

(5)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 21st day of December 2005.

Original Application No. 742 of 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Smt. Chameli Devi, W/o late Ram Kripal,
R/o Purani Ram Bazar, near Bakra Mandi, Bharvari,
ALLAHABAD.

.....Applicant

By Adv: Sri S. Lal

V E R S U S

1. Union of India through General Manager,
N.C. Railway,
ALLAHABAD.
2. Divisional Rail Manager, N.C. Railway,
ALLAHABAD.
3. Senior Divisional Mechanical Engineer (Senior),
ALLAHABAD.
4. Asstt. Divisional Mechanical Engineer,
N.C. Railway,
ALLAHABAD.
5. Coaching Depot Officer (CDO) (Carriage and
Wagon), N.C. Railway,
ALLAHABAD.
6. S.D. Singh, Clerk Sick Line, Carriage and
Wagon, N.C. Railway,
ALLAHABAD.

.....Respondents.

By Adv: Sri S.S. Agnihotri.

O R D E R

By K.B.S. Rajan, JM

For Applicant: Sri S. Lal

For Respondents: Sri S.S. Agnihotri



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According to the applicant she was served a letter dated 25.01.2005 about her absence from duties to which she had made necessary reply by letter dated 08.02.2005. Further the applicant was informed that she was under suspension w.e.f. 25.9.2004. However, according to the applicant no order of suspension was served upon her. The applicant therefore prayed for supply of the order of suspension dated 25.9.2004 and further prayed that the respondents be directed to reinstate the applicant forthwith. By order dated 12.7.2005 while issuing notice the respondents were directed to annex to the CA a copy of the suspension order as well. Counter was filed on 24.10.2005 to which a copy of the order dated 25.9.2004 has been annexed.

The said order reads as under:-

“दिनांक 25.9.04

वरिं ० ख०३ अभि जी० एस० एल

उ० म० रे० इलाहा०

सहायक मंडल यान्त्रिक अभि (M) इलाहा० के आदेश से श्रीमती चमेली देवी

हे० ख० T. H. 1046 को तत्काल प्रभाव से निलम्बीत किया जाता है।

 कृप्या आदेश का अनुपालन सुनिश्चित करें।

हस्ताक्षर

25.09.04”

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2. It has been stated in the CA that after 25.9.2004 the applicant was not available and as such the order of suspension could not be served upon her. It has also been contended that on 25.9.2004 the order of suspension was attempted to be served upon her, she had flatly refused to receive the same.

3. Arguments have been heard and documents have been perused.

4. The applicant's counsel submits that the order of suspension, copy of which is made available as a part of the CA is neither in the format prescribed, nor does it reflect the precise reason for suspension. No order relating to payment of subsistence allowance has so far been passed by the respondents. Again till now no charge sheet has been issued on the respondents. The applicant's counsel relies upon a decision of the Lucknow Bench of the Tribunal decided on 12.1.19934 in OA No. 846 of 1993 wherein it has been held that prolonged suspension of the applicant from his office for more than a year without giving him a charge sheet for departmental enquiry, amounts to indefinitely placing him in the agony and disability of suspension and renders the order of suspension arbitrary and invalid and liable to be revoked.

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5. The respondents' counsel submits that the applicant not having been present in the office subsistence allowance could not be paid to her. He has further submitted that according to the instructions some action of disciplinary proceedings is on and that the applicant is not co-operating.

6. A perusal of the order of suspension is goes to show that it lacks in material particular at least in respect of the following:-

- a. The order does not contain precise reasons for suspension (pending disciplinary proceedings or contemplation of disciplinary proceedings).
- b. The order does not also reflect the office to which the applicant was to be attached during the period of suspension.

(Normally, the departments follow a specific format provided for in the CCS(CC &A) Rules)

7. Normally, immediately after issue of the order of suspension, the same is followed by another order relating to payment of subsistence allowance. Obviously this has not happened in this case; instead, the excuse projected by the respondents is that the applicant did not present herself in the office and as such the question of payment of subsistence allowance does not arise. This argument is to be summarily rejected. It has been stated in order dated 31.5.1983 of the Railways that an



employee under suspension is not required to attend his work nor is there any question of his giving daily attendance and marking presence. As such the contention of the respondents that subsistence allowance was not paid to her because of her absence does not stand judicial scrutiny.

8. Again, when an individual is under suspension charge sheet is issued at the earliest. The reason is obvious. During suspension the employee should be paid subsistence allowance which is initially at 50% and later on is invariably increased to 75% after three months. In such cases apart from issuing the charge sheet within a reasonable time from the time of placing the individual on suspension, attempt should be made to finalize the disciplinary proceedings as early as possible. Further the order of suspension is to be reviewed periodically to ascertain whether continuance of suspension is absolutely essential. None of the aforesaid requirements has been followed in this case. The order of suspension has been drafted as casually and recklessly as one could be and the same therefore, cannot stand as a legal and valid order in the eyes of law.

9. In view of the above the OA is allowed. The so-called order of suspension dated 25.9.2004 is quashed and set aside. The applicant is deemed to have been in continuous service and she is also entitled to payment of her salary for the period

[Signature]

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from 25.9.2004 onwards. The respondents are directed to forthwith reinstate the applicant into service and within a period of eight weeks from the date of communication of this order the pay and allowance from 25.9.2004 shall be made available to her. This order, of course, is independent of any disciplinary proceedings that may be contemplated on plausible reasons by the respondents. Under the circumstance there shall be no order as to costs.

Since there shall be no order as to costs.

 

Member (A) Member (J)


Member (T)

/pc/