

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRRINCIPAL BENCH

OA 2105/2002

New Delhi this the 10th day of March, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri V. K. Majotra, Member (A)

Lakhu Oran,  
Chief Goods Supervisor,  
Northern Railway Stn.,  
Hathras Killa, Hathras

R/0 10T/A, Railway Colony,  
Hathras Jn.

..Applicant

(By Advocate Shri M.L.Sharma )

VERSUS

Union of India through

1. General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House, New Delhi.

2. The Divisional Rail Manager,  
Northern Railway, Allahabad.

..Respondent

(By Advocate Shri R.L.Dhawan )

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The applicant has filed several OAs before filing this application, in which he has impugned the order issued by the respondents dated 23.5.2001. By this order, the respondents have stated that in compliance of Tribunal's order dated 8.3.2001 in OA 1538/2000 filed by the applicant his representation which was treated as an appeal has been considered by the competent authority i.e. ADRM/ALD who had passed the order against which this Original Application has been filed.

18/

2. The relevant portion of the impugned order reads as follows:-

".....While passing orders as appellate authority on 20.3.1996 my predecessor, while cancelling the future punishment, has clearly said "Lakhu Oraon has been rightly hold responsible for the irregularities as pointed out in the charge sheet viz. not keeping the specimen signature of the officers authorised by the D.M. Aligarh for issuing license/Permit for booking cattle and for not endorsing the particulars of Railway receipts on the relevant permits. However, the punishment imposed is quite heavy. While considering the whole issue and its affect on the charged employee in totality. I am of the opinion that ends of justice will meet in this case if future punishment is cancelled with immediate effect. Further punishment is, therefore, cancelled in this case with immediate effect. He has clearly taken into account the long period the employee has suffered including the period between 5.2.88 - 17.9.1992 where he was not been on duty considering him on duty for this period and paying him for this period when he has not performed any duties, would effectively dilute the totality my predecessor had taken into a/c while canceling his future punishment".

The applicant is aggrieved by treating the period from 5.2.1988 to 17.9.1992 as period not spent on duty, as according to the respondents he had not performed any duties, which would effectively dilute the totality of the order passed by the earlier appellate authority. This is the main issue raised in the present application i.e. whether in the facts and circumstances of the present case read with the earlier orders passed by the Tribunal, it is open to the respondents to treat the period from the date of his removal from service on 5.2.1988 till he was reinstated in service in pursuance of the Tribunal's

18.

earlier order dated 6.4.1992 in OA 668/1989 as not spent on duty for which he is not entitled to any payment.

3. Shri M.L.Sharma, learned counsel for the applicant has contended that for the aforesaid intervening period from the date of removal to the date of reinstatement, the applicant is entitled to either full pay and allowances or at least subsistence allowance for deemed suspension for that period in accordance with the provisions of Fundamental Rules (FR) 54-A. He has also contended that no show cause notice was issued before passing the aforesaid order, as required under the FR which is not disputed by either of the parties. FR 54-A (2) is pari materia to the rules applicable to Railway Administration under Rules 1344 and 1345 of Indian Railways Establishment Manual (IREM) Vol.II. In particular, learned counsel for the applicant has also relied on the extract of Govt. of India instructions issued under FR 54-A (pages 48 -51 of the paper book) in which, regarding the application of provision of FR 54 (2) in such cases, reference has been made to the dismissal/removal/discharge orders having been issued under CCS (CCA) Rules, 1957 or corresponding Rules i.e. Railway Servants (Discipline and Appeal), Rules, 1968.

4. A perusal of the aforesaid impugned order dated 23.5.2001 shows that the respondents have not followed the procedure for determining the intervening period from the date of removal from service till reinstatement of the

13

charged officer as a result of an order passed by the Court/Tribunal. There is no reason why they should not have complied with the rules and instructions issued from time to time by the Govt.of India/Railway Administration which are applicable to cases such as that of the applicant.

5. In view of what has been stated above, the impugned order dated 23.5.2001 is quashed and set aside. The case is remitted to the appellate authority i.e. ADRM.Ald to pass appropriate orders with regard to the treatment of the intervening period between 5.2.1988 to 17.9.1992, in accordance with the provisions of the aforesaid rules and instructions. This shall be done as expeditiously as possible and in any case within three months from the date of receipt of a copy of this order. Needless to say the competent authority shall pass a speaking order which shall also be communicated to the applicant.

No order as to costs.

V.K.Majotra

( V.K.Majotra )  
Member (A)

Lakshmi Swaminathan

( Smt.Lakshmi Swaminathan )  
Vice Chairman (J)

sk