

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2507/2002

Thursday, this the 10th day of July, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Udaiveer
C&W Cleaner
C&W Department
Northern Railway, Dehradun ..Applicant
(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway,
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway,
Moradabad
3. The Assistant Mechanical Engineer
Northern Railway, Moradabad ..Respondents

(By Advocate: Shri R.L.Dhawan)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Reliefs claimed by the applicant (Udaiveer), C&W
Cleaner, C&W Department, Northern Railway, Dehradun, are
as follows:-

- "a) to pay full back wages to the applicant from the date of removal from service till the date of reinstatement.
- b) to assign correct and proper seniority to the applicant and regularise him as a Loco Cleaner from the date from which his juniors have been regularised.
- c) to promote the applicant as a Diesel Assistant from the date from which his juniors have been promoted.
- d) to post the applicant in the cadre of Loco Cleaners from which date the applicant was wrongfully removed from the service.

e) to treat the entire intervening period as spent on duty for all practical purposes and further it may be held that the applicant is entitled to fixation of pay at proper stage considering the entire period of service of having acquired temporary status.

2. The applicant, who originally worked as a Casual Labourer under IOW, Balamau and became a Substitute Loco Cleaner vide order dated 10.8.1998, was removed from service without being given any reasonable opportunity, on 2.11.1994. As the applicant's appeal was not decided, he came to the Tribunal in OA-1666/96 which was allowed on 8.10.1999 but with liberty to the respondents to revive the inquiry in accordance with law. A fresh notice was issued on 2.12.1999, whereby the applicant was reinstated but kept under suspension till the completion of the proceedings. As no order was passed relating to the intervening period, he filed OA-2905/2001 seeking directions, which was disposed of on 8.5.2002, when the respondents were directed to give a specific decision on the intervening period. The respondents' Writ Petition No.4428/2002 challenging the above direction was dismissed by the Hon'ble High Court. Still no action was taken thereafter. In the meantime, on 16.5.2002, orders were issued, dropping the proceedings against the applicant. Though the applicant was thus fully exonerated, the period between his date of removal on 2.11.1994 till the date of his reinstatement was not decided upon. In fact, as the proceedings have been dropped, he was entitled for the full benefits but the same had not been dropped. Still the respondents have issued the impugned order dated 13.9.2002 that the applicant would be deemed to have been kept under

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suspension from 2.10.1994 to 22.12.1999 and thereafter till 10.5.2002. Further, in the meanwhile, a few of his juniors have been promoted to the grade of Diesel Assistant but his case has not been considered. Besides, his cadre has also been changed on the ground that there was no vacancy in the cadre. This was also wrong, as his juniors were working in the same cadre. It is the prayer of the applicant, reiterated by Shri Maine, learned counsel, that the Tribunal's intervention was called for extending to the applicant all the consequential benefits emanating from his exoneration.

3. Opposing the above pleas, Shri R.L.Dhawan, learned counsel for the respondents argues that no cause of action has occurred in favour of the applicant and the application was not maintainable in terms of Sections 20 & 21 of the Administrative Tribunals Act, 1985. The applicant has rushed to the Tribunal without challenging the impugned order in the departmental channel, which was not correct. Originally, the disciplinary authority had imposed on the applicant, the penalty of removal from service on 2.11.1994 but he had to be reinstated in view of the Tribunal's order dated 8.10.1999 in OA-166/96 and kept under suspension till the finalisation of the disciplinary proceedings. In between, he filed OA-2905/2001 seeking regularisation of the intervening period, which was disposed of on 8.5.2002. On 16.5.2002, the proceedings against the applicant were dropped and his suspension was revoked, but the period in between had been correctly treated as deemed suspension during which period subsistence allowance @ 75% of the salary ^{has been} paid. It is further stated that as there was no cadre of

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Substitute Loco Cleaner available in the relevant Organisation, the applicant had to be posted to C&W Department, which cannot be questioned. According to the respondents, the applicant's period of absence, i.e., from the date of removal till the reinstatement had been treated as deemed suspension in accordance with rules. Once the proceedings against him had been dropped, the suspension had been revoked. At the same time, Shri Dhawan points out that the dropping of the charges has been on the basis of benefit of doubt and, therefore, the disciplinary authority had a discretion to pay proportionate pay and allowances and treat the period as duty for any specified purpose only. The applicant's having been paid the subsistence allowance during the above period, there was nothing more he could have claimed. Further, his request for seniority also cannot be upheld as his cadre has been changed. The respondents have relied on the decision of the Tribunal in OA-611/93 (Veerpal Singh v. Union of India & others, whereunder similar action has been upheld. Further granting seniority to the applicant was not possible as, according to them, this would affect the seniority of number of others, who would have been promoted in between. He also stated that the dropping of the proceedings against the applicant did not mean that he was exonerated. Therefore, he was not entitled for any relief, according to Shri Dhawan. He also sought to rely upon the decisions of the Tribunal dated 29.4.2003 (C.R. Gautam v. Union of India & others) in OA-970/2002 and dated 16.9.2002 (Shri Ram Avtar Gupta v. Union of India & another) in OA-1057/2001.

