

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1013 of 2001

New Delhi, this the 05th day of February, 2003

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Ved Prakash
S/o Shri Kamlesh Chand
Ex. Substitute Loco Cleaner
Under Loco Foreman,
Moradabad.

-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. Divisional Mechanical Engineer (P),
Northern Railway,
Moradabad.

-RESPONDENTS

(By Advocate: Shri Rajinder Khatter)

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By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant impugns order dated 7.9.99 (Annexure-A-1) vide which he was removed from service.

2. The applicant was initially appointed as Substitute Loco Cleaner. He claims that at the time of his appointment he submitted various documents in support of his application for the job which were duly verified and only after verification of the genuineness of the documents, the applicant was given appointment. However, the applicant was subsequently served a memorandum of charge-sheet for major penalty dated 7.9.90 alleging that the applicant had committed misconduct in as much as he

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submitted a false scholar's register and transfer certificate from Bhagat Singh, Junior High School, Ghaus Ganj, Hardoi to misdeclare his age and qualifications to qualify for the appointment as Substitute Loco Cleaner and by the said act he failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant thereby contravened Rule 3 of the Railway Servants (Conduct) Rules, 1968, as such a charge-sheet on Standard Form of charge-sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 was issued to the applicant on 6/7.9.90. Thereafter an enquiry was conducted and the applicant was held guilty and order of removal was passed. The applicant challenged the same before this Tribunal by filing an OA No. 1763/93. The said OA was allowed and the impugned orders were quashed. However, the disciplinary authority was given liberty to pass a fresh order in accordance with law within three months from the date of receipt of a copy of the order. It was further observed that if the respondents decide to continue the proceedings afresh from the stage at which the illegality has occurred, then the statutory consequences would ensue. If they do not decide to continue the proceedings within the period given above, then the applicant shall be reinstated and the question as to whether he is entitled to the back-wages shall be decided upon the final result of the proceedings, if such order is passed by disciplinary authority as if the respondents dropped further proceedings then the question shall be determined by the competent authority in accordance with law.

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3. In compliance of the judgment the applicant was reinstated in service vide an order dated 30.7.99 with immediate effect. However, by the same order it was directed that he may be kept under suspension till the finalisation of the D&AR proceedings.

4. Now a fresh order of removal from service has been passed which is being impugned in this OA.

5. The grounds on which the applicant has challenged the impugned order are that the charges against the applicant are absolutely false and baseless as the applicant never produced a school leaving certificate issued by the Headmaster Bhagat Singh Junior High School, Gausgan, Hardoi but had actually produced a school leaving certificate issued by the Principal Nehru Samrak Vidyalaya, Mallikapur, Hardoi. So it is submitted that the enquiry has not been conducted in accordance with the principles of natural justice and the Inquiry Officer relied upon the statement of Headmaster, Bhagat Singh Junior School which was taken at the back of the applicant.

6. Besides that the applicant has also submitted that after the earlier order of removal from service was quashed, no decision to continue the proceedings was taken and communicated within 3 months from the date of receipt of a copy of this order and as such the further proceedings deemed to have been dropped but it is only after the expiry of the said period, the respondents issued notice to reinstate the applicant and placed the applicant under suspension.

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7. It is further pleaded that though the order was passed to place the applicant under suspension but subsistence allowance from 3.12.1992 to 29.7.1999 was not paid as per Rule 5 (4) of the Railway Servants (Discipline & Appeal) Rules, 1968 which provide that when the order of removal from service is quashed and further proceedings are to be taken against him he should be placed under suspension and subsistence allowance should be paid, as such the impugned order of removal is bad in law because the respondents did not pay the subsistence allowance to the applicant for the intervening period in spite of the request of the applicant that he was not in a position to defend himself because of non-payment of subsistence allowance as such it is prayed that the OA be allowed and the impugned order dated 7.9.99 be quashed.

8. The OA is being contested by the respondents. The respondents pleaded that since the applicant had secured the job of Sub Loco Cleaner on the basis of forged and frivolous documents which on verification was found to be bogus so the applicant was served with major penalty charge-sheet. An enquiry was conducted as per the extant rules and after the charges have been proved, the applicant had been removed from service.

9. It is also submitted that the defence helper has given his consent not to cross-examine the Principal of Bhagat Singh Junior High School, Gausganj, Hardoi so it is not necessary to call him in the enquiry. In the

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statement of Shri Ram Saran Lal, Principal of Nehru Smarak Vidyalaya was not reliable as he failed to produce the relevant record.

