

**SUPREME COURT OF INDIA**

Union of India & Anr.

Vs.

J.Jason Joseph

C.A.No.1863 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

14.02.2011

**ORDER**

SLP(Civil) No.2938 of 2011

1. Leave granted. Heard.

2. The respondent was a Travelling Ticket Inspector in the Southern Railway. In regard to seven charges, as per charge memo dated 19.2.1997, a departmental inquiry was held and the Inquiry Officer submitted an report dated 13.6.2002 holding that the charges were proved (except a part of the charge No.2). The disciplinary authority accepted the inquiry report and imposed the punishment of dismissal on the respondent by order dated 26.7.2002. The respondent filed an appeal and the appellate authority, by order dated 20.2.2003, allowed the appeal of the employee in part. The appellate authority held that only charges 1,6 and 7 were proved and charges 2,3,4 and 5 were not proved. He was of the view that the punishment of dismissal was excessive in respect of the proved charges and, therefore, he set aside the dismissal and imposed the punishment of reduction in rank from TTE in the time scale of Rs. 5000 to 8000 to senior TC in the time scale of 4000 to 6000 for a period of three years (recurring) subject to the condition that the period between the date of dismissal to date of reinstatement shall be treated as period under suspension. The General Manager, in exercise of his revisional power, after giving an opportunity to the respondent to show cause, revised the order of the Appellate Authority and passed an order dated 8.9.2005 increasing the punishment to dismissal. He held that even in regard to charges 1, 6 and 7 which were held to be proved, the respondent deserved the punishment of dismissal.

3. Feeling aggrieved, the respondent approached the Central Administrative Tribunal and challenged the punishment. The Tribunal, by order dated 30.5.2007, dismissed the original application filed by the respondent and confirmed the punishment imposed. However, the subsequent writ petition filed by the respondent challenging the order of the Tribunal was allowed by the Madras High Court, by the impugned order dated 22.10.2010. The High Court was of the view that the revisional authority was not justified in interfering with the decision of the appellate authority. As a consequence, the High Court set aside the order of

the Tribunal and the revisional authority and restored the order of the appellate authority with the consequential benefits of continuity of service, seniority and 25% of the backwages. The said order is challenged in this appeal by special leave.

4. The learned counsel for the appellant submitted that there was no justification for the High Court, in exercise of power of judicial review, to interfere with the findings of the revisional authority and the punishment imposed, which had been accepted by the Administrative Tribunal. He also contended that the High Court having confirmed the finding that the charges 1,6 and 7 against the respondent were proved, the direction for payment of 25% backwages would amount to rewarding the guilty, which is impermissible in law.

5. The revisional authority did not interfere with the findings recorded by the appellate authority that respondent was not guilty of charges 2,3,4 and 5. The appellate authority found that as only charges 1,6 and 7 were proved and the other charges relating mis- appropriation of additional fare were not proved, the punishment of dismissal was excessive and consequently set aside the same and imposed a lesser punishment of reduction in rank. On the facts and circumstances, the said order of the appellate authority did not call for interference and that too in exercise of power of revision. Therefore we are of the view that the High Court was justified in restoring the decision of the appellate authority imposing a lesser punishment.

6. However while the High Court was justified in restoring the order of reinstatement with imposition of lesser punishment of reduction in service with continuity of service, the High Court was not justified in granting the reliefs of seniority and 25% back wages. When the High Court has upheld the finding that the respondent was guilty of charges 1,6 and 7, any direction for back wages would amount to rewarding the guilty, which is not permissible. Nor will he be entitled to restoration of his seniority as ordered by the High Court.

7. In view of the above, we allow this appeal in part and set aside the order of the High Court awarding backwages of 25% and restoring the seniority. As a result of setting aside of the punishment of dismissal the respondent will be entitled to reinstatement with continuity of service, but shall be subjected to the punishment imposed by the appellate authority. The respondent will not be entitled to restoration of seniority or to any back wages.