

SUPREME COURT OF INDIA

Union of India

Vs.

Madhusudan Prasad

C.A.No.5909 of 2002

(K. G. Balakrishnan and Dr. A.R.Lakshmanan JJ.)

28.10.2003

ORDER

1. Union of India challenges the order passed by the Division Bench of the High Court of Patna. Respondent Madhusudan Prasad was a Safai Karmachari in CRPF. In the year 1994 he proceeded on leave and he should have reported for duty on 31-3-1994. Even after the expiry of the leave, he did not report for duty and overstayed leave without giving any information. The authorities treated him a deserter and issued a warrant of arrest and he was produced before the Chief Judicial Magistrate-cum-Commandant. The Magistrate imposed him a penalty of 15 days rigorous imprisonment. After the imposition of the penalty, the Commandant of CRPF issued an order of dismissal from service. Aggrieved by this order of dismissal, the respondent preferred an appeal and the appellate authority held that the disciplinary authority should have afforded reasonable opportunity to the respondent and as the respondent was not served with any show cause notice nor there was any enquiry preceding the dismissal, the order passed by the disciplinary authority was set aside and directed to reinstate the respondent in service. The appellate authority further observed that the period of absence from the date of dismissal from service i.e. 7-11-1994 till the reinstatement shall be treated as dies-non though there shall not be break in service for the purpose of pensionary benefits.

2. Pursuant to the order passed by the appellate authority, the respondent was reinstated in service on 15-2-1996. The respondent thereafter filed a Writ Petition before the High Court praying that he may be paid salary for the period 7-11-1994, that is the date of dismissal, to 15-2-1996, that is the date of reinstatement. The learned single Judge held that the respondent was entitled to get salary for the period he was out of service.

3. Aggrieved by this order, Union of India preferred LPA before the Division Bench, but the Division Bench disposed of the matter affirming the order passed by the learned single Judge and hence this appeal by way of SLP.

4. We heard the counsel for the Union of India and it was submitted that the respondent was not entitled to get salary for the period from 7-11-1994 to 15-2-1996 in view of the order

passed by the appellate authority. It was submitted that the Fundamental Rule 54 enables the Government to pass such an order and it was argued in appropriate case the authorities can pass an order denying salary to the employee when reinstatement is ordered as a result of appeal or review. Fundamental Rule 54 reads as follows: "Where a Government servant who has been dismissed, removed or compulsory retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and mere a specific order - (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be and (b) whether or not the said period shall be treated as the period spent on duty."

5. It is true that when a reinstatement is ordered in appeal or review, the authorities can pass specific order regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty preceding the dismissal, removal or compulsory retirement, as the case may be. This is an enabling provision and the authorities can consider the relevant facts as to whether the employee should be denied the salary for the period he was kept under suspension preceding the removal, dismissal or compulsory retirement. The counsel for the appellant has placed a reliance on the decision of the Constitution Bench of this Court in *Managing Director, ECIL v. B. Karunakar* reported in¹ this Court held that the question whether the employee would be entitled to the backwages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceeding and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh inquiry is held.

6. The above case was concerning an employee, proceeded, who was found guilty in an enquiry but the report was not furnished to the employee and show cause notice was not served on him. In view of the facts and circumstances of the case, the Court directed appropriate order should be passed regarding the back wages. In the instant case the appellate authority directed reinstatement of the respondent and held that he was not entitled to get back wages for the period he was out of service. It may be noticed that the respondent was removed from service without any enquiry and he was not even given show cause notice prior to his dismissal from service. There was fault on the part of the employer in not following the principle of natural justice. These relevant facts were considered and the learned single Judge and also the Division Bench ordered the payment of backwages. We do not think this is a fit case where the Fundamental Rule 54 could have been invoked by the authorities. We find no merit in the appeal. The appeal is accordingly dismissed. Appeal dismissed.

¹1993 (4) SCC 727