4. We have carefully considered the matter and we are convinced that the applicant has a case. The preliminary objection raised by the respondents that the applicant had not availed himself of the departmental remedies before coming to the Tribunal would have been acceptable in normal circumstances, but the position here is not so. This is a case wherein the applicant had to come to the Tribunal twice earlier on account of the inaction of the respondents, who have been taking action at their own slow pace. The applicant would not have been expected to wait for too long. Hence, his approach ^{to} ₂ the Tribunal. This being an extra-ordinary circumstance, we reject the objection. Circumstances being distinguishable, the decisions of the Division Bench dated 16.9.2002 would not come to the help of the respondents. Decision of the Single Bench on 29.4.2003 in OA-970/2002 is also clearly distinguishable. In that case, a finding has been recorded that while a charge stood proved, the same being of technical nature proceedings were being dropped while no such finding has been recorded in the relevant order. We cannot, in law, read into an order, observations or findings which have not been expressed, though the respondents would like us to do so.

5. What the applicant seeks in this OA is that he be granted the benefit of pay and allowances and other benefits as the proceedings against him had ended in his acquittal. The applicant was originally removed from service on 2.11.1994. However, following the decision of this Tribunal in OA-1666/96, the removal was set aside with liberty to the respondents to revive the inquiry in

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accordance with law, at the end of which the proceedings were dropped on 16.5.2002. The said order reads as below:-

"Notice

In compliance to orders of Hon'ble CAT/ New Delhi passed in O.A.No.166/96 (Udaiveer V/s UOI) Sh. Udaiveer S/o Sh. Balatter Singh, ex Sub. Loco Cleaner under Loco Foreman, Laksar who was removed from service vide this office order of even number dated 02.11.94 was re-instated in service w.e.f. 22.12.99. By the same order dt. 22.12.99 he was kept under deemed suspension till finalisation of D&AR proceedings.

Now after considering the enquiry report the charges levelled against him vide S.F. 5 dt. 15.5.91 are dropped and D&AR proceeding is also dropped. Suspension of Sh. Udaiveer is revoked with immediate effect.

Since at present there is no cadre of Sub. Loco Cleaner available in Loco deptt. therefore, as per orders of DRM he is to be posted as Sub. C&W Cleaner in C&W deptt. Further posting order in the category of Sub. C&W cleaner may be issued by Personnel Branch."

(Emphasis supplied)

6. The above order nowhere states that the applicant has not been exonerated or that the proceedings against him have been dropped giving him benefit of doubt. Learned counsel for the respondents was at considerable pains to show that the proceedings have only been dropped but the applicant has not been exonerated. We do not agree. When the order has specifically stated that the charges levelled against him vide S.F.5 dated 15.5.1991 as well as D&AR proceedings have been dropped, it is not for the Tribunal to go behind the order to ascertain whether benefit of doubt has been granted or what could have passed through the mind of the authority when he

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passed the order. When the order is specific and is not capable of more than one interpretation attempting to find a new meaning in the otherwise explicit order would be an avoidable exercise in futility. We cannot afford it. The order dropping the proceedings would mean that the applicant had not been suspended/charge-sheeted. Resultantly, the impugned order dated 13.9.2002 declaring the period between the applicant's removal from service and his reinstatement - from 2.10.1994 to 22.11.1994 and thereafter upto 16.5.2002 - is illegal and has to be set aside. This would mean correct and proper refixation of his pay and allowances at par with his colleagues and their release of the arrears, subject to the amount already received as subsistence allowance. This would also mean that the applicant would be entitled for grant of seniority in the normal course as if he never underwent any punishment with consequential benefits. The averment of the respondents that the grant of revised seniority to the applicant would adversely affect the seniority of other already promoted is strange and surprising. As the applicant is only being restored to his original seniority position and is not being granted anything extra, nobody can legitimately have any grievance against it.

7. The applicant has also sought that the action of the respondents in putting him in C&W Dehradun on reinstatement instead of as Loco Cleaner. According to the respondents, this has become necessary on account of the absence of vacancy in Loco Cleaner cadre and it was a policy decision. However, it is for the respondents to consider the placement of the applicant back in his own

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cadre in accordance with law, as he had been kept out of service for reasons beyond his control and his juniors have been permitted to continue in the cadre.

8. In the above view of the matter, the OA succeeds and is accordingly disposed of. Impugned order dated 13.9.2002 is quashed and set aside and the respondents are directed to treat the applicant as having continued in service through out and grant his full pay and allowances and arrears thereof, subject of course to the amount already paid as subsistence allowance. he would also be entitled to have the seniority in service for all purposes, as if the suspension and the charge had not intervened. The respondents shall consider possibly him back to his own cadre in accordance with law. This entire exercise may be completed within three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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(Govindaraj S. Tampi)
Member (A)