

Umesh Chandra Misra vs Union Of India (Uoi) And Ors. on 14 October, 1992

Equivalent citations: (1993)ILLJ187SC, 1992(2)SCALE916, 1993SUPP(2)SCC210, 1992(2)UJ770(SC), AIR 2003 ORISSA 420, AIR 2006 BOMBAY 610, AIR ONLINE 1992 SC 32, 1993 SCC (L&S) 441, (1993) 1 CUR CC 707, (1992) 5 SERV LR 608, (1993) 1 LAB LJ 187, (1993) 1 SCT 265, (1993) 66 FAC LR 1015, (1993) 2 CUR LR 17, (1992) JT (SUPP) 216, (1993) 24 ATC 243, 1993 SCC (SUPP) 2 210, 1992 UJ(SC) 2 770, 1992 UJ(SC) 770, (2006) 5 ALLMR 50

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Bench: P.B. Sawant, G.N. Ray

JUDGMENT

P.B. Sawant, J.

1. Leave granted.

2. The appellant was working in the Northern Railway as Assistant Station Master at Bareilly drawing at the relevant time basic salary of Rs. 404/- in the pay-scale of Rs.330-560/-. On 9.5.1974, he was arrested in connection with May 1974 Railway Strike. On 10.5.1974, he was dismissed from service without inquiry, on account of his arrest. However, on his acquittal by the Judicial Magistrate (Transport) on 11.9.1974, he was reinstated in service w.e.f. 3.10.1974. At the time of the reinstatement of service, the Divisional Superintendent, Moradabad after giving an interview to the appellant, passed the following order of punishment in lieu of the dismissal from service, viz., [i] reduction in pay to Rs. 350/- in the grade of Rs. 330-; 560/-; [ii] stoppage of increment for three years; and [iii] the period from 7.5.1974 to 3.10.1974 to be treated as suspension.

3. The appellant preferred proceedings before the Payment of Wages Authority under Section 15 of the Payment of Wages Act, 1936 for recovery of his dues. The Authority allowed most of the claims and rejected some. The appellant as well as the Railways preferred appeals; against the said decision before the District Judge, Moradabad. During the pendency of the appeals, Administrative Tribunals Act, 1985 came into force and both the said appeals were transferred to the Central Administrative Tribunal, Allahabad Bench. The Tribunal allowed the appeal of the respondent-Railways and dismissed that of the appellant. It is this decision of the Tribunal which is under challenge before us.

In the present appeals we are only concerned . with [i] the appellant's claim for full salary for the period from 10.5.1974 to 3.10.1974 and [ii] the subsistence allowance at the higher rate of 3/4th of the salary from 20.5.1976 to 17.2.1977. It is not disputed that he was paid subsistence allowance at the rate of 50% of the salary for the period from 20.11.1975 to 19.5.1976.

4. As regards his full salary for the period from 10.5.1974 to 3.10.1974, the appellant relies on the fact that admittedly the period from 10.5.1974 to 3.10.1974 was treated as suspension as per the Divisional Superintendent's order dated 3.10.1974 and, therefore, he ought to have been paid full salary as per paragraph (a) of the Railway Board's letter/circular dated 28.9.1978. This contention is misplaced since read with paragraph (b) of the said letter/circular, it is clear that the full salary was payable only to those against whom neither prosecution nor disciplinary action was taken. Although in the present case the appellant was prosecuted and acquitted, admittedly the order dated 3.10.1974 was passed as and by way of punishment in a disciplinary proceeding, in lieu of the dismissal of the appellant.

It was then contended on his behalf that in any case the order itself directs the period from 10.5.1974 to 3.10.1974 to be treated as a period of suspension and hence the appellant is entitled at least to the subsistence allowance. This argument is also misconceived because the period is directed to be treated as suspension as and by way of punishment. It is not suspension pending disciplinary inquiry which alone can entitle an employee for subsistence allowance. Suspension is also one of the punishments and the suspension imposed on the appellant was by way of punishment. Hence the appellant is not entitled to any subsistence allowance during the said period.

