

CENTRAL ADMINISTRATIVE TRIBUNAL

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O.A.No./T.A.No. 61 of 1989 (O.S. No.818 of 1988) DATE OF RECD. 17/5/96

Chhotay Lal

----- ATTALGANT (S)

Sri Rakesh Verma

----- ADVOCATE FOR THE
PFL. GANT (S)

V E D G U P T A

Union of India and Others.

44 ----- EXPONENT(S)

Sri Shekhar Srivastava, &

----- Sri Govind Saran ----- ADVOCATE FOR THE
EXPONENT(S)

S U H A M

The Hon'ble Mr. S. Das Gupta, A.M. vice Chairman
----- Member ()

The Hon'ble Mr. T.L. Verma, J.M.

----- Member ()

1. whether Reporters of local newspapers may be
allowed to see the judgment?

2. to be referred to the Report or not? Yes

3. whether their Lawships wish to see the fair
copy of the judgment? Yes

4. whether to be circulated to all other Bench?

WL

(SIGNATURE)

.....others/-

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Allahabad : Dated this 17th day of May, 1996
Original Suit No. 818 of 1988
(T.A. No. 61/89)

District : Moradabad

CERAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Chhotay Lal s/o Shri Nimma R/o Nawabpura,

Mallah Ghat, Moradabad (U.P.), Token porter,

Northern Railway, Moradabad Division,

Mozadabad.

2. The Divisional Railway Manager,
Northern Railway, Moradabad.

2.1.2. *Respondents*

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

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Tribunals Act, 1985, and was renumbered as T.A. No.61 of 1989.

2. The applicant's case is that he was serving in the Northern Railway since 1946 and was posted as Token Porter on the Ram Ganga Bridge Station near Bareilly on 16.4.1973 on which date he was arrested by Bareilly Kotwali Police on the suspicion that the applicant was involved in a criminal case under Section 420/120 I.P.C. He was kept in Bareilly and Meerut District Jail after his arrest and was actually released on 20.6.1973. The applicant stood ~~in~~ trial in the criminal case and was acquitted on 5.2.1979 by the Court of the Judicial Magistrate, Bareilly. He has claimed that the railway administration was kept posted with the progress of the case from the beginning till the end. After his acquittal, he requested the authorities to allow him to resume duty and to pay all his dues of salary and allowances and in response he was informed through a memo dated 4.8.1979 that he could not be allowed to resume duty unless he disclosed the reasons for the alleged absence from duty since 16.4.1973. The applicant submitted a detailed explanation bringing out all the facts. However, inaction on the part of the respondents continued and, therefore, the applicant served a notice under Section 80 C.P.C. to the respondents. The respondents, however, did not take any action even after receiving the notice. Thereafter, the applicant approached the Court of the Civil Judge, Moradabad claiming that he was entitled to receive full pay and allowance for the period 16.4.1973 till he was allowed to resume his duties.

3. The respondents have filed a counter reply in which it has been alleged that ~~xxx~~ records do not reveal the fact that the applicant had posted the department with the progress of the criminal proceedings. The acquittal order dated 5.2.1979, the order dated 30.6.1973

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releasing the applicant from the jail etc. were not in the office record. They have pleaded that the notices under section 80 ~~xxx~~ G.P.C. is not on record. The stand taken by the respondents is that since the applicant could not disclose the reasons for his absence from duties from 16.4.1973, he could not be allowed to resume his duties.

4. The applicant filed a rejoinder affidavit, in which it has been stated that he was arrested by the Police under section 420/120 I.P.C. on 16.4.1973, while he was on duty. Therefore, the averments of the respondents that they had no knowledge about the arrest of the applicant/criminal proceedings against him is palpably wrong. As he was under police custody for more than 48 hours, he will be deemed to be under ^{is} suspension, whether any order is issued or not by the respondents. He has further stated that after the judgement dated 5-2-1979 was passed by the Court of Judicial Magistrate, acquitting him, he approached the respondents through an application dated 9-4-1979 ~~xxx~~ annexing thereo a copy of the judgement with the prayer that he be allowed to join his duties. He has annexed a copy of the aforesaid application dated 9-4-1979 to the rejoinder affidavit as Annexure RA.1. He has also annexed a copy of the order dated 4-5-1979 passed by the D.R.M., Moradabad refusing to permit the applicant to join his duties and directing him to disclose the real reasons. This is Annexure RA.2. He has further annexed a copy of the charge memo dated 5/9/9-1977 (Annexure RA.3), in which the article of charge is that the applicant has been absent without the permission of the competent authority since his arrest by the Civil Police.

