

(2017) 1 WLCRajUC 2

RAJASTHAN HIGH COURT

Case No: Civil Writ Petition No. 8357 of 2016

Sushil Chandra
Chaturvedi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Nov. 4, 2016

Acts Referred:

Constitution of India, 1950 - Article 226#Railway Services (Discipline and Appeal) Rules, 1968 - Rule 9

Citation: (2017) 1 WLCRajUC 2

Hon'ble Judges: Mr. Govind Mathur and Mr. Deepak Maheshwari, JJ.

Bench: Division Bench

Advocate: Mr. Vineet R. Dave, Advocate, for the Petitioner; Mr. Kamal Dave, Advocate, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. This petition for writ is preferred to challenge the order dated May 12, 2016 passed by the Central Administrative Tribunal, Jodhpur Bench,

Jodhpur in Original Application No. 426/2013 to the extent it directs the respondents to re-examine the matter as per the decision of the Hon"ble

Supreme Court of India in the case of State of Punjab & Ors. v. Rafiq Masih reported in AIR 2015 SC 696.

2. The brief factual matrix of the case is that the petitioner while working as Assistant Store Keeper (Group-C) at Chanderiya was served with a

memorandum under Rule 9 of the Raiwal Service (Discipline & Appeal) Rules, 1968 (hereinafter to be referred as "the Rules of 1968"). After

conducting a regular inquiry, an order of punishment was passed by the Disciplinary Authority on January 5, 2000 imposing a penalty of reversion

from the running pay scale. A consequential order to implement the order dated January 5, 2000 was passed on 19th January, 2000. Aggrieved

by the order aforesaid, an appeal was preferred which came to be rejected on 3rd May, 2000.

3. To challenge the order passed by the Disciplinary Authority as well as the Appellate Authority, an Original Application was preferred before the

Central Administrative Tribunal, Jaipur Bench which came to be decided on 20th November, 2007. The Tribunal set aside the orders passed by

the Disciplinary Authority as well as the Appellate Authority. The Tribunal also quashed the charge-sheet itself.

4. Suffice to mention that the charges in the disciplinary proceedings were related to certain shortage of material with the petitioner while holding

the office of Store Keeper (C). Suffice to mention that the charge-sheet was also containing the issue relating to material available in excess with

the stores. Despite quashing of the orders passed by the Disciplinary Authority as affirmed by the Appellate Authority, the respondents under an

order dated May 28, 2004 directed the petitioner to deposit a sum of Rs.6,16,184/- and a sum of Rs.1,74,878/- was deducted from his gratuity.

5. Against the order aforesaid, the petitioner preferred an Original Application before the Central Administrative Tribunal, Jodhpur which came to

be dismissed under an order dated 13th September, 2005.

6. A challenge was given to the same by way of filing a petition for writ (D.B. Civil Writ Petition No. 6225/2005). The writ petition aforesaid came

to be disposed of under an order dated 8th January, 2013 with directions as follows:-

(i). The petitioner will file representation before the respondents against the order dated 28th May, 2004 within 15 days from today. The

petitioner is at liberty to raise all legal and factual submissions in his representation including the violation of provisions of Payment of Gratuity Act,

1972 and violation of provisions of Railway Service (Pension) Rules, 1993.

(ii). The respondents are directed to decide the representation of the petitioner within a period of 30 days from the date of receipt of it

sympathetically and taking into consideration the fact that petitioner had already retired way back on 30th September, 2000. It is made clear that

in case his representation is not decided within the time prescribed, then it will be open for the petitioner to approach this Court by way of

contempt petition.

(iii). If any adverse order is passed against the petitioner, then petitioner will be at liberty to take any legal recourse available to him before the

contempt forum, in accordance with law.

(iv). The interim stay order of this Court dated 21st October, 2005 will remain in force, till the decision of the representation.

(v). Parties are directed to bear their own costs.

7. In pursuance to the directions given by this Court, the petitioner submitted a detailed representation to the Deputy Chief Engineer

(Construction), West-Central Railway, Kota Junction, Kota which came to be decided on 11th March, 2013. The Deputy Chief Engineer

(Construction)-I, while declining the claim made by the petitioner, arrived at the conclusion that the dues against the delinquent are absolute and he

is liable to pay a sum of Rs.4,41,306/- excluding the amount already recovered from his gratuity.

