Ram Charan Singh Vs Union of India (UOI) and Others

C.W.P. No. 2574 of 1999

Court: Delhi High Court

Date of Decision: May 31, 2002

Acts Referred:
Central Civil Services (Classification, Control and Appeal) Rules, 1965 â€" Rule 14, 15(4)#Central Civil Services (Pension) Rules, 1972 â€" Rule 10(4), 9, 9(2)

Hon'ble Judges: S.B. Sinha, C.J; A.K. Sikri, J

Bench: Division Bench

Advocate: B.B. Rawal, for the Appellant; T.V. George, for the Respondent

Final Decision: Allowed

Judgement

S.B. Sinha, C.J.
How to read a judgment of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as,

"the Tribunal") is one of the questions, which arise for consideration in this writ petition.

2. The basic fact of the matter is not in dispute. The petitioner was working as a Deputy Collector, Customs and Central Excise at Siliguri. A

departmental proceeding was initiated against him in terms of Rule 14 of the Central Civil Services (C.C.A.) Rules, 1965 (hereinafter referred to as

"the said Rules").

He was removed from service by an order of the disciplinary authority dated 27.03.1986. Questioning the said order, an Original Application was

filed by him before the Tribunal.

The said Original Application was allowed in part by the Tribunal in terms of its order dated 06.12.1994. The operative portion whereof is as

follows :-

33. The order removing the applicant from service having not been passed in accordance with new Sub-rule (4) of Rule 15 is not sustainable. We,

however, leave it in the discretion of the disciplinary authority (the President) to pass an appropriate order keeping in view the facts and

circumstances of this case. The question still remains whether this is a fit case where we should direct the reinstatement of the applicant and also

issue a direction that he should be given his back wages. We note that the applicant had been placed under suspension before the commencement

of the disciplinary proceedings and his services remained suspended during the pendency of the disciplinary proceeding. Again, in these

circumstances, we do not consider it proper to issue any direction on this score. It will be open to the disciplinary authority to take such decision,

as it deems just and proper. If it decides to reinstate the applicant, it will be open to it to consider the question as to whether the applicant should

be given back wages. Since the matter is pretty old, the disciplinary authority should take an expeditious decisions but not beyond a period of four

months from the date of receipt of certified copy of this order by the appropriate competent authority.

3. Prior to passing of the said order, the petitioner retired from service on 30.11.1994, although a provisional pension was granted to him under

Rule 69 of the Central Civil Services (Pension) Rules, 1972 (in short, "CCS (Pension) Rules"). He was directed to continue to remain under

suspension under Rule 10(4) of the said Rules till the date of his superannuation.

4. The disciplinary proceedings were treated to have been continued by the disciplinary authority and the said order dated 25.10.1995 was passed

purported to be in terms of Rule 9(ii)(a) of the CCS (Pension) Rules in terms whereof a direction was issued to cut 50% of his monthly pension,

which was otherwise admissible to him on permanent basis.

The said impugned order reads thus :-

NOW Therefore, the President being the disciplinary authority to impose the penalty under Rule 9(2)(a) of the CCS (Pension) Rules, 1972

hereby orders imposition of penalty of 50% cut in the monthly pension otherwise, admissible to Sh. R.C. Singh, Dy. collector of Central Excise,

Siliguri on permanent basis. It is also further ordered that period of suspension from 1.9.1983 to 30.11.1994 be treated as non duty and the

subsistence allowance already paid to Sh. R.C. Singh during the period from 1.9.1983 to 30.11.1994 be treated as adequate.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

5. Questioning the said order, the petitioner filed an Original Application before the learned Tribunal praying inter alias for the following reliefs :-

(i) To quash the impugned orders at Annexure "A", "B", and "C", being bad in law and contrary to the Rules laid down on the subject.

(ii) Consequent to relief at (i) being granted, direct the respondents to issue orders fixing the pay of the applicant in the Fourth Central Pay

Commission pay scale as on 1st January, 1986, given yearly increments and to work out his pay on the date of superannuation and given him the

arrears of pay, seniority, promotion and all consequential benefits accruing to him after quashing the order or removal and also consequently refix

the pension and direct and respondents to pay the arrears on all these counts with 24% interest till the date of realization.

(iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other

relief/reliefs as deemed fit in the light of the facts and circumstances of the case.

6. Before the learned Tribunal as also before us, a contention was raised by the petitioner that the order of penalty of removal having been quashed

by the learned Tribunal in its order dated 06.12.1994, the only consequential order, which the respondent could pass, was to notionally reinstate

him in service w.e.f. 27.03.1986.

7. On the other hand, the contention of the respondent is, as the Tribunal had not quashed the charges, the Enquiry Report and the entire

disciplinary proceedings, which were subject to the discretion of the disciplinary authority to pass an appropriate order in accordance with law

upon complying with the requirements of Sub-rule (4) of Rule 15 of the said Rules.

