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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.C.P. NO. 38/92 in
O.A. NO. 2100/89

DECIDED ON : 26.5.1992

C. P. Singh

... Petitioner

-Versus-

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. L. Madhok, proxy counsel for
Shri B. S. Mainee, Counsel for Petitioner

Shri Rajesh, Counsel for the Respondents

ORDER (ORAL)

Hon'ble Mr. Justice V. S. Malimath, Chairman :-

The complaint in this case is that the judgment of the Tribunal in O.A. 2100/89 dated 25.9.1991 has not been complied with. By the said judgment the order of termination of the petitioner's services has been quashed reserving liberty to the respondents to re-initiate the disciplinary inquiry proceedings from the stage of supply of the copy of inquiry officer's report and to proceed in accordance with law. The complaint of the petitioner is that in accordance with the judgment the petitioner was to be reinstated in service. We must say that there is no positive direction to reinstate the petitioner in service. It is not possible to take the view that that is the clear effect of the judgment of the Tribunal at all. Learned counsel for the petitioner on our asking him if the petitioner was under suspension until his services were terminated, he submitted, on instruction of his client, that he was under suspension, until the order of removal came to be passed. The said order having now been quashed by the Tribunal, the legal effect of the same is provided in Sub-Rule (4) of Rule 5 of the Railway Servants

(Discipline & Appeal) Rules, 1968. It provides that "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 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." The judgment itself has reserved liberty in this case to the respondents to re-initiate the inquiry from the stage of supply of copy of inquiry officer's report. It is not the case of the respondents that they have decided not to continue the proceedings. The respondents' counsel submitted that they have filed an SLP before the Supreme Court and that the same is pending. The counsel for the petitioner, however, submits that he has been instructed to say that no such SLP has been filed by the respondents. Be that as it may, what is relevant for our purpose is as to whether the Supreme Court has granted any interim order of stay of the operation of the judgment of the Tribunal. It is not the case of the respondents that the judgment has been stayed by the Supreme Court. Hence, it is obvious that the respondents have to comply with the judgment. As a matter of fact, when the matter came up on the last occasion after the reply was filed by the respondents, we

granted time till this date for reporting compliance, and, therefore, the respondents were under an obligation to report compliance today. There is no satisfactory explanation for non-compliance.

2. Learned counsel for the respondents submits that he has been put into a very awkward situation and that inspite of several requests made to the concerned authorities, he has not been furnished with the required instructions. If that is so, it is a very sad state of affairs. On a number of occasions we have noticed that in the cases relating to the ^{Northern} Railways no attempt is made by the department to diligently prosecute their cases before the Tribunal. The General Manager and other higher authorities of the Railways must realise that they owe a duty to protect the interest of the Railway Administration. So far as legal proceedings are concerned, it is their duty to ensure that the cases are prosecuted diligently and satisfactorily. For that purpose it is their duty to provide necessary instructions to the counsel defending their cases and it is also the duty of their counsel to properly place their cases before the Tribunal. The Railway authorities ought to be careful in future in prosecuting their proceedings before the Tribunal hereafter.

3. In view of the provisions of Rule 5(4) of the Rules referred to above, it is obvious that the petitioner must be deemed to be under suspension. On that basis, he has to be paid subsistence allowance in accordance with rules. We, therefore, dispose of this petition with the direction to the respondents to pay to the petitioner subsistence allowance in accordance with rules. The arrears in this behalf shall be paid to the petitioner within a period of one month from the date of receipt of this order.

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Let a copy of this order be sent to the General Manager,
Northern Railway as also to the counsel for the petitioner
forthwith.

Malimath

(i.c.)
(P. C. Jain)
Member (A)

(V. S. Malimath)
Chairman

as