

Raj Bahadur Sharma (dead) thr.L.Rs.

Vs

Union of India & Ors.

(S. P. Bharucha, K. Venkataswami JJ)

20.01.1998

JUDGMENT

K.VENKATASWAMI J

1.Special leave granted.

2.The short question that arises for our consideration in this appeal is whether the respondents are justified in depriving the appellant (who has died pending appeal) the salary for the period from 20.2.81 to 17.5.88.The legal representatives of the deceased appellant are prosecuting this appeal. For the sake of convenience, the deceased appellant will be referred to herein as the appellant.

3.To appreciate the question, brief facts are necessary, which are as follows:-

4.The deceased appellant was an employee in the Railways. By an order dated 28.6.77, he was placed under suspension with effect from 1.7.77.The suspension was revoked by another order on 28.1.81.He preferred an application successfully under the provision of the Payment of Wages Act claiming wages for the period he was kept under suspension. The respondents preferred an appeal to the learned District Judge against the order of the Authority under the Payment of Wages Act and the appeal was allowed. Against that, the appellant preferred a Writ Petition before the High Court at Allahabad and that was allowed by the High Court on 5.9.84.

5.In the meanwhile, the appellant was transferred from Izatnagar to Kashipur. However, according to the appellant, since no relieving order was given and relevant passes were not made available, he could not join at the transferred place. Therefore, he continued to occupy the quarter at Izatnagar. For the said unauthorized occupation of the quarter after orders of transfer, departmental proceedings were initiated against the appellant and ultimately on that count, he was removed from service on 31.5.84.

6.The appeal filed against the removal from service was rejected in limine on 2.11.84.Challenging the order of removal as confirmed by the Appellate Authority, he preferred a Writ petition in the High Court which was subsequently transferred to the Central Administrative Tribunal. The Tribunal by an order dated 8.9.87 set aside the order of removal as confirmed by the Appellate Authority, with a direction to dispose of the appeal afresh with a reasoned order.

7.The Appellate Authority, after remand by the Tribunal, set aside the order of removal and imposed a minor punishment of withholding increments for three years. However, the Appellate Authority declined the relief of salary for the period from the date of transfer till he was allowed to join duty.

8. In the meanwhile, the appellant also initiated parallel proceedings in the Civil Court challenging the order of transfer itself and the Trial Court decreed the suit quashing the order of transfer. The appeals filed by the Railways before the Appellate Court and the High Court were dismissed. The result was the order of transfer was quashed. Since the order of transfer itself was quashed, the appellant claimed his salary from the date of transfer till he was permitted to join duty.

9. The appellant again preferred an application before the Central Administrative Tribunal challenging the order of the Appellant Authority imposing minor punishment and declining to pay salary from the date of transfer till he was allowed to join the duty. The contention before the Tribunal was that the order of transfer itself having been quashed by the Trial Court and its judgment having been upheld by the High Court, the disciplinary proceedings arising out of such illegal order could not stand in the way of the appellant getting his salary for the said period. It was also contended that his stay in the quarter at the original place (Izatnagar) after the transfer order was quashed cannot be treated as unauthorized one. It was also the specific case of the appellant that he was not at fault in not joining at the transferred place as he was not given the relieving order and necessary passes to enable him to join at the transferred place. Therefore, the initiation of disciplinary proceedings itself must be held to be bad. According to the appellant, even the minor punishment imposed by the Appellant Authority in the place of order of removal must also be set aside and he must be given all the continuity of service with full back salary.

10. The Tribunal held that though the order of transfer was quashed ultimately his stay at the original place after the order of transfer till the transfer order was quashed cannot be construed as authorized one. Therefore, the minor punishment imposed by the Appellate Authority cannot be interfered with. On the question of continuity of service and full salary, the Tribunal held that the appellant factually did not work after the transfer order was served upon him, and by setting aside the order of transfer, the appellant will not be entitled to pay and allowances for the period during which he did not work. On that ground, the Tribunal while allowing the consequential benefits from the date of his removal from service to the date of his reinstatement, directed the payment of salary only from 17.5.88 the date of reinstatement.

11. Learned counsel appearing for the appellant submitted that thought it was brought to the notice of the Tribunal that the appellant was not at fault in not joining at the transferred place, without giving any finding on that, the Tribunal has deprived the appellant of the salary for the period in question. He also brought to our notice that there was a specific plea, namely, that the appellant could not join at the transferred place in the absence of relieving order and necessary passes. The respondents never came forward to deny that assertion of the appellant. In other words, while the appellant was prepared to join the duty it was the administration which disabled the appellant to join the duty and, therefore, the appellant cannot be blamed.

12. Learned counsel appearing for the respondents could not deny the position and as a matter of fact, in the Counter Affidavit filed instead of directly replying the point it is stated as follows:-

"That in reply to para 2(ix) it is submitted that there is no material on record to show that the pass etc. were not issued to the petitioner." There is no plea positively denying the averments of the appellant in para 2(ix) in the appeal.

13. In the circumstances, we hold that the appellant was not at fault in not joining at the transferred place. Therefore, when he was not at fault he cannot be blamed for the consequences entirely. It is also a fact that he did not work factually for the period in question.

14. Taking all these factors into consideration, we are of the view that the ends of justice would be met by directing the respondents to pay 50% of the salary and allowances for the period in question to the legal representatives of the deceased appellant within six months. The appeal is accordingly allowed in part with no order as to costs.