

## **Union Of India (Uoi) And Ors. vs R. Reddappa And Anr. on 5 August, 1993**

**Equivalent citations: JT1993(4)SC470, 1993LABLC2203, (1994)ILLJ1233SC, 1993(3)SCALE351, (1993)4SCC269, [1993]SUPP1SCR503, 1993 AIR SCW 2986, 1993 (4) SCC 269, 1993 LAB. I. C. 2203, (1993) IJR 354 (SC), (1994) 1 SCT 119, 1994 SCC (L&S) 142, (1993) 67 FACLR 637, (1993) 2 LABLJ 1233, (1993) 3 SCJ 157, (1993) 4 SERVLR 794, 1993 UJ(SC) 2 568, (1994) 26 ATC 117, (1993) 2 CURLR 474, (1994) 1 LAB LN 367, (1993) 4 JT 470 (SC)**

**Author: R.M. Sahai**

**Bench: S.C. Agrawal, R.M. Sahai**

### **JUDGMENT**

R.M. Sahai, J.

1. Railway employees working in Loco Running Staff, of different zones numbering approximately 800, were dismissed under Rule 14(2) of Railway Service (Discipline and Appeal) Rules for their participation in Loco Running Staff Association strike in January 1981. In each of these cases the disciplinary authority held that it was not reasonably practicable to hold any inquiry. Since then most of the employees have been pursuing their remedy by way of appeals, revisions, writ petitions and claim petitions. They have also been making effort politically to get themselves reinstated. The legal battle has been long one. Some of it is noticed in the order passed by the Central Administrative Tribunal (referred as 'CAT'), Hyderabad. Other orders impugned are passed by CAT, Jodhpur and CAT, Chandigarh. Appeal numbers 4681-82 of 1992 and 4651-4680 of 1992 arise out of the order passed by the CAT, Hyderabad. Earlier the employees challenged their dismissal by way of writ petitions in the High Court of Andhra Pradesh. Some of these petitions were allowed as the appellate authority had passed non-speaking orders. Others were dismissed. Against the orders dismissing the writ petitions the employees filed a review petition which was allowed in view of decision of this Court in Union of India v. Tulsiram Patel and a direction was given to the appellate authority to decide the appeals afresh in light of observations made, by this Court in Satyavir Singh v. Union of India and Ors. and Ram Chander v. Union of India and Ors. . The appellate authority once again maintained the order of dismissal. It has been set aside by the CAT both for failure to apply mind and absence of any material justifying dismissal. Following directions were issued:

In the result, we set aside the orders of the appellate authorities/reviewing authorities rejecting the appeals/review petition of the applicants and the orders of the disciplinary authorities dismissing the applicants from service. In O.A. Nos. 24/86, 369/86, 232/ 87, 402/88, 403/88, 694/88, 808/88, 809/88, 810/88, 811/88, 812/88, 865/88, 868/88, 869/88, 870/88 871/88, 883/88, 44/89, 46/89, 92/89, 93/89, 103/89, 231/89, 298/89, 299/89 and 300/89, we direct the appellate authority to conduct an enquiry either himself or through an enquiring authority appointed by it in accordance with the Railway Services (Discipline and Appeal) Rules, 1968. If an enquiry is not possible at all, the applicants will be entitled to be reinstated with all consequential benefits. In O.A. Nos. 233/87, 329/87, 767/87, 43/89 and 45/89 it is represented that the applicants have since retired. The question of holding an enquiry in their cases does not, therefore, arise. The orders of the disciplinary authority/appellate authority in these cases are set aside as has been done by the Gauhati Bench in O.A. No. 408/86 Golul Ch. Barua and Ors. v. Union of India and Ors. The applicants therein will be entitled to receive the salary for the period from the date of dismissal to the date of their attaining the age of superannuation and thereafter to pension as if they had retired from service on attaining the age of superannuation.

2. Special Leave Petitions have been filed against the order of CAT, Jodhpur. The employees working in Loco Running Sheds of Jodhpur had challenged their order of dismissal by way of appeals. As the appeals were not decided within reasonable time they filed writ petitions in the Rajasthan High Court which were transferred to this Court on an application made by the Union of India. All these petitions were disposed of along with the decision in Tufairam Patel. In view of the observation made in that decision the employees whose appeal had been rejected during pendency of the writ petition filed revision before the revising authority which was dismissed. Against the order dismissing their revision they filed the claim petition which was decided in July 1992 and following directions were issued:

In view of the above discussion, we allow the applications partly, quash the orders passed by the Revisional Authority and direct that a fresh order may be passed in the Revision petition of the applicants after taking into account observations contained in this order. Since applicants are out of job for over 11 years, the revisional authority shall pass the fresh orders on the Revision Petitions within 4 months of receipt of; the copy of this order. The respondents are directed to allow the applicants to retain their quarters until 2 months after the fresh orders are passed in their Revision Petition, or until the normal period for which they are entitled under rules to retain the quarters after superannuation in case of those who have attained the age of superannuation, subject to payment of all arrears of rent at the rate applicable before their dismissal from service. within 4 months of this order. Where the revisional authority holds or orders an enquiry under D.A.R., the applicants will be allowed to retain the quarters till final decision in the enquiry proceedings subject to the above conditions. Parties to bear their own costs.

