

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

CP No. 440 of 1993 In
CP No. 387 of 1992 In
O.A. No. 997 of 1986
T.A. No.

DATE OF DECISION 22.08.1994

Shri Bhauri Ram _____ Applicant(s)

Versus

Shri Masih-uz-Zaman, General Respondent(s)
Manager, Northern Railway, Baroda House, New Delhi.

(For Instructions)

1. Whether it be referred to the Reporter or not? Y
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? N

SKD
(S.K. DHAON)
ACTING CHAIRMAN

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI

CP 440/93
in
CCP 387/92
in
OA 997/86

New Delhi, this the 22nd day of August, 1994.

Hon'ble Mr. Justice S.K.Dhaon, Acting Chairman.
Hon'ble Mr B.N.Dhoundiyal, Member(A)

Shri Bhauri Ram s/o Shri Roop Ram, Gate-keeper, Northern Railway, R/O Railway Utr. No. E5A, Mandawali, Fazalpur, Delhi-92. ... Applicant,

(through Mr O.P.Gupta, Advocate).

vs.

Shri Masih-Uz-Zaman, General Manager, Northern Railway, Baroda House, New Delhi. ... Respondents
(through Mr H.K.Gangwani, Advocate).

O.R. D.E.R.(ORAL)

JUSTICE S.K.DHAON, ACTING CHAIRMAN

This is the second time, the applicant has been compelled to come to this Tribunal by means of contempt proceedings.

2. The applicant, a Gate-Keeper in the Northern Railway, a Class-IV employee, was subjected to disciplinary proceedings under the Railway Servants (Discipline and Appeal) Rules, 1968 (the Rules). Taking resort to Rule 14(ii) of the Rules, the disciplinary authority, without holding a regular inquiry, passed an order removing the applicant from service. The matter came to this Tribunal by means of O.A. No.997 of 1986, which was decided on 19.11.1991. This Tribunal took the view that ^{on account} of the failure of the disciplinary authority to record reasons that it was not reasonably practicable to hold inquiry in the matter, the order passed by it stood vitiated. Paragraph 5 of the order of the

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Tribunal is relevant and is therefore, being extracted:

"5. In view of the settled principles of law, we are constrained to quash the orders of the disciplinary authority passed on 8.1.86 by Annexure-III removing the applicant from service. We, therefore, set aside this order and direct the respondents to conduct the departmental inquiry, if possible, according to law. The inquiry shall be completed within a period of 6 months from the date of receipt of this order...."

3. It appears that the said order of 19.11.1991 was not complied with by the respondents. Therefore, the applicant filed a contempt petition No.387/92. In that petition, notices were issued to the respondents and the same were duly served upon them. However, the respondents did not file any counter-affidavit in those proceedings. On 6.1.1993, a two-member Bench of this Tribunal, presided over by Hon'ble Mr. Justice V.S. Malimath, the then Chairman, passed the following order:-

"The respondents have since complied with the judgement of the Tribunal they have reinstated the petitioner in service. The respondents are also required to give the petitioner the emoluments which stood deprived of as a consequence of the order passed by the disciplinary authority which has been quashed by the Tribunal. The learned counsel for the respondents submitted that the emoluments will be paid to the petitioner within a period of one month from this date. We record the said undertaking and dispose of this petition with a direction that if the arrears are not paid within one month from this date, the same shall be paid with interest @ 12% from this date."

4. Before proceeding further we may pause to find out as to what is implicit in the afore-quoted order. It is

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clear from a reading of the order that the respondents did not care to inform the Tribunal that the respondents were contemplating to hold a fresh inquiry against the applicant. They also did not disclose that the authority concerned contemplated to take resort to the provisions of Rule 5(4) of the Rules. This Tribunal, therefore, proceeded on the assumption that the respondents were prepared to abide by the order dated 19.11.1991 in letter and spirit.

5. The complaint in the present application is that even though the counsel for respondent No.1 gave an undertaking on 6.1.1993 that the emoluments would be paid to the applicant, no such payment has been made. The respondents have filed a counter-affidavit and have come out with a case that the applicant having remained under suspension as provided for in Rule 5(4) of the Rules, the subsistence allowance payable to the applicant has been paid with 12% interest thereon.

