

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A. No.439/87

(6)

Raghubir ::::: Applicant

vs.

Union of India & Others ::::: Respondents

Hon.Mr. Justice U.C.Srivastava, V.C.

Hon.Mr. K. Ghayya, A.M.

(By Hon.Mr. Justice U.C.Srivastava, V.C.)

The applicant, who was earlier under disciplinary proceedings and removed from service and was later on re-in-stated, has prayed that the order dated 25-5-89 and the para 11 of the order of General Manager dated 16-8-86 and the order of G.M.P. dated 17-12-86 be quashed and the applicant may be allowed the benefit of reclassification from semi-skilled grade in the scale of Rs.209-290 to skilled grade, in the scale of Rs.260-400 from 1-8-78 to 31-3-80 and lump-sum arrears from 1-4-80 to 31-12-81 and higher fixation from 1-1-82 onwards along with arrears may be granted and the deemed suspension during the period from 1-4-78 to 4-12-83 and the order dated 12-10-85 in this behalf be quashed.

2. The applicant was a Railway employee as a khalsi. The applicant has claimed that because of his re-in-statement with effect from 1-4-80 he is entitled to the benefit of reclassification scheme by which the semi-skilled were made skilled in the scale of Rs.260-400 and fixation of pay on proforma basis with effect from 1-8-78 as a result of

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Railway Board's Circular letter dated 13-11-1982. The subject of the Railway Board's letter dated 13-11-82 was reclassification of ordinary staff in the Railway and relief to the semi-skilled and un-skilled staff. In the said letter it was provided that the Trades presently designated as Semi-skilled should be re-classified as skilled in the grade of Rs.260-400 and 60% of the existing unskilled artisan strength in production Units and workshops (all departments) should be allotted the semi-skilled grade of Rs.210-290 and designated as Khalasi - Helper, and 50% of the existing strength in unskilled artisan categories in the open Line Establishments (all departments) and RDSO (to the extent applicable) should be allotted the semi-skilled grade of Rs.210-290, and fixation of pay in respect of staff reclassified should be done on proforma basis and provision for lump-sum arrears also was made as well as for higher fixation.

3. From the facts it appears that in the year 1973 the applicant was involved in a theft case relating to Railway property and a criminal case was instituted against him. The applicant was convicted for a period of one year and his appeal was dismissed by the Session Judge vide order dated 11-1-78 and as a result of the same the applicant was dismissed by the department from 31-3-78. The applicant filed an appeal against the dismissal order. The appellate authorities allowed the appeal and directed re-in-statement of the applicant

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and immediate suspension u.s.f. 1-4-78 simultaneously issuing show cause notice dated 29-9-83. The applicant filed an appeal against the same. In the enquiry, the applicant desired a personal hearing. As a result of the enquiry, the disciplinary authorities awarded a punishment of withholding increment for a period of 2 years with cumulative effect vide order dated 9-12-1983. The suspension order of the ~~XXXXXX~~ applicant was revoked on 9-12-1983. The period during 1-4-78 to 9-12-1983 was treated as 'suspension period'.

4. According to the respondents, as the applicant joined duty on 10-11-83, he was not entitled to the benefit of Railway Board's letter dated 13-11-82, but the letter further provides that the initial allotment of the semi-skilled grade to unskilled staff and skilled grade to the semi-skilled grade will be on the basis of seniority-cum-suitability without the eligible staff being subjected to Trade Test. The applicant joined duty on 10-12-1983 and the benefit to which he was entitled to, was given to him. He was not on duty from 1-4-1978 to 9-12-1983 as he was under suspension and proceedings were taken against him and as such he was not given the benefit of the Railway Board's Circular dated 13-11-1982 and the period has been rightly treated as 'under suspension'. It is clear that ~~XX~~ earlier the applicant's services were terminated applying the provisions of Rule 14(1) of F.A.R. Rules. This was a case wherein the appellate authorities found that the enquiry should not have been dispensed with and that is why the enquiry was started. The dismissal order passed earlier was obviously illegal and without jurisdiction and the applicant was deemed to be continuing in

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service. Now the question that arises for consideration is as to whether the applicant could have been placed under suspension with retrospective effect or not.

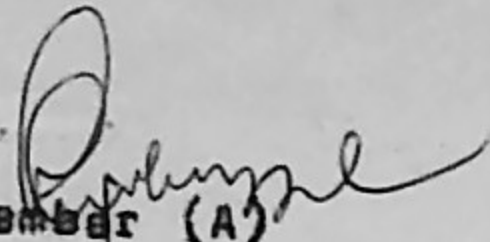
5. Explanation (iii) to Rule 5 provides dismissal, removal or compulsory retirement is set aside in appeal or any review of the case is considered and the case is further remitted for further enquiry or action or that the order of suspension shall be deemed to have continued in force from the date of original order of dismissal, removal or compulsory retirement shall remain in force until further orders, but the dismissal order has been set aside by the appellate authorities. As such a person can be placed under deemed suspension. But in view of the fact that the applicant was re-in-stated in service, the applicant was deemed to be continuing in service since he was given a minor punishment later on and that itself could not ~~XXXX~~ come in his way for getting the benefit of the restructuring scheme. It is not known as to whether ^{for depriving} the applicant from the benefit of the scheme of restructuring, his suitability was adjudged or not.


6. In case his case was rejected after adjudging ~~XXXX~~ his suitability, the applicant has no case. In case his suitability was not adjudged, merely because he was dismissed and placed under deemed suspension, the applicant cannot be deprived of the benefit of the restructuring scheme/reclassification scheme, contained in the Railway Board's Circular of the year 1982. Therefore, the respondents are directed to consider this aspect of the case and in case the applicant's suitability was not adjudged

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merely because of his earlier dismissal and deemed suspension, and if he was deprived of the benefit of the restructuring or reclassification scheme, his suitability be adjudged now and due benefit of the Railway Board's letter relating to the restructuring or reclassification scheme be given to him from due date.

Let this be done within a period of 3 months from the receipt of date of the copy of this order. *No order as to cost?*


Member (A)


Vice-Chairman.

Dated: 29th Sep., 1992, Allahabad.

(tgk)