

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 72/89
TMAXNO

199

DATE OF DECISION 20.9.91

<u>SMT. MAYA RANI</u>	<u>Petitioner</u> APPLICANT
<u>SHRI B.S. CHARYA</u>	Advocate for the <u>Petitioner(s)</u> APPLICANT
Versus	
<u>GENERAL MANAGER, NORTHERN</u>	<u>Respondent</u>
<u>RAILWAY & OTHERS</u>	Advocate for the Respondent(s)
<u>SHRI D.P. KSHATRIYA</u>	

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The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant in this case has come before this Tribunal to quash an order of punishment of reduction of time scale by one stage for 2 years, passed on 22.10.87 and action or "otherwise" for amount of the of the General Manager, enhancing punishment to reduction to the initial stage of the time scale, 8x2x2 years with effect. The applicant had also challenged a chargesheet dated 4.12.81 and another dated 5.3.85 and the inquiry proceedings conducted on the basis of those but during the hearing, the learned counsel for the applicant stated that he would not press this prayer. We are not considering this prayer in any case as it is barred by limitation.

2. A further prayer is to hold that the deemed suspension

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of the applicant w.e.f.11.6.82 retrospectively as illegal.

Consequential reliefs for salary etc. have been claimed, as a further prayer.

3. The facts of the case are that applicant was appointed as Enquiry-cum-Reservation Clerk on 31.7.1979. On 4.12.81, a chargesheet was issued for some alleged irregularities in handling reservations at the reservation counter in the II Class Reservation Office on 3.5.81. After inquiry, the applicant was dismissed and order of dismissal was passed by the disciplinary authority on 8.6.82. The applicant submitted an appeal which was rejected. Thereafter, the applicant submitted a revision application under Rule 24 of the Railway Servants Discipline and Appeal Rules, 1968, on 14.5.84. The applicant contends that the Divisional Railway Manager wrote to the Chief Reservation Supervisor on 5.3.85 to the effect that the chargesheet dated 4.12.81 was cancelled and that the period of dismissal from service w.e.f.11.6.82 be treated as under suspension until further orders. Another set of chargesheet is also stated to have been enclosed with the said letter which was served upon the applicant by memorandum dated 5.3.85.

4. A fresh inquiry was held and the applicant was served with an order for removal from service on 13.2.87 by the disciplinary authority. On an appeal thereagainst, the penalty was reduced to that of reduction in time scale by one stage for 2 years without cumulative effect, on 21.10.87. The applicant reported for duty on 27.10.87 and represented for payment of arrears from 11.6.82 to the first week of April, 1985. On 21-11-88, the General Manager, Northern Railway, the first respondent, issued a memorandum proposing to enhance the punishment to reduction in the time scale to the initial stage for 2 years with cumulative effect under the revisional powers under Rule 25 of the Railway Servants Discipline and Appeal Rules, 1968 and asking the applicant to show cause thereagainst.

5. The learned counsel for the applicant contended that the second chargesheet in the disciplinary proceedings, which have been once again initiated in 1985, were the same as in the earlier

proceedings as a result of which the applicant had already been punished. The fresh proceedings were, therefore, illegal.

6. The learned counsel for the applicant ^{also} submitted that the respondents have stated in their reply that the period from 11.6.82 onwards was treated as suspension as decided by the Railway Board. He stated that the applicant had not been suspended under the earlier disciplinary proceedings. She had not also been dismissed/removed or compulsorily retired under the earlier disciplinary proceedings initiated in 1981. Therefore, the applicant could not be deemed to have been placed under suspension retrospectively in terms of Rule 5(3) or 5(4) of Railway Servants Discipline & Appeal Rules 1968. Therefore, the order of the Railway Board treating her as being under suspension from 11.6.82 was illegal. The learned counsel cited judgements in 1980(3) SLR 564 ~~m~~K.H.Gohal Vs. U.O.I. of the Gujrat High Court.

7. The counsel further contended that the General Manager, Northern Railway, namely, 1st respondent, could not have exercised his power of review under Rule 25 of the Railway Servants Discipline & Appeal Rules 1968 without the approval of the President/more than six months after the date of the order, in ^{case} where it is proposed to enhance the penalty. He relied on the proviso to Rule 25 of the said Rules in this regard.