6. One of the questions is whether in view of the specific direction given by this Tribunal in its judgment dated 19.11.1991 that the disciplinary proceedings shall be completed within a period of six months the respondents had any legal justification to issue an order of deemed suspension on 15.3.1993, which was served upon the applicant on 26.6.1993, long after the expiry of a period of six months from 19.11.1991. Shri Gangwani, counsel for the respondent stated that an Inquiry Officer was appointed on 8.1.1993 and the applicant was served with a copy of the order of said appointment alongwith the order of deemed suspension passed on 15.3.1993.

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7. Rule 5(4) of the Rules inter alia, provides that where penalty of removal from service imposed upon railway-servant, is set aside and declared or rendered void in consequence of or by a decision of court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegation on which the penalty of removal from service was originally imposed, he shall be deemed to have been placed under suspension by the competent authority from the date of the original order of removal from service and shall continue to remain under suspension till further orders. The proviso to sub-rule(4) limits the power as it states that no 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. We have already stated that this Tribunal, while disposing of the O.A. preferred by the applicant set aside the order of the disciplinary authority purely on technical grounds.

8. The Hon'ble Supreme Court in the case of Nelson Motis vs. Union of India and another (JT 1992(5) SC 511), while interpreting Rule 10(4) of the CCS(CCA) Rules, the provisions of which are analogous to Rule 5(4) of the Rules, held that the suspension of a Government Servant under Rule 10(4) is automatic if a decision is taken to hold a further inquiry. Nonetheless, in the present case, the authority concerned passed an order of deemed suspension on 15.3.1993. The question, which has to be considered by us is whether, firstly, an order could be passed after

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expiry of a period of six months from 19.11.1991 and secondly whether the disciplinary proceedings initiated against the applicant by the appointment of the Inquiry Officer on 8.1.1993 can be continued beyond a period of six months from 19.11.1991.

A fresh look at the provisions of Rule 5(4) of the Rules goes to show that an order directing a further inquiry has to be passed. This indicates a conscious application of mind. In the absence of the specification of any period in Rule 5(4) a decision has to be taken within a reasonable period.

In this case, the Tribunal considered a period of six months as a reasonable period and, therefore, it fixed that period in its order. The consequence in this case is that the authority concerned could not order a further inquiry after the expiry of a period of six months from 19.11.1991 and the continuance of the inquiry is illegal.

9. The Tribunal in its order made it mandatory that the inquiry shall be completed within a period of six months. If the respondents did not complete the inquiry within the specified period, they did so at their peril. Whether they should be punished for having committed the contempt of the Tribunal is a different matter. In any view of the matter, it has to be held that the enquiry having not been completed within a period of six months from 19.11.1991 the same cannot be allowed to be completed now.

10. We are satisfied that the inquiry had been commenced to circumvent their undertaking given to the Tribunal and the direction given by it on that basis. Such an act is contumacious and, therefore, the order passed for holding an inquiry is without jurisdiction. Furthermore, public

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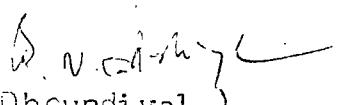
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policy requires that such an act should not be countenanced.

11. We direct the respondent to pay the entire emoluments to the applicant from the date of his removal from service on the footing that no decision of the authority concerned, for holding a further inquiry came into existence at all and the order of deemed suspension passed on 15.3.1993 is inoperative. As directed by this Tribunal on 6.1.1993, the applicant is entitled to interest @ 12%. However, the amount already paid to the petitioner, as subsistence allowance with 12% interest thereon will be adjusted. The respondent shall now make the payment to the applicant in pursuance of this order within a period of three months from the date of the receipt of a copy of this order. The applicant shall be paid upto date interest @ 12% till the date of payment.

12. This is a fit case wherein costs should be awarded to the applicant. We assess the costs at Rs.1000/- The costs shall be paid to the applicant alongwith emoluments payable to him under this order.

13. With these directions, the contempt application is disposed of. Notice issued to the respondent is discharged.


(B.N.Dhadliyal)

/sds/ Member(A)


(S.K.Dhaon)
Acting Chairman.