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Central Administrative Tribunal, Allahabad.

Registration T.A.No.446 of 1987

T.R.K. Srivastava ... Petitioner

Vs.

Union of India & 3 others ... Respondents.

Hon. D.S.Misra, AM

Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This writ petition under Art.226 of the Constitution of India has been received u/s.29 of the Administrative Tribunals Act XIII of 1985 from the Lucknow Bench of the High Court of Judicature at Allahabad.

2. The petitioner while working as Guard Grade 'C' in the Lucknow Division of the N.E.Railway was placed under suspension on 7.7.1976 for occasioning the loss of 3 bundles of booked articles on 12.9.1975 from the Brake Van of train no.53-up Mailani-Lucknow, which was under the charge of the petitioner. He was also served with one charge sheet for major punishment and another charge sheet for minor punishment and later on the charge sheet for major punishment was also converted into the charge sheet for minor punishment in connection with this incident. The suspension of the petitioner was revoked on 16.9.1976 and after considering the statement of defence submitted by the petitioner, the Sr. Divisional Commercial Superintendent- respondent no.4 ordered on 5.1.1979 the recovery of Rs.2,946 by way of compensation for causing the loss of 3 bundles of the booked articles by way of penalty. The appeal preferred by the petitioner to the respondent no.3 was rejected on 3.9.1979. The petitioner accordingly prayed for quashing the impugned orders dated 5.1.1979 and 3.7.1979 and for a mandamus



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to the respondents not to recover the sum of Rs. 2946 and to pay the difference in pay for the period of suspension to the petitioner.

3. The writ petition was admitted by the High Court on 10.8.1979 and by its order dated 3.9.1987 the High Court also stayed the recovery of any sum under the impugned orders. The respondents, however, preferred not to file any counter affidavit before the High Court till this writ petition was transferred to the Tribunal. Even before this Tribunal, the respondents did not file any counter affidavit or reply and only on 29.9.1988, the date fixed for final hearing, the copy of letter dated 9.6.1988 sent on behalf of the Divisional Railway Manager (C) Lucknow addressed to the petitioner was filed, which states that the charge memorandum dated 16.5.1976 issued by the Sr.D.C.S to the petitioner, order dated 5.1.79 passed by respondent no.4 and the order dated 3.7.79 passed by the appellate authority-respondent no.4 have been cancelled by the General Manager N.E. Railway, Gorakhpur without prejudice.

4. It was orally contended on behalf of the respondents that the respondents intend to initiate fresh proceedings against the petitioner and this writ petition has become infructuous. The petitioner opposed the initiation of the contemplated fresh proceedings against him contending that the same could not be done under the law. The order of the General Manager quashing the impugned orders is not before us. We are, therefore, unable to comment whether fresh disciplinary proceedings can be taken against the petitioner



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under the rules or not. The petitioner has not yet been served with any fresh charge sheet and as such it is premature on the part of the petitioner to contend and for the Tribunal to consider the validity and the propriety of the same.

5. In case, the petitioner is served with any fresh charge sheet for the same misconduct or incident he will have a fresh right to approach the Tribunal. So far as the main reliefs <sup>claimed by the petitioner</sup> are concerned, have already been granted to him by the General Manager and to that extent, his petition has become infructuous. Regarding the payment of difference of pay and the subsistence allowance for the period the petitioner remained under suspension, we direct the respondents to pass suitable <sup>orders</sup> in the light of the provisions contained in Rule 2044, 2044-A and 2044-B R.I.I. corresponding to F.R.54, 54-A, and 54-B expeditiously. The writ petition is disposed of accordingly without any order as to costs.

*[Signature]*

MEMBER(J)

Dated: 30.9.1988  
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*[Signature]*

MEMBER(A)