

Central Administrative Tribunal
Principal Bench, New Delhi

28

CP-158/94 in
OA-1841/92

New Delhi this the 15th Day of December, 1994.

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

Smt. S.K. Mani,
Ex.Nursing Sister,
Central Hospital,
New Delhi.
C/o C-2/207, Panchkuian Road,
New Delhi.

Petitioner

(through Sh. B.S. Mainee, advocate)

versus

1. Shri Masish-Uz-Zaman,
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Sh. Bupender Narain Sinha,
Chief Medical Officer,
Northern Railway Central Hospital,
New Delhi.
3. Sh. B.M. Banerjee,
Chief Hospital Superintendent,
Central Hospital,
Northern Railway,
Connaught Place,
New Delhi.

Respondents

(through Sh. R.L. Dhawan, advocate)

Order(oral)
delivered by Hon'ble Mr. Justice S.K. Dhaon, V.C.(J)

The complaint is that the directions given
in our judgement dated 22.7.93 have not been complied
with.

This contempt petition has been sent to us
by the Hon'ble Chairman and Hon'ble Sh. P.T.
Thiruvengadam, Member(A) as the learned Members felt
that it involved interpretation of our judgement.
Having heard the learned counsel for the parties and
having read our judgement, we feel that this is so.

Sy

9

We set aside the order dismissing the applicant from service on the technical ground that the Divisional Medical Officer had no jurisdiction to pass that order. In paragraph-6, the directions which are subject matter of interpretation are to be found. The contents of the said paragraph are:-

"In the result, this application is allowed. The orders dated 25.06.1991 and 16.06.1992 passed by the punishing authority and the appellate authority are quashed. The petitioner shall be reinstated in service and given her entire back wages. It goes without saying that the petitioner will have to satisfy the authority concerned that she was not employed gainfully elsewhere between the period when the order of dismissal was passed and the order of reinstatement is passed."

Rule 5(iv) of the Railway Servants (Discipline and Appeal) Rules, 1968 has relevance and, therefore, the said rule is being extracted in extenso:-

"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 that no such further inquiry shall be ordered unless it is intended to meet a situation where the

sy

court has passed an order purely on technical grounds without going into the merits of the case."

no

It is implicit in the afore-quoted rule that the disciplinary authority is fully empowered to decide as to whether a further enquiry should be held against the delinquent. The only embargo is that such an enquiry shall not 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 could not and did not intend to take away the force of the statutory rules as contained in Rule 5(iv) of the Railway Servants (Discipline and Appeal) Rules, 1968. Had we done so, we would have acted without jurisdiction.

The learned counsel for the petitioner has strenuously urged that the directions given by us in para-6 are crystal clear and free from any ambiguity. We are afraid that that is not so. We should have gone a step further in clarifying our directions that the applicant shall be reinstated in service and given back wages provided the Disciplinary Authority decides not to hold a further enquiry in terms of Rule 5(iv). Such a direction was, therefore, implicit in our original directions.

It is everybody's case now that the disciplinary authority is justified to hold a further enquiry and, therefore, we find no illegality in the stand taken by the respondents that the petitioner shall be deemed to be suspended. It goes without

sy

saying that the respondents shall be liable to pay the subsistence allowance, payable to the petitioner, during the pendency of the enquiry.

31

This contempt petition is dismissed.

Notices issued to the respondents are discharged.

B.N. Dhondiyal
(B.N. Dhondiyal)

Member(A)

S.K. Dhaon
(S.K. Dhaon)

Vice-Chairman

/vv/