

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.11/87
Bal Yishan

Date of decision: 8.6.93
... Petitioner.
vs.

Union of India
through
Secretary,
Ministry of Railways & ors ... Respondents.

Counsel:

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN (J)
THE HON'BLE MR.S.R.ADIGE, MEMBER (A)
For the petitioner ... None.

For the Respondents ... Sh.I.C. Sudhir, counsel

JUDGEMENT (ORAL)

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

The petitioner was subjected to disciplinary proceedings. The disciplinary authority passed an order that the petitioner should be reduced by three stages in the same time scale for three years without cumulative effect. It appears that the petitioner went in appeal and the appellate authority modified the order of the disciplinary authority and enhanced the punishment from reduction to removal from service. Feeling aggrieved, the petitioner preferred a Writ Petition in the High Court of Delhi challenging the illegality of the aforesaid order dated 15.9.80. The Writ Petition was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

This Tribunal on 29.4.86 disposed of Transferred Application No.T-658/85. It quashed the order of the appellate authority and remanded the matter to the appellate authority to pass necessary

8

orders under Rule 25 of the Railway Servants(Discipline & Appeal) Rules. It gave a direction that the appellate authority shall indicate how the period between the date of removal to the date of passing of the order by the appellate authority shall be treated.

In pursuance of the said directions of the Tribunal, the appellate authority on 10.6.86 passed the fresh order. It came to the conclusion that no case for enhancement of the punishment awarded to the petitioner has been made out. However, the initial order passed by the disciplinary authority was directed to be maintained. It directed that the petitioner should also be given an opportunity to explain as to why the period from removal from service to reinstatement should not be treated as period spent under suspension qualifying for pensionary benefits only.

It appears that the petitioner gave some explanation. Finally, on 11.7.86 a communication was issued stating therein that the D.R.M., New Delhi has decided that the period from the date of removal from service to the date of reinstatement be treated as period spent under suspension, qualifying for pensionary benefits only. This order is being impugned in the present OA. Rule 54(1) of the Fundamental Rules empowers the authority competent to order reinstatement to consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension

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preceding his dismissal, removal, or compulsory retirement, as the case may be. It also empowers the authority competent to pass an order whether or not the said period ~~as~~ shall be treated as a period spent on duty. It appears that the impugned order has been passed by the competent authority in exercise of the powers conferred under F.R.54(1). Sub-rule(2) of F.R.54 provides inter alia, that in a situation where a Government servant who was dismissed, removed or compulsorily retired is fully exonerated, such a Government servant shall be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsorily retirement, as the case may be. We are not concerned with sub-rule(2) of FR 54 which has no application to the present OA. The appellate authority has recorded a categorical finding that the petitioner was not free from remiss. Therefore, it thought it proper to maintain the order of punishment passed by the disciplinary authority. It follows that the question of the petitioner being ^{natural} fully exonerated by it did not arise. As a ~~matter of~~ corollary, sub-rule(2) of FR 54 has no application to the case of the petitioner.

We have considered the matter carefully. We find no infirmity in the impugned order.

The OA is dismissed but with no order as to costs.

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(S.R.Adige)
Member (A)

S.K.Dhaon
(S.K.Dhaon)
Vice-Chairman (J)

SMS
8.6.91