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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2163/93

New Delhi this the 8th Day of July, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Om Parkash Jain,
s/o Sh. Banwari Lal Jain,
Accounts Clerk (Foreign
Traffic Accounts),
Western Railway, Delhi
Kishan Ganj, Delhi.

...Applicant

(By Advocate Sh. O.N. Moolri)

Versus

1. F.A. & C.A.O. (WST),
Western Railway,
Churchgate,
Bombay-400020.
2. Senior Accounts Officer (FTA),
Western Railway,
Delhi Kishan Ganj,
Delhi.

...Respondents

(By Advocate Sh. Romesh Gautam)

ORDER

Hon'ble Mr. N.V. Krishnan, Vice-Chairman:-

The applicant's grievance relates to the pay and allowances allowed to him for the period prior to 1.9.92 - the date of his reinstatement in pursuance of the Annexure A-1 directions of this Tribunal in OA-1695/87.

2. The facts are not in dispute. The applicant was removed from service by way of penalty. This was challenged in OA-1695/87. The judgement was delivered on 20.9.91 (Annexure A-1). It was held that the disciplinary proceedings were vitiated on two grounds. Firstly, the procedure prescribed in sub rule 12 of rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 - Rules for short - was not followed. Secondly, a copy of the enquiry officer's report was
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not given to the applicant before holding him guilty and removing him from service. Hence, the order of removal from service was quashed (Annexure A-1) preserving the liberty to continue the disciplinary proceedings from the stage of sub rule 12 of rule 9 of the Rules, within three months from the date of receipt of the order.

3. The respondents did not revive the proceedings within the time stipulated. A review petition filed by the respondents was dismissed on 4.5.92. A petition filed for extension of time to enable the respondents to revive the enquiry was rejected finally by the order dated 21.4.93 (Annexure A-2).

4. In pursuance of the Annexure A-1 judgement, the applicant has, admittedly, been reinstated in service from 1.9.92. After the dismissal of the MP for extension of time (Annexure A-2) by order dated 21.4.93, the respondents informed the applicant on 27.7.93 (Annexure A-9) about their provisional decision. Inter alia, it was stated as follows:-

"As you were not exonerated on merits, it is proposed to treat the period of 3 years preceding reinstatement as duty as per provisions of para 1343 and 1344 of RII. You will be paid pay & allowances for the period from 1/9/89 to 31.8.92 which would be adjusted against subsistence allowance paid to you. However, leave for the remaining period as admissible to you, may be applied for if you so desire.

Your representation in writing, if any, may be submitted within ten days from the date of receipt of this letter, failing which it will be deemed that you have no objection to the action as proposed."

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5. The applicant filed a representation dated 3.8.93 (Annexure A-8) contending that he is entitled to full pay and allowances in terms of paras 1344 (3) of the Indian Railway Establishment Code, Volume-II - Code, for short. This was not accepted by the respondents who confirmed in the impugned Annexure A -1 order dated 26.8.93 that for the period 1.9.89 to 31.8.92 the applicant would be paid the amount restricted to the subsistence allowance paid to him and for the remaining period, leave as admissible may be applied for by him, if he so desired.

6. Therefore, the question is whether the applicant is entitled to full pay and allowances from 9.1.86, i.e., the date on which he was removed from service, upto 1.9.92 - the date on which he was reinstated the extent to which the Annexure A-10 order is legal.

7. The respondents have relied upon Rules 1343 and 1344 of the Code but have not indicated which particular rule applies.

8. The learned counsel for the applicant tried to contend that the applicant was governed by the Payment of Wages Act and, that therefore, the pay and allowances given to him cannot be restricted to three years as in Annexures A-9 and A-10, in view of the provisions made in the proviso to sub para (4) of rule 1343 and proviso to sub para (1) of rule 1344 of the Code. This argument was given up as no foundation has been laid for this claim in the O.A.

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9. We have heard the arguments and perused the records. The contention of the learned counsel for the applicant that the Tribunal had ordered reinstatement on merits is untenable. The judgement clearly shows that the reinstatement was made only on two technical grounds, i.e., failure to adhere to the provisions of the sub rule (12) of rule 9 and the failure to adhere to the principles of natural justice, as mentioned in the judgement of the Supreme Court in Mohd. Ramzan Khan's case (supra), both related to Article 311 of the Constitution.

10. Rule 1343 of the Code does not apply to this case, as that governs a Railway servant who is reinstated as a result of appeal or review.

11. Rule-1344 of the Code applies to this case. Sub rules (1), (2) and (3) are reproduced below:-

"1344 (FR 54A)- (1) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by a Court of law and such Government servant is reinstated without holding any further enquiry, the period of absence from duty shall be regularised and the Government 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 dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 1343 (FR 54), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been

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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 in no case shall exceed sixty days from the date on which the notice has been 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 Payment of Wages Act -1936) shall be restricted to a period of 3 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.

(ii) The period interven-ing between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgement of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 1343.