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5. The respondents thereafter filed a Suppl.CA in which it was stated that the applicant was issued a charge sheet on 28/31-1-1975 for unauthorised absence since 16-4-1973 without the permission of the competent authority. An Inquiry Officer was also appointed for conducting inquiry. The Inquiry Officer issued registered letter on 25-6-1977 requiring the applicant to appear before the Inquiry Officer on the date fixed. The registered letter was acknowledged by the applicant. It is further stated that on 16-7-1977, the applicant submitted an application to the effect that he had not received any charge sheet and he asked for the same. Later the same charge sheet was again issued through the memo dated 5/9-9-1977. The applicant did not reply to the charge sheet and then he was given another opportunity. However, despite several reminders, he did not give any reply to the charge sheet. Later by the letter dated 3-12-1977 the applicant informed the respondents through the registered letter that the criminal case against him was still pending. He had also informed that he remained in Meerut Jail for one month and thereafter for another month in Bareilly Jail. A photocopy of the letter dated 3-12-1977 has been annexed as Annexure-13 to the Suppl.CA. In reply to this letter, the applicant was directed by letter dated 13-12-1977 to be present on any day in the office of the Sahayak Parichalan Adhikshak (G.). However, he did not turn up. He was again directed by the letter dated 3-1-1978 to appear failing which the petitioner was threatened that ex parte proceedings will be initiated. The said registered letter was, however, refused. Thereafter by the letter dated 9-4-1979, the applicant informed that his case had now been decided and he was enclosing a copy of the court's order. However, the applicant could not

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be allowed to resume duty unless he disclosed the real reasons for his long absence and, therefore, the letter dated 4-5-1979 was written directing him to disclose reasons. He was also asked to give reply to the charge memo. dated 5/9/9-1977. Later the applicant was given another charge sheet on 27-6-1979 by the Asst. Personnel Officer. The charge was that he remained absent from duty without permission since 1973 and during the period of absence he did not maintain any contact with the administration. The applicant thereafter gave a notice under Section 80 C.P.C. to which a reply was given. The applicant, however, did not give any reply to the charge sheet served on him and since he ultimately attained the age of superannuation from 31-12-1980, the disciplinary proceedings could not be completed. It is the further case of the respondents that since he remained absent w.e.f. 16-4-1973 without any intimation to the railway department and for a long time the cause of his absence and his whereabouts were not known, he was not put under suspension.

6. T.A. Suppl.RA has been filed by the Applicant in which he has stated that he had sent a letter dated 3-12-1977 stating that after having been released on bail, he approached the railway administration and reported for duty but he was not allowed to resume duty and was advised that he should approach only after the criminal case was decided. Thereafter when the case was decided, he approached through the letter dated 9-7-1979 to be permitted to join duty but this was refused.

7. From the averments in the pleadings, it is quite clear that the applicant was arrested by the Police on 16-4-1973 and thereafter for some time he was behind the bars, until his release on bail. The case was finally decided and he was acquitted by an

order dated 5-2-1979. Thereafter, he had approached the respondents for being allowed to resume duty but the permission was not granted. Meanwhile, certain disciplinary actions have been initiated against the applicant. The proceedings were not finalised until he reached the age of superannuation. It is also clear that despite initial denial on the part of the respondents that this had knowledge ^{that} _{was} the applicant ^{involved} in criminal proceedings, they were fully aware of the criminal proceedings against the applicant, since the first charge sheet which was issued to the applicant clearly indicates that the railway administration was advised about the arrest of the applicant.

8. Once a railway employee was arrested and detained for more than 48 hours, he would be deemed to have been placed under suspension in terms of Railway Servants (Disciplinary & Appeal) Rules. The suspension would continue until it is revoked by a specific order by the competent authority. In the present case, ^{though} no specific order was issued placing the applicant under deemed suspension, he would be deemed to have been suspended w.e.f. 16-4-1973 and since no specific order of revocation of suspension was passed, he would be deemed to be under suspension until the date of his retirement. Thus the legal position would be that the applicant was under suspension since 16-4-1973 till ~~xxxxxxxx~~ 31-10-1980 i.e. the date of his superannuation. The question whether the applicant kept the competent authority posted with the development of the criminal case or not, would be wholly immaterial in this context as even if he did not keep the authority posted with the development of the criminal case, it would not in any

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manner alter the legal position stated above. The respondents certainly could have initiated disciplinary action against him in case he was not resuming duty or not informing whereabout and apparently they did initiate certain proceedings but they did not bring such proceedings to a completion. Since they did not complete the proceedings and did not remove the applicant from service prior to the date of his superannuation, the employer-employee relationship continued to subsist until the date of the applicant attained the age of superannuation. We, therefore, have no hesitation in holding that the applicant was in service of the respondents till the date of his retirement on 31-10-1980 and the period between 16-4-1973 and 31-10-1980 would be deemed to be under suspension.

9. In the result, we allow the application in part. The direction sought by the applicant for being allowed to resume his duties cannot obviously be granted since he has already attained the age of superannuation. However, the other relief relating to the arrears of pay and allowances is allowed to the extent that the applicant shall be entitled to the subsistence allowance as per rules for the entire period from 16-4-1973 till the date of his superannuation on 31-10-1980 and this amount shall be paid to him by the respondents within a period of three months from the date of communication of this order. The parties shall, however, bear their own costs.

J. Bhurima
Member (J)

W.P.
Member (A)

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