8. To challenge the decision taken by the Deputy Chief Engineer (Construction)-I on 11th March, 2013, the petitioner preferred an Original

Application (OA No. 426/2013) before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur. The Original Application aforesaid came to

be disposed of under the judgment impugned dated 12th May, 2016 (Annex.1).

9. The Central Administrative Tribunal under the order aforesaid arrived at the conclusion that the recovery impugned is impermissible in law.

However, the respondents were directed to re-examine the matter as per the decision of the Hon"ble Supreme in the case of State of Punjab &

Ors. v. Rafiq Masih (supra) and further to pass an appropriate order.

10. While challenging the order aforesaid, the argument advanced by the learned counsel on behalf of the petitioner is that for the shortage of

material, the petitioner was subjected to a disciplinary action and was also subjected to a penalty which culminated into a penalty. The same was

subject matter of the Original Application which came to be accepted. In view of it, there was no need to further make any recovery on the count

of shortage of material with the petitioner. It is also stated that the petitioner has already been retired from service on 30th September, 2000 and as

such, the retention of a part of his gratuity is highly unjust and arbitrary.

11. Per contra, as per the learned appearing on behalf of the respondents, the recovery sought to be made is against the shortage of material with

the petitioner while he was working as Store Keeper (C) at Chanderiya. The recovery, as per the learned counsel, is permissible under Rule 15 of

the Railway Servant (Pension) Rules, 1993. The Rule aforesaid prescribed that it shall be the duty of the Head of Office to ascertain and assess

Government or railway dues payable by a railway servant due for retirement. The shortage in question was ascertained in the light of the provisions

aforesaid and the recovery is in consonance thereto.

12. Heard learned counsels appearing on behalf of the rival parties.

13. It is not in dispute that for the shortage in question, the petitioner was subjected to disciplinary action as per Rule 9 of the Rules of 1968. In the

disciplinary action aforesaid, the petitioner was penalised by reversion from his running pay scale. The order imposing penalty though was

confirmed by the Appellate Authority but ultimately came to be set aside by the Central Administrative Tribunal in an original application preferred

by the petitioner. The question about shortage as such was not open for the respondent to re-examination. The respondents if at all had any

grievance with regard to the order passed by the Central Administrative Tribunal pertaining to the penalty imposed then, they should have file a

petition for writ before the competent Court having jurisdiction.

14. Suffice to mention that the Central Administrative Tribunal while accepting the Original Application not only quashed the order of punishment

but also quashed the charge-sheet itself. Meaning thereby, the charge pertaining to shortage of material was not found sustainable. In view of it, the

recovery sought to be made from the petitioner by the respondents was not at all permissible. The Central Administrative Tribunal also arrived at

the same conclusion to allow the respondents to proceed against the petitioner as per the law laid down by the Hon"ble Apex Court in the case of

Rafiq Masih (supra).

15. The case aforesaid is admittedly having no application in the instant matter.

In the case of Rafiq Masih (supra), the Hon"ble Apex Court was dealing with the issue pertaining to recovery of the amount which was paid

erroneously by making wrong fixation of pay.

16. In the case aforesaid, the erroneous payment was a fact admitted and that is not the position in the instant matter. In view of it, we are in

agreement with the argument advanced by the learned counsel for the petitioner that no direction could have been by the Tribunal to re-examine

the issue in the light of decision of the Hon"ble Supreme Court in the case of State of Punjab & Ors. v. Rafiq Masih (White Washer) etc.

(supra).

17. The writ petition is allowed. The judgment dated May 12, 2016 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in

Original Application No. 426/2013 is set aside to the extent it directs the respondents to re-examine the matter as per the decision of the Hon"ble

Apex Court in the case of State of Punjab & Ors. v. Rafiq Masih and further to pass an appropriate order.

18. The respondents are directed to release whatever amount already recovered from gratuity or pension of the petitioner. No order to costs.

19. Writ Petition, deducted amount ordered to be released to