So far the appeals arising out of order passed by CAT, Chandigarh are concerned the employees working in that area also challenged the orders of disciplinary and appellate authority by way of writ petitions which were transferred to this Court. After the decision of the case in Tulsiram Patel the employees filed Revision Petition and sought a direction that the "concerned authorities be directed to decide the same. The CAT Chandigarh held that the ratio of Tulsiram Patel was of no assistance as the appeals had been rejected earlier and nothing was pending.

3. So far the political endeavour is considered it is narrated in an affidavit that in March 1990 the then Railway Minister made a statement on the floor of the House assuring that the cases of the dismissed employees would be reviewed and a decision would be taken for their reinstatement. It is further stated that in pursuance of the said statement of the Minister an order was passed on 20th June 1990 by the Board for review of cases and on 8th September 1991, 37 employees of South Central Railway were recommended for reinstatement. Later on the Chairman of the Railway Board submitted a note to the Railway Minister that instead of reinstating the employees they may be paid one time compensation. The affidavit states, that it was not agreed to by the Minister and a decision was taken by him to reinstate all the employees which was approved by the Cabinet. However since the decision was taken one day prior to the fall of the Ministry it was rescinded by the President. The affidavit states that the Railway Minister of the interim Government again made a statement in 1991 on the floor of the House that all the dismissed employees shall be reinstated. The succeeding Government, however, did not pass any order of reinstatement. But the learned Counsel for respondents has produced a copy of the Government's decision made in 1993 to re-employ all such employees who had not approached the Court.

4. When the special leave petition was filed by the Union of India against the order of CAT, Hyderabad, a statement was made on 14th November 1991 that the Government was seriously considering the question of withdrawing the proceedings against all the persons who took part in the strike in 1981. The statement was supported by an affidavit filed in January 1993, by Sr. Personnel Officer. In March 1992 another affidavit was filed by another Chief Personnel Officer stating categorically that the Government of India had decided not to reinstate these employees in service. In yet another affidavit filed in July 1992 it was stated that the matter was receiving attention of ministries concerned and a recommendation was being made for grant of monetary benefit to the employees. The statement was supported by an affidavit and it was stated that although the punishment of dismissal was not being withdrawn the Government as a matter of sympathetic consideration had decided to examine the feasibility of granting to the employees ex-gratia payment. In October 1992 the Deputy Director, Eastern Railway Board filed an affidavit stating that the railway employees who had been dismissed due to participation in the trade union agitation will be paid ex-gratia as one time payment on certain terms and conditions. In November 1992 when the petitions were taken up for hearing it was stated that the attempt to settle the dispute, amicably, has failed.

5. More than a decade has gone since these employees were dismissed for participating in strike called by the Union recognized by the Railways. But end has not reached. Barring appellate and revisional authority whose discretion too was attempted to be curtailed by issuing circular no Court

or tribunal has found the orders to be well founded on merits. True the jurisdiction exercised by the High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the Court is satisfied of injustice or arbitrariness then the restriction, self imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of rendering justice. We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an enquiry. The jurisdiction to exercise the power under Rule 14(2) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the tribunal was well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation.

6. Reliance was placed on the Cabinet decision taken in November 1990 and it was urged that the succeeding Government should have honoured it and directed reinstatement of all employees and payment of back wages. We do not think that we are called upon to decide it as the decision was rescinded by the President. Suffice it to say that in Parliamentary system of Government the democracy grows and matures by healthy conventions and traditions. Should an outgoing Government take a policy decision one day before quitting the office or should the succeeding Government honour it, cannot be regulated by courts.

7. However, what is apparent is that the order of dismissal against the employees has not been sustained in the Courts. Although Jodhpur Bench has not examined the matter on merits and the CAT Chandigarh has dismissed the claim petitions on bare technicality, yet there can be no doubt that the Government whether in 1990 or in 1991 or in 1992 has been considering the matter, and efforts had been to grant relief to these employees. What should be done then which may do justice to both the parties? Overall picture is that there are five types of employees, one, whose claim petition before tribunal has been allowed and they have been directed to be reinstated; second, whose claims petitions had been allowed to a limited extent, namely, the appellate and revising authority had been directed to re-examine their cases; third, those who have retired during pendency of the claim petitions; fourth, where the claim petitions have been dismissed because the appeals filed had already been dismissed; and fifth; those who did not approach the Court and the Government have taken a decision to re-employ them. We are not concerned with last category. But the rationale behind this decision of the Government is to atone the injustice done to these employees. It has not been found by any tribunal that the orders passed against the respondents was in any manner justified. In other words, the exercise of power was arbitrary. If this be so as is apparent then there can be no justification for denying the benefit to employees. Technical arguments apart once this Court is satisfied that the participants in the strike were unjustly treated the Court is not only competent but has an obligation to act in a manner which may be just and fair.

Keeping this in light we issue following directions:

(i) Employees who were dismissed under Rule 14(2) for having participated in the Loco Staff strike of 1981 shall be restored to their respective post within a period of three months from today.

(ii)(a) Since more than three years have elapsed from the date the orders were found to be bad on merits by one of the tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the judgment was delivered, that is, in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefit but. They shall be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death.

8. All the appeals and pensions are disposed of accordingly. Since the employees are being directed to be paid compensation there shall be no order as to costs.