8. The learned counsel for the respondents drew our attention to the reply affidavit in which it has been stated that the decision to treat the period from 11.6.82 onwards as suspension was taken by the Railway Board and was in order.

9. As regards the enhancement of the penalty ^{by} the General Manager of the Railway Board, the Counsel contended that the application was pre-mature in as much as only a show-cause notice regarding the enhancement of the penalty had been issued on 21.11.88 and the representation of the applicant thereagainst submitted on 22.12.88 was still under consideration. When meanwhile, the application had been filed. He, therefore,

contended that the second prayer was pre-mature.

10. From the facts and averments of this case, we find that in so far as the first prayer for setting aside the order of the appellate authority imposing reduced penalty is concerned, we consider that this was pursuant to a review petition which, although time barred, was decided to be accepted, as the Railway Board condoned the delay. The Rule 25(A) of the Railway Servants Discipline & Appeal Rules, 1968 enables holding of further inquiry in such circumstances. Accordingly, we do not consider either the inquiry proceedings initiated in 1985 or the orders of the disciplinary and appellate authority passed thereon were illegal or contrary to rules.

11. In so far as the order of the respondents treating the applicant as having been under suspension retrospectively from 11.6.82, is concerned, we find that such an order of deemed suspension has to be passed in terms of Rule 5(3) or Rule 5(4) of the Railway Servants Discipline & Appeal Rules. These are reproduced below :

"5(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Railway servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

5(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement, was originally imposed, the Railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case. "

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12. From the facts of the case, it will be seen that Rule 5(3) will apply to cases where ^aRailway servant has been earlier under suspension. It cannot apply to cases where ^aRailway servant was not suspended at all during the earlier proceedings. This Tribunal has ⁱⁿ a number of cases, e.g., N.V.Karwarkar Vs. Dy. Director (Vigilance) 1989(1) SLJ CAT 115 ^{held} ~~that~~ that when a Government servant had not been suspended earlier, he cannot be suspended retrospectively when the said punishment has been set aside and the matter remitted for fresh inquiry. The present case would also not ~~be~~ covered under Rule 5(4) as the penalty has not been set aside or declared or rendered void in consequence ^{of} or by a decision of a court of law. Therefore, we hold that the deemed suspension of the applicant w.e.f. 11.6.82 was contrary to statutory Rules, and, therefore, was illegal. The Railway Board does not have any powers to relax [/]Railway Servants Classification & Control Discipline and Appeal of the [/]Rules or to waive them, and is bound to act according to them.

13. As regards the second prayer of the applicant, we find that till date there is no impugned order passed by the General Manager enhancing the reduced penalty imposed by the appellate authority. The respondents have averred that only a show cause notice had been issued on 20.11.88 against the proposed enhancement and the applicant had represented thereagainst. The representation had not been finally disposed of and accordingly the prayer was pre-mature. The applicant has not also contended that there is any final order of enhancement of the penalty. We accept the contention of the respondents that the applicant has not exhausted the remedies available to her under the Rules and that final orders have yet been passed by the General Manager.

14. We accordingly allow the ~~first~~ ^{for} ^{her retrospective suspension} prayer of the applicant and set aside the order of the respondents treating the applicant

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as being under suspension from 11.6.1982 onwards and direct that she shall be paid full pay and allowances as admissible from 11.6.82 onwards. The arrears shall be paid to her within a period of three months from the date of receipt of this Order.

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In so far as the ~~second~~ prayer regarding the proposed enhancement of penalty is concerned, we direct the respondents to pass speaking orders as per the law on the representation of the applicant against the proposed enhancement which was submitted by her on 22.12.88, within a period of sixty days from the date of receipt of this Order.

Application disposed of accordingly with no order as to costs.

R. Venkatesan
(R. VENKATESAN)
MEMBER (A)

Ram Pal Singh 20.9.91
(RAM PAL SINGH)
VICE-CHAIRMAN

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