

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1770/2004
MA No.173/2006

New Delhi, this the ^{26th} May, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. N.D. Dayal, Member (A)

Shri R.K. Rastogi,
S/o Shri Hari Dev Rastogi,
C/o Shri A.K. Rastogi,
Resident of 155-A, Jawahar Galli,
Shahdara, Delhi-110032.

Station Master Pilkawa, U.P.
Northern Railway, New Delhi.

...Applicant.

(By advocate: Shri P.S. Madan)

Versus

1. Union of India.
Through the General Manager,
Northern Railway, Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Moradabad, U.P.

...Respondents.

(By Advocate: Shri Rajinder Khatter)

ORDER

By Mr. Justice M.A. Khan, VC(J):

The applicant in the present OA prays for a direction to the respondents to pay him pay and allowances for the period between the date of his dismissal from service and the date of the reinstatement in service.

2. Briefly stated, facts are that the applicant was working as Assistant Station Master with the respondents when he unauthorisedly absented himself from duty from 09.12.93 to 15.02.94. A disciplinary inquiry for major penalty was conducted against him and he was held guilty of the charge. The disciplinary authority agreed with the finding of the inquiry officer and imposed the penalty of dismissal from service on 15.5.95. His appeal and review were also dismissed. The applicant challenged these orders by filing OA 2450/95, which was allowed on



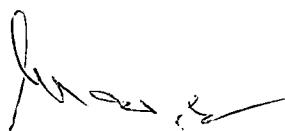
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28.6.99 and the impugned orders were quashed and the applicant was directed to be reinstated in service with consequential benefits. This order was challenged in Writ Petition No. 5209/99 which was partly allowed and the order of the Tribunal reinstating the applicant in service was upheld but the order of payment of the backwages was set aside and a direction was given to the respondent authority to decide the backwages for the intervening period, i.e. from the date of his dismissal to the date of his reinstatement in service afresh. The respondents by order dated 08.1.2002 (Annexure P-2) have rejected the claim of the applicant for backwages on the principle of "no work, no pay". The applicant challenged this order in W.P.(C) No.4834/2003 which was dismissed on 07.05.2004 as not maintainable and holding that the remedy of the applicant lay before the Tribunal. Thereafter the applicant filed the present OA on 20.7.2004. The applicant assailed the order primarily on the ground that his claim had been rejected without taking into consideration the rules and the order is non-speaking and that claim has been rejected on the ground of principle of "no pay, no work" without recording reason for reaching this conclusion.

3. The respondents defending the impugned orders have stated in the counter reply that the Divisional Operations Manager, Moradabad while dismissing the claim of the applicant has taken note of the observation of the Hon'ble High Court in Writ Petition that the applicant had not been completely exonerated and he held that on the principle of "no pay no work", the applicant was not entitled to the backwages for the intervening period. Accordingly, order was communicated to the applicant, which is under challenge in the present OA. It was also submitted that the OA is barred by limitation as the applicant is impugning the order dated 5.5.2003 and the OA is not filed within one year of the passing of the order.

4. In the rejoinder, the applicant has reiterated his own case pleaded in the O.A.

5. We have heard the learned counsel for the parties and have perused the relevant record.



6. Learned counsel for the respondents has raised a preliminary objection that the present OA is barred by time. Learned counsel for the applicant has drawn our attention to MA 173/2006 which has been filed for condonation of delay in filing the OA. Contention of the learned counsel for the respondents is that this MA has not been filed along with the OA and the same has been filed in January 2006 whereas the OA was filed in July 2004. The MA for condonation of delay cannot be dismissed simply because it has not been filed along with the OA and has been filed at a later date. The Tribunal by order dated 28.6.1999 set aside the penalty order and directed the disciplinary authority for reinstatement of the applicant in service with all consequential benefits. In the Writ Petition No. 5209/99 the order of the Tribunal was set aside only to the extent that the backwages were granted to the applicant. The Hon'ble High Court directed the competent authority to decide as to whether the applicant should be given backwages for the intervening period and if so, to what extent. The respondents issued the order dated 08.01.2002 rejecting the claim of the applicant. Instead of filing OA for redressal of his grievance against this order, the applicant filed Writ Petition (C) 4834/2003 which was dismissed as not maintainable only on 7.5.2004. In MA 173/2004 filed for condonation of delay the applicant has stated that a Writ Petition was filed before the Hon'ble High Court as the direction of the Hon'ble High Court had been disobeyed and soon after the order of the Hon'ble High Court dated 7.5.2004, the summer vacation started and the applicant filed the present OA on 15.7.2004 so it is well within the time. It is also submitted that the applicant was under an impression that the period during which the Writ Petition remained pending in the Hon'ble High Court would be excluded in accordance with provisions of Indian Limitation Act as per the legal advice his counsel and, therefore, he cannot be punished for the fault. Applicant has submitted an affidavit in support of these allegations. Even otherwise the claim of the applicant pertains to his pay and allowances for the period between the date of his dismissal to the date of his reinstatement from service and to do the



substantial justice the period during which the applicant had sought remedy against the impugned order of the respondents dated 08.1.2002, by filing the Writ Petition, under a mistaken legal advice should be excluded from consideration. The Hon'ble Supreme Court has looked upon with disfavour the technical objection raised by the public authorities and the State like bar of limitation to the just claim of an employee. Accordingly, we do not find that the claim of the applicant should be rejected merely on technical ground of delay in filing the OA. Accordingly, we condone the delay.

