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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No.382 of 1988

Deep Chand Pachauri

Petitioner

Versus

Union of India and Ors

Respondents

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HON'BLE MR. JUSTICE R.K. VARMA,

HON'BLE MR. V.K. SETH, MEMBER(A)

(By hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has sought quashing of the order dated 20.8.86(Annexure III to the petition) passed by the Respondent No.3 regularising the period of suspension as suspension and not as duty and has prayed for a direction to the respondent to count the period of suspension from 3.9.75 to 30.6.77 as duty for all purposes and allow him the consequential benefits thereof consisting of full salary and allowances and a further direction to reimburse the applicant for the monetary loss amounting to Rs.72,196 including interest @ 12% per annum from 1.7.77 following the date of his retirement on 30.6.77

2. The facts giving rise to this application briefly stated are as follows:

While the applicant was in service as Station Master, Sasni railway station, disciplinary proceedings were started against him in the year 1975 for certain alleged acts of omissions in the performance of the duties and he was placed under

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suspension by the Senior Divisional Commercial Supdt.w.e.f. 3.9.75

After receipt of the enquiry report the petitioner was removed from service by the General Manager w.e.f. 24.9.77 i.e.

almost 3 months after retirement of the petitioner on super-annuation. on an appeal being filed by the petitioner to

the Railway Board, the Appellate Authority, the order of removal passed by the General Manager, Northern Railway New Delhi, the order of the Appellate Authority were affirmed.

3. The petitioner filed a writ petition No. 8965 of 1981 in the High Court of Allahabad which was allowed by order dated 14.10.85(Annexure 1 to the petition) whereby the order of removal passed by the General Manager and the Appellate order passed by the Railway Board were quashed and it was directed that the petitioner shall be deemed to have continued and retired from service on 30.6.77 and the petitioner is also entitled to such benefits as are available to a retired employee.

4. It is the case of the petitioner that the respondents have not implemented the order of the High Court passed in the writ petition dated 14.10.85 inasmuch as the Senior Divisional Commercial Supdt, Respondent no.3 without any jurisdiction passed an order dated 20.8.86(Annexure 3 to the petition) that the suspension of the petitioner was justified and hence the period of suspension will be treated as suspension. This order of the respondent no.3 deprives the petitioner of the payment of salary for the said period of suspension minus the subsistence allowance paid to him and the other consequential benefits. The petitioner preferred an appeal dated 30.9.86(Annexure IV to the petition) against the order (Annexure 3 to the petition) to the Divisional Railway Manager, Respondent

No.2 which remained undecided for a period of more than one year and as such the petitioner filed this petition for relief of regularising the period of suspension and other consequential benefits as stated at the outset.

5. The learned counsel for the petitioner has submitted that the order of removal passed against the petitioner on 24.9.77 was held to be bad in law by the ~~Head quarter~~ ^{in High Court} as the petitioner has already retired on 30.6.77 and as such the order of removal passed by the General Manager, Northern Railway was quashed. The learned counsel placed reliance on a decision of the Supreme Court in 'Om Prakash Gupta Vs. State of U.P.', A.I.R 1955 (SC)600 to submit that the order of suspension which lasted during enquiry against the petitioner had lapsed with the final order of removal and upon the order of removal being quashed by the High Court, the order of suspension could not revive. The relevant observations in this behalf made in the case of 'Om Prakash Gupta(Supra) are as under:

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"The order of suspension made against the appellant was clearly one made pending an enquiry. It certainly was not a penalty imposed after an enquiry. As the result of the enquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a Civil Court that the order of suspension was illegal could not revive an order of suspension which did not exist. The case referred to by the Attorney-General is not . . . P-4

directly in point and that decision does not conflict with the case relied upon by the appellant. The appellant is, therefore, entitled to recover arrears of salary from the 25th of November, 1944, to 31st December, 1947."

6. It is, therefore, urged by the learned counsel ^{that} ~~for~~ the petitioner is entitled to be treated as on duty during the period of suspension and consequently to the difference of salary and the subsistence allowance paid during that period. While regularising the period of suspension and deciding the question of entitlement to arrears of salary for that period, it would have to be decided by the Competent Authority whether the order of suspension was or was not justified in the circumstances of the case.

7. The relevant rule pointed out by the learned counsel for the petitioner in this connection is contained in clause (2) of Para 2044-A(F.R. 54-A) of the Indian Railway Establishment Code which contemplates that where the employee is not exonerated on merits, the pay and allowances to be paid to the Railway servant for the period intervening between the date of removal including the period of suspension preceding removal and the date of reinstatement shall be determined by the Competent Authority 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 as may be specified in the notice. The Competent Authority according to Appendix XXXII providing for delegations made by the President with reference to definition of Competent Authority given in Rule 2003(5) (F.R.9)(5-A), is an authority which has power to make a substantive appointment to the post which a railway servant holds.

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8. It has been submitted by the learned counsel for the petitioner that the Competent Authority in the case of the petitioner-employee who was a station Master, was the General Manager, Respondent No.1 and not the Senior Divisional Commercial Supdt, Respondent No.3, who regularised the suspension period although he was not the competent authority to do so in the case of the petitioner and it is, therefore contended that the order of regularisation made by the respondent no.3 is without jurisdiction and is liable to be struck down. It has also been pointed out that no notice was given to the employee by the respondent no.3 of the quantum proposed while regularising the period of suspension. The order of the respondent no.3 is therefore, also assailed on the ground that it is violative of principles of natural justice. The reply of the respondents in their counter affidavit is that since the representation of regularisation was made by the petitioner, the same was considered by the respondents and as such no notice was required to be given to the petitioner. This reply, in our opinion, cannot be an answer to the requirement of notice to the railway servant of the quantum proposed before determination of the petitioner's entitlement by the Competent Authority.

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9. In view of the discussion aforesaid, this petition is allowed. The order of respondent no.3 dated 20.8.86 is quashed and it is directed that the Competent Authority shall consider and determine the petitioner's entitlement during the period of suspension having regard to the relevant rule contained in Para 2044-A(2) of the Indian Railway establishment Code.

10. There shall, however, be no order as to costs in the circumstances of the case.

Member(A)

R.K. Varma
Vice Chairman

Dated: August 30, 1993