

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

New Delhi, this 2nd day of February, 1995

Hon'ble Mr. Justice S.C.Mathur, Chairman

Hon'ble Mr. P.T.Thiruvengadam, Member(A)

O.A.NO.2184/90

Shri Radhey Shyam
S/o Shri Khoob Chand
Fireman Grade 'B'
under Loco Foreman
Tundla
r/o Nagla Ram Kishan
Tundla
Ferozabad.

.... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

Union of India

1. The General Manager
Northern Railway
Baroda House
NEW DELHI.

2. The Divisional Railway Manager
Northern Railway
Allahabad.

3. The Loco Foreman
Northern Railway
TUNDLA.

.... Respondents

(By None)

AND

O.A.NO.2182/90

Shri Tarachand
S/o Shri Khoob Chand
Fireman Grade 'C'

.....2/-

L



under Loco Foreman
Tundla
r/o Nagla Ram Krishan
Tundla
Ferozabad.

.... Applicant

Vs.

Union of India

1. The General Manager
Northern Railway
Baroda House
New Delhi.
 2. The Divisional Railway Manager
Northern Railway
Allahabad
 3. The Loco Foreman
Northern Railway
Tundla
- (By None)

.... Respondents

ORDER (Oral)

Hon'ble Mr. Justice S.C.Mathur, Chairman

These two applications are based on identical facts and therefore, they have been heard together and are being disposed of by this common Judgment.

.....3/-

2. The applicants who were employees of the railway establishment have, through their respective applications, sought a direction to the railway administration to reinstate them in service with all consequential benefits including the refixation of pay in the revised scale and payment of arrears of salary and allowances and seniority and promotion. The applications have arisen in the circumstances hereinafter indicated.

3. While in the employment of the railway administration a criminal case was registered against the applicants. By judgment and order dated 5.5.1980 the applicants were convicted and sentenced to five years rigorous imprisonment. The applicants were arrested and sent to jail. The applicants appealed against that judgment before the Allahabad high court which granted them bail. On the basis of bail order the applicants came out of jail and thereafter they claim to have approached the loco foreman for assigning them work, but the work was not assigned as the loco foreman sought instructions from the higher authorities which never came. The appeal of the applicants was allowed by the Allahabad High Court vide judgment and order dated 7.3.1989 and they were acquitted. Thereafter, the applicants submitted a copy of the judgment before the concerned authority and sought assignment of duty. Again there was no response which compelled the applicants to file the present O.A. on 4.10.1990. On 13.12.1990 an interim order was passed by a division bench of this Tribunal to take them on duty within 15 days from the date of receipt of the order by them.

.....4/-

(2)

The learned counsel for the applicants has stated that the interim order of this tribunal has been complied with and the applicants have been reinstated in service. It is submitted that the consequential benefits have not yet been diverted and arrears of salary and allowances have not been paid to the applicants.

4. In spite of a number of opportunities, no counter affidavit has been filed on behalf of the respondents and no one has appeared.

5. Learned counsel for the applicants has submitted that although the applicants were detained in jail no order of suspension was passed against them and therefore, the applicants are entitled to payment of full salary and allowances for the entire period.

6. Rule 5(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 provides as follows:

"A Railway servant shall be deemed to have been placed under suspension by an order of the competent authority:

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction?"

Contd.....5/-

7. Under the above provision a railway servant is deemed to have been suspended by an order of the competent authority in the circumstances contemplated under clauses (a) and (b). Accordingly, even though no order of suspension was actually passed against the applicants by the competent authority such ^{an} order will be deemed to have been passed against the applicants. It cannot continue after the conviction has been set aside by the appellate authority. In the present cases the judgment of the appellate authority, as the applicants claim, had been brought to the notice of the concerned authority, but the concerned authority did not allow the applicants to join duty. The respondents have not brought to our notice any material which would disentitle the applicants to ^{get} salary from the date of conviction to the date of acquittal. Since they have been reinstated under the interim of this tribunal they will naturally be entitled to salary from the date of the reinstatement onwards.

8. It appears, from the material on record that disciplinary proceedings were started against the applicants for unauthorised absence ^{from 5.5.1980} which perhaps have not yet concluded. The learned counsel for the applicants produced before us the report of the enquiry officer and submitted that the applicants have been exonerated in that enquiry. The report of the enquiry officer has to be considered by the disciplinary authority which is competent to pass the final order. The disciplinary authority may agree with the findings recorded by the enquiry officer or disagree with the findings. Our attention has not been drawn to any final order passed in the disciplinary proceedings.

Contd.....5/-

9. Since no order dispensing with the services of the applicants appears to have been passed so far, the applicants' reinstatement in service which has been done in pursuance of the interim orders of this tribunal deserves to be confirmed. However, it would be open to the authority to pass final order in the disciplinary proceeding which appears to be still pending against them.

10. Since, the reinstatement of the applicants is in view of ^{their} acquittal in the criminal case it is apparent that the applicants shall be entitled to all consequential benefits also.

11. In view of the above, the original applications are allowed and the reinstatement of the applicants in service already done in pursuance of this Tribunal's interim orders is hereby confirmed. The applicants shall continue in service till their services are dispensed with in accordance with law or till they attain the age of superannuation. The applicants are entitled to payment of full salary and allowances from 5th May, 1980 till the date of their reinstatement. The respondents shall make payment of the arrears within three months of the production of a certified copy of this judgment before the concerned authority. Within the same period the respondents shall pass appropriate orders regarding the refixation of applicants' salary and consider their claim for promotion, etc. In the circumstances of the case there shall be no order as to costs.

(P.T. THIRUVENGADAM)
MEMBER (A)

(S.C. MATHUR)
CHAIRMAN

/RAD/



CHIEF AND TRUE COPY

Date....

[Signature]
25/4/80

प्रमुख अधिकारी (अ-1)

Section Officer (A)

केन्द्रीय प्रशासनिक न्यायिक निकाय

Central Administrative Tribunal

भारत सरकार