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SHREEDHARAN KALLAT

v.

THE UNION OF INDIA AND ORS.

APRIL 26, 1995

B

[R.M. SAHAI AND SUJATA V. MANOHAR, JJ]

Service Law

C *Service Rule—Interpretation order by Court—Order attaining finality—Held Department is precluded from challenging the interpretation given by Court—But Court can interfere with such interpretation order.*

Judicial Comity

D *High Court—Judgment by—Settlement of issues in judgment by High Court—Affirmation by Supreme Court—Reopening of issues by Tribunal—Comment by Tribunal against judgment—Held Act of judicial impropriety.*

E **The appellant, who was initially appointed in Railways as a Ticket Collector and later promoted as travelling Ticket Examiner, went on deputation as Railway Sectional Officer (RSO) but by an order dated 2.2.73 he was reverted to his parent department. He filed petitions before the High Court challenging the order which were allowed by a single judge of the High Court. The order of single judge was affirmed in appeal by the Division Bench of the High Court and even the Special Leave Petition filed in this Court was dismissed. Since the order was not implemented, the**

F **appellant approached the High Court. Thereafter, the appellant was called for selection to a class II post and the High Court directed that his seniority be reckoned from 1963.**

G **The Railways unsuccessfully challenged this order of the High Court before the Division Bench of the High Court as well as before this Court and consequently his seniority was fixed from 1963. Later some direct recruits, who were not affected by fixation of appellant's seniority, filed applications before the Central Administrative Tribunal. In the proceedings before the Tribunal not only the Railways raked up the same controversy on which it was unsuccessful earlier but also the Tribunal**

H **re-opened the issues which were already settled by the judgment of the**

High Court. Further the Tribunal not only commented upon the judgments rendered by the High Court in favour of the appellant and affirmed by this Court, but also held that they had no binding effect as they appeared to be inconsistent with the Rules. Against the decision of the Tribunal, the appellant preferred appeal before this Court.

Allowing the appeal and setting aside the order of the Tribunal, this Court

HELD: 1. The Tribunal acted against judicial comity and propriety. [830-B]

2. In service matters where validity or interpretation of rule is concerned any order passed by the courts which achieves finality is binding on the Department. If the court is satisfied that any employee has been prejudiced of his right under Article 14 has been violated it may interfere in his favour. But the Department is precluded from challenging the interpretation given by the court. Since the earlier order has been upheld by this Court the order could be set aside by only this Court. The Tribunal could not have passed an order which resulted in disturbing the finality about interpretation of rule. [832-A-B]

3. The issues having been settled by the judgment of the High Court, the Tribunal committed act of grave impropriety in attempting to reopen it. Such practice of the Tribunal cannot be commended. The judgment was binding on Railways. It could not once again take up those very pleas which were rejected by the High Court. Such unwarranted stand by public authorities results in protracted litigation involving wastage of money and time. [831-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3565 of 1989.

From the Judgment and Order dated 26.11.87 of the Central Administrative Tribunal, in Madras in O.A. No. 513 of 1986.

P.S. Poti, Ms. Sushma Suri (N.P.) for the Appellant.

A.Mariarputham and Ms. Aruna Mathur for the Respondents.

The following order of the Court was delivered :

A This appeal directed against the order of the Central Administrative Tribunal does not raise any intricate question of law but it exposes very disturbing feature as the Tribunal not only commented upon the judgments rendered by the Kerala High Court in favour of the appellant which had been affirmed by this Court, but went on to hold that they had no binding effect as they appeared to be inconsistent with the Rules. This was against
B judicial comity and propriety. We do not approve of it.

The appellant who was appointed as a Ticket Collector in 1950 was promoted as Travelling Ticket Examiner in 1951. He went on deputation as Railway Sectional Officer (RSO) in 1960. There he continued for nearly
C 12 years. He was reverted to the parent department on 2.2.73. It was challenged by way of two writ petitions. The petitions were allowed by the learned Single Judge. It was held that the appointment of appellant as Railway Sectional Officer was based on selection. The Court further held that the post was permanent and the claim of the Railways that it was a
D tenure post was not correct. This order was affirmed in appeal by the Division Bench and even the SLP filed in this Court was dismissed. Since the order was not implemented, the appellant approached the High Court, once again, and the railways were directed to dispose of the representation within two months. But the order was not complied. The appellant approached the High Court for the third time. He was called for selection to
E class II post. The High Court allowed the writ petition and held that in class II post his seniority was to be reckoned from 1963. This order was challenged by the Railways before the Division Bench. The appeal was dismissed. The SLP filed by the Railways was also dismissed. In 1983 the Railways fixed the seniority of the appellant in Class II from 1963.

F Thus came to an end the first phase of litigation. Now started the second phase. One S. Ramkrishan (Respondent No.6) who was direct recruit and was not affected by fixation of appellant's seniority filed writ petition in the High Court. It was subsequently transferred to Central Administrative Tribunal. During hearing it transpired that he was not
G aggrieved person and then another direct appointee S.Chakradhara Rao (Respondent No.5) filed claim petition which was heard along with earlier petition and the decision in it is subject matter of this appeal.

H What is surprising is that apart from respondents even the Railways which was unsuccessful twice again raked up the same controversy and

supported the respondents. The plea of the Railways is described thus by the Tribunal, A

"Thus the stand taken by the railways in their counter in all these applications is that Shreedharan will not be entitled either for retention as RSO or for promotion or for protection of the emoluments which he had received while on deputation, but for the judgments of the Kerala High Court." B

The Tribunal framed following issues:-

- "(i) whether the order of the fourth respondent dt. 22.5.1979 appointing Shreedharan as CTTI with effect from 1.1.1979, is valid; C
- (ii) whether the order of the fourth respondent dt. 16.6.1979 confirming Shreedharan as CTTI with effect from 20.10.1975 is correct; D
- (iii) whether the order of the third respondent dt. 21.6.1979 informing Shreedharan that he can be considered only for the post of Asst. Commercial Officer, is valid;
- (iv) whether the fourth respondent's order dt. 24.5.1980 appointing Shreedharan as Public Relations Officer is valid; E
- (v) whether the fourth respondent's order dt. 27.1.1983 fixing the seniority of Shreedharan in Class II as on 1964 is valid in law." F

The first four issues having been settled by the judgment of the High Court, the Tribunal committed act of grave impropriety in attempting to reopen it. Such practice of the Tribunal cannot be commended. It has interfered at the instance of the respondents who were not adversely affected. The judgment was binding on Railways. It could not once again take up those very pleas which were rejected by the High Court. Such unwarranted stand by public authorities results in protected litigation involving wastage of money and time. G

Assuming that the respondents could challenge fixation of seniority of the appellant as the order which furnished foundation for the determination of seniority, was passed without impleading the respondents, the scope H

- A of such petition could be limited. In service matters where validity or interpretation of rule is concerned any order passed by the courts which achieves finality is binding on the Department. If the court is satisfied that any employee has been prejudiced or his right under Article 14 has been violated it may interfere in his favour. But the Department is precluded from challenging the interpretation given by the court. Since the earlier order has been upheld by this Court the order could be set aside by this Court. The Tribunal could not have passed an order which resulted in disturbing the finality about interpretation of rule specially when the S.L.P. had been dismissed by this Court.

- C The appeal is consequently allowed and the order of the Tribunal is set aside. The claim petition filed by the respondents shall stand dismissed. The appellant was entitled to exemplary costs against Railways, but since no one appeared for the Railways, and the learned counsel for the appellant did not press for it we refrain from imposing costs.

T.N.A.

Appeal allowed.