

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL No.759/1998 @@
EE

A. Devadanam Appellant(s)

VERSUS

Rly. Board & Ors. Respondent (s)

(With O.R.)

WITH C.A. Nos.761,762,763,760 & 758/1998@@
AA

Date : 29.11.2000 This appeal was called on for hearing today.@@
AA

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr.P.N.Mishra,Sr.Adv. .
(C.A. 763/1998) Mr.K.M.Rao & Mrs. K.Radha,Advs.
for Mr. Guntur Prabhakar,Adv.

(C.A.759/1998) Mr. Rajinder Sachhar,Sr.Adv.
M/s.K.Maruthi Rao,Mahesh Srivastav and
Pankaj Srivastav,Advs.for
Mr. Guntur Prabhakar,Advs.

For the Respondent(s) Mr. P.P. Malhotra,Sr.Adv.
Mr. S.W.A.Qadri,Adv.for
Mrs. Anil Katiyar,Adv.

UPON hearing counse, the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

The appeals are disposed of in terms of signed order.

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@
AA
COURT MASTER COURT MASTER

Signed order is placed on the file.

.PA
.PL56

CIVIL APPEAL NO. 759/1998@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

A. Devadanam ...Appellants

Vs.

Rly. Board & Ors.Respondents

WITH C.A. No.761,762,763,760 & 758/1998@@
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

O R D E R@@
EEEEEEEEEEEE

.....L.....I.....T.....T.....T.....T.....J.
.SP2

These appeals are directed against the order of the Central Administrative Tribunal denying the relief sought for. It transpires that the services of these appellants stood terminated as they participated in a Railway strike and against the order of termination they had approached the Divisional Manager in appeal but appeal also stood dismissed. They also preferred a Review to the General Manager which also stood dismissed. They had approached the High Court of Andhra Pradesh but the High Court also dismissed the batch of Writ Applications by order dated 17.9.1985. After the dismissal of the Writ Petition by the High Court of Andhra Pradesh, the applicants in present batch of appeals had made a representation again to the Divisional Railway Manager. Several other employees similarly situated, however, filed a Review Petition before the High Court of Andhra Pradesh. Needless to mention these appellants did not file any Review Application. That Review Application was allowed and the

- 2 -

High Court directed the appellate authority to dispose of the appeals in accordance with the direction contained in the judgment. The said appellate authority, however, stuck to its earlier decision and dismissed the appeals and against the judgment of the appellate authority those persons approached the Central Administrative Tribunal. The Tribunal allowed their case by order dated 5.9.1990, but there was no direction for re-instatement. Those very persons again approached the Tribunal by way of a Review and Tribunal directed that they should be re-instated by order dated 27.3.1991. This order of the Tribunal was assailed by the Railway Administration by way of an appeal in this Court which stood disposed of by the judgment dated 5th August, 1993 since reported in Union of India & Ors. Vs. R.Reddappa & Anr. 1993 (4) SCC 269. The applicants in the present appeals then approached the Tribunal in the year 1993 and the Tribunal having dismissed the applications they are in appeal before this Court.

Mr. Sachhar and Mr. Mishra appearing for the appellants contended that these cases are covered by the earlier judgment of this Court since reported in 1993(4) SCC 269 and therefore since relief has been given by the judgment of this Court to several other employees similarly situated, it would not be appropriate to deny the same to the present applicants. Mr. Malhotra appearing for the Railway

Administration, on the other hand, submitted that no doubt this Court has granted relief in the aforesaid case but the relief has been given because the matter was still surviving in this Court and such a relief cannot be given to those who never assailed the matter after dismissal of the batch of Writ Petitions by Andhra Pradesh High Court by order dated 17.9.1985. We find from the facts of these cases that out of six original applicants the applicant in C.A. No.763 has died and the applicants in C.A. No.760 as well as 762 have already reached their age of superannuation. A direction for re-instatement therefore would only enure to applicants in C.A. Nos.758, 759 and 761/1998. There is no doubt considerable force in the arguments advanced by Mr. Malhotra that these applicants not having assailed the order of dismissal of their Writ Petition by Andhra Pradesh High Court should not be entitled to any relief. But on reading the judgment of this Court we find that the relief which is granted on a finding that the exercise of power to termination was found to be arbitrary and the Court observed that there cannot be any justification for taking the benefit to the employee concerned. The Court noted that it is satisfied that the participants in the strike were unjustly treated and it went on to observe that the Court is not only competent but has an obligation to act in a manner which may be just and fair. It is this approach of the Court which Mr. Sachhar invokes in the present case. Having regard to the

facts and circumstances in these appeals, we therefore dispose of these appeals with the direction that the applicants in C.A. Nos.758,759 and 761/ 1998 would be re-instated in service and continue in service till they are superannuated or otherwise terminated in accordance with law. Needless to mention they would not be entitled to any back wages. The applicants in C.A. 760 and 762/1998, who have already superannuated, question of any direction for re-instatement would not arise but following the direction of this Court in the earlier case, we would also direct that they be paid 3 years salary as compensation and this should be paid within 3 months from today. The applicant in CA No.763/1998 having already died their dependents also would be entitled to receive 3 years salary as was directed by this Court in the case referred to earlier and this should be paid within 3 months from today.

So far as those in whose favour we are issuing direction for re-instatement though they would not be entitled to any back wages but they would be entitled to get the continuity of service for the purposes of calculation their pensionary benefits, if any. If any of these applicants have received the ex-gratia payment made pursuant to the direction of the Board by order dated 18.9.1992 they will refund/adjust the same.

In case of applicants who have already superannuated or who has died, apart from getting compensation as already stated, they would also get the benefit of continuity of service notionally till their superannuation or death as the case may be and if they are entitled to any retiral benefit on that basis, according to the rules, then the same be given.

It is stated by Mr. Malhotra that this order may open a flood gate for several other employees similarly situated. We make it clear that any person who has not

approached any Tribunal or any Court as on today will not be entitled to get the benefit of this order.

The appeals are disposed of with the aforesaid directions.

.SP1

.....J.
(G.B. PATTANAİK)

New Delhi,
November 29, 2000

.....J.
(B.N. AGRAWAL)