8. The learned Tribunal by reason of its impugned judgment construed the earlier order of the Tribunal dated 06.12.1994 passed in O.A. No. 410

of 1986 to mean that the matter was left at the discretion of the disciplinary authority to pass an appropriate order and as the petitioner herein was

directed to continue to remain under suspension and further having regard to the fact that there had no adjudication on merit of the charges, the

impugned order is sustainable.

9. The learned Tribunal inter alias held :-

15. Re the second main ground it is noticed that though the penalty order of removal was quashed, there is no direction by the Tribunal in its order

dated 6.12.94 (supra) as such for reinstatement of the applicant and, inter alia, it was left to the discretion of the disciplinary authority (the

President) to pass an appropriate order as it deems just and proper. In the circumstances, we are of the view that the disciplinary proceedings are

deemed to have been continued till the passing of the aforesaid impugned order dated 25.10.95 (Annexure B). As rightly contended by the

respondents there is no question of passing any order by the disciplinary authority if the disciplinary proceedings are not pending against the

applicant, since a disciplinary proceeding initiated against the applicant originally several years back will have to be construed as pending at the

time of the retirement of applicant. In view of the above position, we are of the opinion that there was no infirmity or illegality in continuing the

disciplinary proceedings against the applicant under Rule 9 of the CCS (Pension) Rules, 1972 and there was no obligation to obtain the sanction of

the President under the said Rules in the aforesaid facts and circumstances of this case. The bar of limitation under Rule 9(ii)(b)(i) and (ii) is also

not applicable to the present case in the above circumstances. Hence, the second ground raised by the applicant fails as it is not sustainable.

10. A further contention was raised before the learned Tribunal that, in any event, when ascertaining the quantum of punishment, no order could be

passing imposing 50% cut in the pension by the said order. The said contention was also rejected by the learned Tribunal.

11. So far as the order dated 15.06.1995 is concerned, the contention to the effect that the quantum of pension ought to have been calculated

having regard to the revision in the scale of pay brought about by reason of acceptance of the recommendations of the Fourth Central Pay

Commission w.e.f. 01.01.1986 was not accepted and the prayer of the petitioner to quash the said order was rejected by the Tribunal inter alias

on the ground of inaction, laches and inordinate delay on the part of the petitioner.

12. As regards contention of the petitioner that he was entitled to re-fixation of the pensionary benefits, the learned Tribunal did not apply its mind

deeply and rejected the said contention stating :-

27. On a careful consideration of the matter, we are of the view that the applicant has failed to prove the presence of any prima facie illegality in

the said order and the grounds raised by him against the same, Therefore, are not sustainable. Hence, the aforesaid ground also fails.

13. The principal question, which arises for consideration, as noticed hereinbefore, is how to read the direction of the learned Tribunal made in its

order dated 06.12.1994 passed in O.A. No. 410 of 1986 in the peculiar facts and circumstances of the case.

14. It is not is dispute that a judgment is to be read in its entirely. It is required to be read reasonably. It cannot be read as a statute. There exists a

presumption that by reason of a judgment, a Court would not permit a party to the lis to do something, which would be contrary to law. The fact

that on the date of passing of the said judgment the petitioner had retired had not been brought to the notice of the learned Tribunal. Had the same

was brought to the notice of the learned Tribunal, the matter would have been otherwise.

15. In Central Coalfields v. State of Bihar & Ors.1993 (1) PLJR 617, a Division Bench of the Patna High Court noticed :-

15. It is also well known that judgment of a court is not to be reason as a Statute.

In General Electric Co. Vs. Renusagar Power Co., , it was held :-

As often enough pointed by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as word and

expressions defined in statutes. We do not have any doubt that when the words, ''adjudication of the merits of the controversy in the suit'' were

used by this Court in State of U.P. v. Janki Saran Kailash Chandra the words were not used to take in every adjudication which brought to an end

to proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the

parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to

the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be turned as adjudication of the merits of the

controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which

tends to defeat the object of the legislation must be avoided.

The exists a presumption that the court directed the parties to act in terms of law.

16. The said decision has been followed by us in C.W.P. No. 3366 of 1988 in Shri S.D. Shukla v. Union of India & Ors. disposed of on

11.04.2002.

17. Yet again recently in Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , it was held :-

19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decisions on

which reliance is placed. Observations of Courts are not to be read as Euclid"s theorems nor as provisions of the statute. These observations must

be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of

a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges

interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London

Graving Dock Co. Ltd. v. Horton 1951 AC 737 , Lord Mac Dermot observed :

The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and

applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that

most distinguished judge.