10. We have heard the learned counsel for the parties and gone through the records of the case.

11. The learned counsel appearing for the applicant submitted that since the enquiry was not started within a period of three months from the date of passing of the earlier order in the earlier OA so it is deemed to be dropped and in support of his contention the learned counsel for the applicant has also relied upon a judgment reported in ATJ 2201 (1) page 404 entitled as Shri Pranab Kumar Dutta Vs. U.O.I. But in our view the contention as raised by the learned counsel for the applicant has no merit because in that case a specified period was granted to the authorities to hold departmental proceedings and it was found that the department could not complete the proceedings within a specified period so it was held that on expiry of the period the departmental proceedings were without jurisdiction. But in the present case when the Original Application was decided it was specifically observed that the respondents were given liberty to pass a fresh order within three months from the date of receipt of a copy of this order. If the respondents decide to continue the proceedings afresh from the stage at which the illegality has occurred, then the statutory consequences would ensure. It was further observed that if they do not decide to continue the proceedings within the period specified, then the applicant shall be reinstated and the

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question as to whether he is entitled to back wages shall be decided on the final result of the proceedings (emphasis supplied) meaning thereby that it was directed that in case the respondents take a decision to start proceedings fresh within a period of 3 months then the status of the applicant shall remain as if the enquiry was pending and in case they do not take decision within 3 months then the applicant has to be reinstated but still the final result could come after the proceedings meaning thereby that the enquiry could continue even beyond three months. So the period of 3 months mentioned in the operative portion of the judgment was mentioned not with the purpose that the enquiry could not be continued beyond three months but it was so mentioned that if the enquiry is not completed within 3 months, then the applicant shall be reinstated but the enquiry could still continue. So the judgment relied upon by the learned counsel for the applicant does not apply to the present facts of the case.

12. The next contention raised by the learned counsel for the applicant is that Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968 provides that if the penalty of removal from service is set aside and if it is decided to hold further enquiry, then the Railway servant shall be deemed to have been placed under suspension by the competent authority from the date of original order of dismissal/removal/compulsory retirement and shall continue to remain under suspension and it is submitted that in this case there is a clear violation of rule because neither the respondents passed order treating the

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intervening period as suspension nor subsistence allowance was paid. In this regard we may mention that in compliance with the judgment an order was passed on 30.7.99 whereby the applicant was reinstated in service and simultaneously he was kept under suspension till the finalisation of the D&AR proceedings, so there is substantial compliance of Rule 5(4) and even otherwise Rule 5(4) stipulates that if it is decided to hold the further enquiry, the delinquent official shall be deemed to be under suspension for the intervening period as well (emphasis supplied).

13. As far as non-payment of suspension allowance is concerned, the applicant could have made a representation asking for payment of suspension allowance. It appears that no representation has been made and the record itself suggest that the applicant did appear before the authorities as he was called for personal hearing vide letter dated 30.7.99 and he did appear though applicant claims that he had made a representation asking for suspension allowance during the intervening period but since no such representation has been placed on record whether the applicant has claimed the same, so we find that no prejudice has been caused to the applicant on this score.

14. Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968 simply says that where penalty of removal from service is set aside and if it is decided to hold further enquiry, the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of original order of dismissal.

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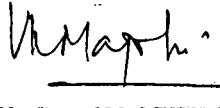
thus Rule 5(4) gives a mandate that the railway servant shall be deemed to be under suspension if no order is passed. Though the counsel for the respondents pointed out that a separate order has to be passed about the intervening period but we are of the opinion that even if a separate order is not passed then the Railway servant as per Rule 5 (4), is to be deemed under suspension as if the order has been passed by the competent authority.

15. As regards the acceptance of the statement of Principal, Bhagat Singh School is concerned, the applicant by taking this argument have simply tried for reappreciation of evidence by taking statement of another Principal of Nehru Samarak School in preference to the statement of Principal of Bhagat Singh School which plea cannot be entertained because while exercising the power of judicial review this court cannot reappreciate the evidence. It was for the Inquiry Officer who had also given cogent reasons for accepting the statement of Principal of Bhagat Singh School.

16. No other contention has been raised before us.

17. In view of our discussion above, the OA does not call for any interference and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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