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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 345 of 1997.

ALLAHABAD THIS THE 25. DAY OF NOVEMBER 2005.

Hon'ble Mr. S.C. Chaube, Member-A
Hon'ble Mr. K.B.S. RAJAN, MEMBER-J

Smt. Girish Srivastava, W/o late Harish Chandra Srivastava, C/o Shri Jagannath, R/o Opp. Mohd. Husainabad Bal Shuksha Niketan Jaunpur.

.....Applicant.

By Advocates : Sri M.K. Upadhyay

Versus

1. Union of India through the General Manager, North Eastern Railway, Baroda House, New Delhi.
2. Chief Personnel Officer (Administration), North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North Eastern Railway, Izzatnagar, Bareilly.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

O R D E R

By K.B.S. RAJAN, MEMBER-J

The applicant in this case is the wife of Sri Harish Chandra Srivastava, who was employed in the Railways. The said individual filed O.A. no. 1058 of 1987 and during the pendency of the O.A., he had expired. Consequently, the applicant in this O.A. was impleaded as the applicant being the wife of Sri Harish Chandra Srivastava as legal heir.

2. The said Harish Chandra Srivastava was transferred and absorbed in the Commercial

2. The said Harish Chandra Srivastava was transferred and absorbed in the Commercial Department and later on, he was removed from service during the emergency period. He filed an appeal against the dismissal order and in pursuance of the same, he was given re-employment as per the circular dated 7.7.1977. The grievance of the applicant in that O.A. was that the said circular contemplated reinstatement and not re-appointed ^{ment} or re-employment. As such, the applicant had prayed for a direction to the respondents to treat his re-instatement into service in accordance with law instead of re-employment. This Tribunal had passed in that O.A. the following order :-

"..... Accordingly, this appeal is allowed and the respondents are directed to consider the representations filed by the applicant dated 14.9.82, 10.12.82, 8.12.84, 27.5.85, 6.12.85,, 28.2.86, 9.10.86 and 10.7.87 in accordance with the circular of the Railway Board referred to above and the observations made in this judgment. They shall do it by passing a speaking order within a period of three months from the date of communication of this order."

3. In the wake of the aforesaid order of this Tribunal, the Chief Personnel Officer (Administration), North Eastern Railway, Gorakhpur had passed an order dated 13.6.94 and the same reads as under :

"The case of Sri H.C. Srivastava, ex-Goods Clerk, Izatnagar Division was put up to the General Manager for decision on the judgment of CAT/Allahabad who has passed orders as under:-

"Upon a reconsideration of the case, as per the direction of the CAT, the undersigned is of the view that the

late employee Sri Harish Chandra Srivastava should have been reinstated and not re-appointed.

Accordingly, the employee may be presumed to have been re-instated in service w.e.f.19.8.1975 and the period from 19.8.1975 to 4.7.1980 may be regularised as leave due."

4. Though the aforesaid order was passed lateron, the respondents had passed the impugned order dated 7.7.94 whereby the period of absence from 1975 to 1980 had been regularised by way of grant of leave for a few days, by grant of half pay leave for some more days and the balance to the tune of 4 years, seven months and 10 days were regularised by way of leave not due or leave without pay.

5. The applicant has challenged this order as also earlier order dated 13.6.1994. The said order dated 13.6.1994 has been challenged if in the opinion of the respondents, the term leave due would mean only the leave to the extent it is due and the balance without pay.

6. The respondents have filed their Counter Affidavit. According to them, the applicant's case for regularization has been dealt with in accordance with clause 2044 of Indian Railway Establishment Code. It is the case of the respondents that the regularization was done in accordance the said rules.

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7. Lateron, through a Supplementary Affidavit, the respondents have also submitted that the case of the applicant had been regularised in accordance with Rule or Clause 1343 (2) & (4) of the Indian Railway Establishment Code. For the purpose of records and reference the relevant rules are cited below:-

"(2) Where the authority competent to order reinstatement is of opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the railway servant shall subject to the provision of sub-rule (6) be paid the full pay and allowances in 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.

(4) In cases other than those covered by sub rule (2) including cases where the order of dismissal , removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held the railway servant shall, subject to the provisions of sub-rule (6) and (7), be paid such amount 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 with such period which in no case shall exceed 60 days from the date on which the notice has been served as may be specified in the notice."

8. Arguments were heard and the documents perused.

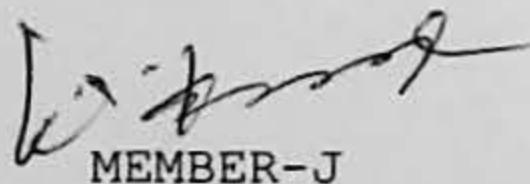
9. The dismissal of late H.S. Srivastava from the Railway service was at the time of emergency and the

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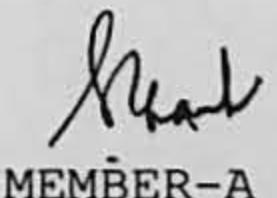
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reinstatement order was as a matter of amnesty subsequently provided by the Railways. As such, the term, period of absence to be regularised by grant of leave due should mean that the entire period should be treated as on duty or as leave with pay. There cannot be different view that could be taken in the facts and circumstances of the case.

10. In view of the above, the O.A. succeeds. The orders impugned namely orders dated 7.7.94 and 13.6.94 are quashed and set-aside. It is directed that the applicant be paid pay and allowances due to her husband for the period of absence from 1975 to 1980. This amount shall be payable within a period of 6 months from the date of communication of this order. No costs.



MEMBER-J



MEMBER-A

Girish/-