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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

...

DATE OF ORDER: 14.12.1988.

CCP No. 134/88
O.A. No. 297 /86.

Raghubir Singh ... Petitioner.

Vs.

Union of India ... Respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman (J)

For the petitioner: Shri B.S. Bindra, counsel.

For the respondents: Shri P.S. Mahindru, counsel.

ORAL:

Vide our judgment dated 29th September, 1987
in O.A. No. 297/86, Raghubir Singh Vs. Union of India,
we had passed the following order:

"17. So considering all these aspects, we deem it fit to set aside the punishment of compulsory -removal from service and alter it into that of reduction to the lower stage in the time scale of pay for a period of five years. However, on the expiry of the said period, the reduction will not have the effect of postponing the future increments of his pay. Hence, this application is allowed in part to the extent of the quantum of punishment inflicted on the petitioner as indicated above. The concerned authorities shall reinstate the petitioner w.e.f. the date he was removed from service and give effect to this order within three months from today. He shall also be entitled to all consequential benefits like salary and other emoluments etc. as admissible under the Service Rules."

2. On a plain reading of the aforesaid order, it is manifest that the respondents were required to do the following things:-

(i) Reinstatement of the petitioner with effect from the date he was removed from service;

(ii) he was to be paid all consequential benefits like salary and other emoluments etc. as admissible under the Service Rules and

(iii) the punishment of removal from service was reduced to that of reduction to the lower stage in the time scale of pay for a period of five years, with the further direction that on the expiry of the said period, the reduction would not have the effect of postponing future increments of his pay.

3. The grievance of the applicant in this contempt of court petition precisely is that the respondents have done just the reverse by mis-interpreting the aforesaid order. In the first instance, they have reduced his pay to the minimum of time scale viz. Rs. 950/- in the revised pay scale, as recommended by the Fourth Pay Commission instead of fixing him at the lower stage in the pre-revised scale which was then obtaining.

The punishment of removal from service became operative with effect from 5.1.1985, the date on which the order of removal was served on the applicant. There is no dispute so far as this date is concerned. In view of the order passed, the only thing to be done by the respondents was to fix his salary at a stage lower than what he was drawing on 5.1.1985. Instead, the respondents have fixed his salary in the revised pay scale which came into force with effect from 1.1.1986, i.e. obviously contrary to the letter and spirit of our order. The respondents could not, by any stretch of reasoning, alter the date of commencement of the punishment. It would have remained the same under all circumstances. Hence, we direct the respondents to lower the pay of the applicant by one stage in the pay scale then obtaining.

4. As for reinstatement of the applicant, it has been done with effect from 5th April, 1988. Secondly, the applicant has been placed under suspension in view of the provisions contained in para. No. 2044A of the Indian Railway Establishment Code Vol. II which runs as under:-

(2) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non compliance with the requirements of clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the pay and allowances to be paid to the railway servant for the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be determined by the competent authority and the said period shall be regularised in accordance with the provisions contained in sub-rules (4), (5) and (7) of Rule 2044 (F.R.54)".

To say the least, the respondents have totally mis-construed this provision. This provision in its plain language comes into operation or can be invoked only when dismissal, removal or compulsory retirement of the Railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and where he is not exonerated on merits. In the instant case, the question of setting aside the punishment of removal from service of the petitioner solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution did not arise at all. Moreover, it is not a case where the applicant was exonerated from the charge of alleged misconduct by this court. All that we did was to reduce the penalty of removal from service imposed on the applicant on the ground that it was disproportionately high to the gravity of the alleged misconduct. Once this Tribunal had reduced the punishment, it was not at all open to the respondents to review that matter and punish the applicant indirectly by placing him under suspension for the period commencing from 5.1.1985 to 4th April, 1988. That is a clear violation of the explicit

orders of this Tribunal. However, we would not like at this stage to initiate Contempt of Court proceedings against the respondents and would prefer to give one more chance to the respondents to rectify the mistake and pass fresh orders strictly in accordance with the directions given in our judgment dated 29th September, 1987, as clarified today. So, the question of placing the applicant under suspension for any period does not arise at all and his reinstatement has to be done with effect from 5.1.1985 and full benefits of salary etc. flowing from the reinstatement of the applicant shall have to be paid to him. We allow three months time to the respondents to comply with these directions strictly in letter and spirit and no further action on the C.C.P. is deemed necessary at this stage.

Rule discharged. 'Dasti' allowed.

J.D. Jain
14.12.
(J.D.JAIN)
Vice Chairman(J)

B.C. Mathur
14.12.88
(B.C.Mathur)
Vice-Chairman

14.12.1988