(3) If the dismissal, removal or compulsory retirement of a railway servant is set aside by court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding, such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for 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 compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be." (emphasis ours).

12. Read with sub-rule (5) of Rule 1343, sub rule 2 (ii) of Rule 1344 means that period is not to be treated as period spent on duty unless so specifically directed by the order of the competent authority for any specific purpose. However, if the railway servant so desires, such authority may direct

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that the absence from duty during this period may be converted into leave of any kind due as admissible to the railway servant.

13. Admittedly, the applicant was not under suspension before the order of removal was passed on 9.1.86. Likewise, after the Tribunal directed his reinstatement by the Annexure A-1 order dated 20.9.91 also granting liberty to revive the disciplinary proceedings, the respondents did not continue with the enquiry. Therefore, the applicant cannot be deemed to have been placed under suspension from the date of the original order of removal, as authorised by rule 5 (4) of the Railway Servants (Discipline & Appeal) Rules, 1968.

14. Before proceeding further, it is seen that one obvious mistake has been committed by the respondents. The three year period has to be from the date of judgement (20.9.91 in this case) or the date of retirement, obviously, whichever is earlier, though not so stated. Hence the relevant period is 19.8.88 to 19.9.91 and not from 1.9.89 to 31.8.92 as stated in Annexure A-9.

15. We are not impressed by the argument of the learned counsel for the applicant that the Annexure A-9 letter is not a proper notice to him under the Rules. In our view, Annexure A-9 letter clearly informs the applicant as to what the respondents intend to do about the period of absence. It states as follows: -

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- i) The period of three years prior to the date of reinstatement will be treated as duty.
- ii) The pay and allowances for this period of three years will be adjusted against the subsistence allowance paid.
- iii) For the remaining period the applicant may apply for leave.

He has understood this and given a representation.

16. Sub-rule (3) of rule 1344 provides that if the reinstatement is on merits, the period of absence upto reinstatement shall be treated as duty for all purposes and full pay and allowances would have to be paid. If the reinstatement is only on the technical grounds of non-compliance with the requirements of clauses (1) and (2) of Article 311 of the Constitution - which is the position in this case - 100% of the pay and allowances shall not be payable and necessarily, there has to be some reduction to the extent determined by the competent authority. The amount so payable shall also be not less than the subsistence allowance (sub Rule 2(i) of Rule 1344 read with sub Rule 7 of Rule 1343).

17. We notice that neither in Annexure A-9 nor in Annexure A-10 have the respondents indicated why they restricted the pay and allowances to the amount of subsistence allowance. This would have been

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justified, if the applicant had been suspended prior to the final order of the disciplinary authority. As the applicant was removed from service the applicant would not have received any thing more than the subsistence allowance for the period of suspension. In the present case, the removal from service has been quashed on technical grounds. The applicant has been reinstated. He was never under suspension before removal. There is no order of deemed suspension. Further enquiry has not only been not held though permitted, but due to the laches of the respondents, the right to hold further enquiry has been forfeited. It is in this background that the pay and allowances for the period of absence has to be determined, more particularly, for the period of three years prior to the date of judgement for which alone payment is due under the Code. That payment cannot be less than the subsistence allowance. This amount he would have got even if he had been removed from service after suspension. Necessarily, the payment made to him has to be substantially more than the subsistence allowance but less than the full pay. What that amount should be is a matter which should be fixed by the respondents after applying their mind and giving reasons for such determination. That has not been done.

18. In the circumstances, the Annexure A-9 notice is liable to be quashed on this limited ground. In other words, the other decisions taken therein viz. that the period of three years prior to date of reinstatement (should be judgement) would be treated as

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duty for all purposes and that for the remaining period the applicant could seek leave, if he so desired, are correct and valid.

19. In the circumstances, the O.A. is substantially allowed with the following directions/orders:-

- i) The Annexure A 9 notice dated 27.7.93 and the Annexure A 10 order dated 26.8.93 in so far as they relate to restricting the payment of pay and allowances to the subsistence allowance are quashed.
- ii) The applicant is entitled to pay and allowances for the period from 19.9.88 to 19.9.91 in accordance with Rule 1344 and, subject to determination of such pay and allowances in the manner, this period shall be treated as duty for all purposes.
- iii) The respondents are directed to consider the question of payment of pay and allowances for this period afresh, keeping in mind the above observations and determine this afresh in accordance with law.
- iv) The applicant is also permitted to inform the respondents, within two weeks from the date of receipt of this order, as to whether he desires that the remaining period of

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absence from duty, i.e., from 9.1.86 to 18.9.88 should be converted into leave of any kind due and admissible to him. In case such an intimation is received the respondents are directed to pass appropriate orders.

v) The applicant shall be treated to be as on duty from the date of the judgement (20.9.91) till he was reinstated for all purposes and he shall be paid full pay and allowances for this period.

vi) These orders shall be complied with within three months from the date of receipt of this order by the respondents.

20. The O.A. is disposed of as above. No costs.

(C.J. Roy)
Member(J)

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(N.V. Krishnan)
Vice-Chairman