18. The judgment of the Tribunal must be read in the context of factual matrix obtaining and the respective contentions of the parties therein. In the

said proceedings, the report of the Enquiry Officer was not furnished to the petitioner. The learned Tribunal held that the petitioner was not entitled

to a copy of the said report. It referred to the decision of the Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

wherein it was held :-

...The courts held that while exercising his second opportunity of showing cause against the penalty, the employee was also entitled to represent

against the findings on charges as well...

19. The learned Tribunal held that the disciplinary authority, Therefore, is enjoined with a duty to apply his mind not only on the report of the

Enquiry Officer, but also the defenses of the delinquent. It was held that the diplomacy authority must find out whether the findings recorded by the

Enquiry Officer are supported by evidences or not and thus implicitly it is required to read and consider the evidences produced before the Enquiry

Officer.

20. The submission of the learned counsel appearing on behalf of the respondents to the effect that by the officials in the concerned Ministry had

taken the relevant matters into consideration was held to be untenable stating :-

...It has to be borne in mind that the primary responsibility of passing an order of punishment is of the disciplinary authority (the President). A

distinction between acting automatically on an advice and exercising one''s own discretion has to be maintained. Whenever, it is found in a given

case that the power though vested in a particular authority has, in substance, been exercised by another authority, the exercise of such a power

cannot and should not be upheld.

It was further held :-

28. Having given a thoughtful consideration to the matter, we are of the opinion that this is a typical case where neither the Minister of Finance nor

any official in his Ministry considered the report of the inquiry officer and took his decision thereon after looking into the evidence produced before

the inquiry officer.

21. Referring to the various office memorandums referred to therein, it was held that the respondents were not bound thereby.

Thereafter as noticed supra, the said application was allowed in apart with the observations made therein. The order removing the petitioner from

service having not been found in accordance with law was held to be not sustainable.

Once it is not held to be sustainable, the same must be held to have been set aside.

Leave granted to the disciplinary authority was only to the effect that it may pass an appropriate order.

22. An order that disciplinary proceedings should be continued against the petitioner was not passed by the President. Admittedly, the President

had also not directed initiation of any proceedings in terms of Rule 9 of the CCS (Pension) Rules, as on the date of the petitioner''s retirement, the

order of removal was not subsisting.

23. A disciplinary proceeding can be directed to be continued despite superannuation of the concerned employee, but Therefore although a person

is permitted to retire, a specific direction to that effect must be passed.

24. It is not in dispute that the President had not passed any order(s) to continue the departmental proceedings under Rule 9 of the CCS (Pension)

Rules.

Furthermore, such a proceeding was barred by limitation under rule 9(ii)(b)(i)&(ii) of the CCS (Pension) Rules.

25. Pension payable to a person can be withheld only in the event an appropriate case Therefore is made out in terms of the CCS (Pension) Rules

and not otherwise. A Statutory authority, as is well known, must act within the four corners of the Statute. A Statutory authority must apply the

principles of the Statutes reasonably.

In the foundation for exercise of power is non-existent, the same cannot be done relying on or on the basis of an observation made by the Tribunal.

A decision must be read having regard to the factual backdrop obtaining therein. If a decision is based on a factual error, the same would be for all

intent and purport will not have the value of any binding precedent.

Directions of the Tribunal could be complied with in the event the petitioner was at the time of passing thereof was in service. It was the bounded

duty of the respondents to bring the said fact to the notice of the Tribunal by filing an appropriate application. If the petitioner was not in service,

the Tribunal had no jurisdiction to direct that a proceeding under Rule 9 of the CCS (Pension) Rules be initiated against him. Such an order would

have been without jurisdiction and, thus, a nullity.

26. Having regard to the fact that initiation of the departmental proceedings under the CCS (Pension) Rules was barred by limitation, and no order

in relation thereto having been passed, the learned Tribunal, in our opinion, completely misdirected itself in passing the impugned judgment.

The learned Tribunal, in our opinion, failed to pose un to itself the right question so as to enable it to consider the facts involved therein with a view

to arrive at a right decision.

27. So far as the second and third contentions raised before the learned Tribunal are concerned, the same, in our opinion, are not sustainable. The

findings of the learned Tribunal are not sustainable. The petitioner was in service when the recommendations of the Third and Fourth Central Pay

Commission came into force. The petitioner, thus, was entitled to the benefit of the revision of the scale of pay. Consequently he was also entitled

to pension in terms thereof.

So far as matter relating to pension is concerned, the cause of action is a continuous one and thus the learned Tribunal must be held to have

committed a serious error in not considering the same in its proper perspective. (See M.R. Gupta Vs. Union of India and others, .

28. In this view of the matter, we are of the opinion that the petitioner would be entitled to pension in terms of the extant rules as if he had retired

on superannuation on 30.11.1994.

However, we are not inclined to interfere with that part of the order whereby and whereunder the petitioner has been treated to be under

suspension in terms of Rule 10(4) of the said Rules.

This writ petition is allowed accordingly. However, in the facts and circumstances of the case, there shall be no orders as to costs.