7. Coming to the merit of the applicant's case, we find that the competent authority has dismissed the claim of the applicant for backwages on the ground that the Hon'ble High Court had observed that the applicant had not been completely exonerated of the charges of misconduct and he was not entitled to the backwages for the period on the principle of "no pay no work". No other reason has been given. The authority had not taken into consideration the relevant rule, which is applicable. In fact, the Hon'ble High Court remitted the matter to the competent authority to decide as to whether the applicant should be paid the backwages for the intervening period and if he is paid as to what extent. It will be relevant to produce the relevant paragraph containing the observation of the Hon'ble High Court, which is as under:

"In the circumstances and facts of the case, the findings of the Tribunal to the extent, it set aside the impugned orders of punishment of department finds favour with us. However, we do not find any justification in granting the delinquent full back wages for the period he was kept out of service. The delinquent was removed from service on 15th May, 1995. The enquiry proceedings are found vitiated basically on the ground that the delinquent was not supplied with relevant documents which prejudiced his defence. We have been informed that after the orders of the Tribunal, respondent has already been reinstated in service. The question, therefore, arises as to whether he is entitled to be granted full back wages in the facts and circumstances of the case of whether this issue can be left to be decided by the Competent Authority. It is not a case whether the respondent was completely exonerated in the disciplinary proceedings or that he was not blameworthy in the least. The enquiry proceedings in this case are held to be vitiated on a technical ground of non-supply of additional documents as desired by the delinquent. He did remain absent from 9th



December 1993 to 15th February 1994. In view of the peculiar circumstances of this case, to our mind, the concerned authority should be vested with power to decide whether the employee at all deserves any back wages for the intervening period and if he does, to what extent. The respondent having already been reinstated in service, we find it expedient to leave it to the Competent Authority to decide as to whether the respondent be given back wages for the intervening period and if so, to what extent."

8. The competent authority keeping in mind the observation of the Hon'ble High Court and the relevant rule applicable should have taken a decision in the matter which has not been done and by a cryptic order the claim of the applicant has been rejected. Rule 2044A which is analogous to FR 54A applies to the railway servants. It relates to the grant of backwages when the removal or dismissal from service is set aside by a Court. It has been reproduced at Page No.716 of the Railway Establishment Rules & Labour Laws Vol. 2001 ~~2004~~ compiled by Shri B.S.Mainee which reads as under:-

"Rule 2044A (F.R.54-A):- (1) Where the dismissal, removal or compulsory retirement of a Railway servant is set aside by a Court of Law and such Railway servant is re-instated without holding any further inquiry, the period of absence from duty shall be regularized and the Railway servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the 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 whether he is not exonerated on merits, the Railway servant shall, subject to the provisions of sub rule (7) of Rule 2044, be paid amount (not being the whole) of 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 compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which shall in no case exceed 60 days from the date on which the notice is served) as may be specified in the notice:

Provided that any payment under this sub-rule to a Railway servant (other than a Railway servant who is governed by the provisions of the Payment of Wages Act, 1936) shall be restricted to a period of three years immediately preceding the date on which the judgement of the court was passed, or the date of retirement on superannuation of such Railway servant, as the case may be.



(2) The period intervening between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of judgement of the court, shall be regularized in accordance with the provisions contained in sub rule (5) of Rule 2044 given above.

(3) If the dismissal, removal or compulsory retirement of a Railway servant is set aside by the court on the merits of the case, the period intervening between the date of the dismissal, removal or compulsory retirement including the period of suspension preceding such the dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty or all purposes and he shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such the dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

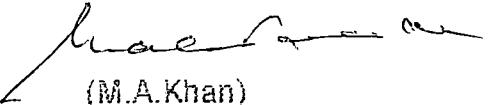
(5) Any payment made under this rule to a Railway servant, on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of the dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule is equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Railway servant."

9. Respondent authority has not been taken note of the above Rule and has also not proceeded to decide the claim of the applicant in accordance with its requirement. The order of the competent authority, therefore, is not in accordance with rule applicable and the observations of the Hon'ble High Court which are reproduced above.

10. Accordingly the order dated 8.1.2002 is set aside and the respondent authority is directed to decide afresh the claim of the applicant for grant of pay and allowances for the intervening period between the date of dismissal and the date of reinstatement in service in the light of the observation of the Hon'ble High Court in the Writ Petition No. 5209/1999 decided on 19.9.2001 and the Rule 2044A. The order shall be implemented within a period of three months from the date on which a copy of the order is received. No costs.


(N.D. Dayal)
Member (A)

/kdr/


(M.A. Khan)
Vice-Chairman(J)