

Central Administrative Tribunal, Principal Bench

Original Application No.1036 of 1998

New Delhi, this the 11<sup>th</sup> day of September, 2000

Hon'ble Mr.Kuldeep Singh,Member (J)

Hon'ble Mrs.Shanta Shastry,Member(A)

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Subash Chander S/o Late Shri Chander Bhan  
R/o Village & P.O.Bithwana  
Teh. & Distt. Rewari (Haryana). . . . . - Applicant  
(By Advocate - Shri M.K. Gaur)

Versus

1. Union of India through  
the General Manager,  
Northern Railway,  
Baroda House, New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Bikaner (Raj.).
3. The Divisional Personnel Officer,  
Northern Railway, Bikaner (Raj.).
4. The Divisional Mechanical Engineer,  
Northern Railway,  
Bikaner (Raj.). . . . . Respondents

(By Advocate - Shri R.L. Dhawan)

O R D E R

By Hon'ble Mr.Kuldeep Singh,Member(J)

The applicant in this OA has challenged order dated 29.7.97 at Annexure A-1 whereby his period from 12/17.8.82 to 6.6.86 was treated as dies non and had been denied salary/wages for the said period.

2. Facts in brief are that the applicant was appointed as Fitter Khalasi from 6.5.1982 and his services were terminated on 17.8.82. The applicant challenged the order of termination and the same was decided by the Tribunal on 31.5.89 directing that the applicant shall file an appeal against the order of termination before the appropriate authority. The appeal filed by the applicant was re-considered and

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applicant was reinstated in service with effect from 4.6.1996. Thereafter the applicant made a representation claiming back wages, increments, seniority and promotion but the respondents vide order dated 29.3.87 (Annexure A-1), rejected the claim of the applicant.

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3. ....In the grounds to challenge the same, the applicant has submitted that as per Rule No.1343 (F.R.54)-(1) and (2), it is stated that when a Railway servant who has been dismissed or removed and is reinstated as per his appeal, the competent authority shall make a specific order regarding the pay and allowances and employee who is reinstated, is entitled for full back wages and allowances.

4. .... The O.A. is contested by the respondents and they have stated that Rule 1343 (1)(2) of the Indian Railway Establishment Code Vol.II is not applicable to the present facts of the case as the services of the applicant was not terminated by way of dismissal, removal etc., rather his services were terminated under Rule 149 of the Indian Railway Establishment Code Vol.I,

5. It is further submitted by the respondents that the appellate authority had passed the orders for reinstatement of the applicant and had also directed that the intervening period shall be treated as dies

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non.. as such the applicant is not entitled for wages for the intervening period and the said period cannot be counted for annual increments, promotion etc.

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

7. The applicant himself has placed on record an order passed in O.A. 2021 of 1991 which shows that when the applicant was given an appointment, his papers were sent for verification of character, antecedents etc. and on receipt of the verification report from the police, it was discovered that the applicant was convicted in a criminal case so the appointing authority terminated his services in accordance with the provisions of Rule 149 of the Indian Railway Establishment Code Volume-I. Now in this conspectus we have to see whether Rule 1343 (FR 54 (1)(2)) is attracted in such like cases or not. We may mention that Rule 1343 applies only in those cases where an employee had been suspended before conducting the disciplinary enquiry and during enquiry he had been kept under suspension, then the disciplinary authority/competent authority has to decide as to how the period of suspension is to be treated, whether to be treated as spent on duty or not spent on duty, and how the pay for the said period is to be regulated. But in this case the services of the applicant had been terminated by invoking provisions of Rule 1343 (FR 54)-(1) & (2) of the Indian Railway Establishment Code, as such the Railway authorities on receipt of the verification report from the police had found that

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the applicant had been convicted in a criminal case and more so the applicant only hardly worked for a period of about 3 months. Though the applicant had been reinstated but the intervening period had been decided to be dies-non since the applicant had not worked during the intervening period and the said period has been treated as dies-non period with a specific object to show that the applicant had been appointed only on 6.5.82. But in any case, the claim of the applicant for back wages for the said period cannot be treated to be a bona fide claim, as the appellate authority had already decided that the applicant had not to be paid wages for the said period since the applicant had not worked during this period, so we find that the impugned order is quite justified and no interference is called for and the intervening period has been rightly treated as dies non.

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8. In the conspectus of the above discussion, we find no merit in the OA and the same is accordingly dismissed. No costs.

*Shanta*

D (Mrs. Shanta Shastry)  
Member (A)

*Kuldeep*  
(Kuldeep Singh)  
Member (J)

/Rakesh