5. As regards the appellant's claim for subsistence allowance from 20.5.1976 to 17.2.1977, it is based on the ground that as per the Railway Board's letter/circular 21.1.1966 where a Railway servant is convicted in a court of law, action to dismiss, remove or to compulsorily retire him from service should not be taken before the period for filing the appeal has elapsed or if any appeal has been filed till it has been decided by the first court of appeal. Admittedly, the appellant had filed an appeal against his conviction and the appeal was decided on 17.2.1977. However, the respondent-Railways had removed him from service on 30.4.1976 on the basis of the conviction order of the Sessions Court. The appellant was paid subsistence allowance at the rate of 50% of the salary only, from 20.11.1975 from which date he was suspended till 30.4.1976 when he was dismissed from service. In view of the Railway Board's said letter/circular he could have been dismissed from service only w.e.f. 17.2.1977. Hence he ought to have been paid subsistence allowance upto 17.2.1977. What is further, since Sub-clause (a) of Clause [ii] of Rule 2043 of the Indian Railway Establishment Code [Volume-II] states that where the period of suspension exceeds six months, the amount of subsistence allowance may be increased by a suitable amount not exceeding 50% of the subsistence allowance admissible during the period of the first 12 months, the appellant was entitled to the subsistence allowance at the rate of 50% for the period from 20.11.1975 to 19.5.1976 and at the rate of 75% for the period from 20.5.1976 to 17.2.1977. The appellant has received subsistence allowance at the rate of 50% for the period from 20.11.1975 to 30.4.1976. He is, therefore, entitled to the balance of the subsistence allowance as follows:

[i] at the rate of 50% of the salary for the period from 1.5.1976 to 19.5.1976; and [ii] at the rate of 75% of the salary for the period from 20.5.1976 to 17.2.1977.

6. Dr. Prakash while not disputing the provisions of Railway Board's letter/circular of 26.1.1966 and of Rule 2043 referred to above, contended firstly that the question of entitlement of the appellant to the subsistence allowance could not have been gone into by the Payment of Wages Authority and secondly the grant of increased subsistence allowance at the rate of 75% of the salary for the period 20.5.76 to 17.2.77 depended upon the decision of the competent authority. The competent authority was vested with the power to grant such increased subsistence allowance only if it came to the conclusion that the period of suspension had been prolonged for reasons not directly attributable to the delinquent employee which reasons are to be recorded by the competent authority in writing. He, therefore, submitted that in any case the matter will have to go back to the competent authority concerned.

7. It is no doubt true that the Payment of Wages Authority could not have gone into the . said questions and granted the claim of the appellant. We are, however, of the view that this is not a matter which should be sent to the competent authority, when the facts are undisputed. These appeals have been pending in this Court since 1987 and the claims relates to the period between November 1975 and February 1977. The claim is also very small. There is no dispute that both the letter/circular of the Railway Board as well as Rule 2043 govern the present case. That being so, the appellant could not have been removed from service prior to 17.2.1977 which was the date on which his appeal against his conviction by the Sessions Court was dismissed by the High Court. He is, therefore, admittedly entitled to his subsistence allowance upto 17.2.1977. Further, since he was dismissed from service on 30.4.1976, there was no question of his making an application to the competent authority either for allowance from 1.5.1976 to 19.5.1976 or for increased allowance from 20.5.1976 to 17.2.1977 and the authority applying its mind to decide the entitlement for such increase one way or the other.

8. On the facts and circumstances of the case, therefore, we set aside the order of the Tribunal and direct the respondents to pay to the appellant the following amounts: subsistence allowance [i] from 20.11.1975 to 19.5.1976 at the rate of 50% of the salary and [ii] from 20.5.1976 to 17.2.1977 at the rate of 75% of the salary with interest on both the amounts thereon at the rate of 10% per annum from 26.9.1979 on which date the appellant had filed his claim before the Payment of Wages Authority till the date of payment. We further direct that the subsistence allowance be paid on the basis of the revised scale of salary, if any, which was prevalent and due to the appellant during the relevant period for which the subsistence allowance is directed to be paid. We further direct that the payment be made to the appellant within six weeks from today.

9. The appeals are allowed accordingly with costs fixed at Rs. 1000/-.