

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL (ALLAHABAD BENCH), ALLAHABAD.

O.A.NO. 192/90
T.A.NO.

OF 199

Date of decision : 24/11/92

.....Kamta Nath.....Petitioner

.....Sri J.K. Sharma.....Advocate for the Petitioner.

Versus

.....U.O.S & others.....Respondent

.....Sri A.V. Srivastava.....Advocate for the Respondent (s).

CORAM:-

The Hon'ble Mr. Justice S.K. Dham VC

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the judgment ? No
4. Whether to be circulated to all other Benches ? No

S.K.D.
Signature

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. NO. 192/90

Kamta Nath

Applicant

V/s

Union of India Ors.

Respondents

Coram: Hon. Shri Justice S K Dhaon, Vice Chairman

ORAL JUDGMENT:
(PER: S K Dhaon, Vice Chairman)

DATED: 24.11.92

The principal prayer is that the respondents be directed to pay the applicant the arrears of pay with effect from 24.3.55 to 11.7.72 on the footing that he was in continuous and uninterrupted services of the respondents during the relevant period. There is a further prayer that 18% interest may be awarded to the applicant.

2. A reply has been filed on behalf of the respondents. Counsel for the parties have been heard.

3. The material facts which are not in dispute are these: On 24.3.55, the applicant was suspended from service on the ground that a criminal case against him was under investigation. A charge sheet was submitted by the investigating agency in accordance with law. The applicant was put to trial and was convicted by the trial court for an offence under the Prevention of Corruption Act. The High Court allowed his appeal and set aside his conviction.

4. Upon passing of the order of the High Court, he was reinstated in service on 31.8.63. He was again suspended from service on 31.8.1963. He retired from service on 11.7.72. Somehow or other the disciplinary proceedings could not proceed and were eventually dropped.

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5. In the reply filed on behalf of the respondents, the material averments are these: The order of suspension dated 31.8.63 was challenged before the Civil Judge, Bareilly. It was decreed. The appeal preferred by the Railway Administration, succeeded in part before the District Judge, Bareilly. The second appeal no.1567/71 of the Railway Administration was finally allowed on 4.5.76. The High Court dismissed the suit and held that the order of suspension dated 31.8.63 had been validly passed under Rule 1706(4) of the Railway Establishment Code. The applicant retired from service on 11.7.72. The disciplinary proceedings pending against the applicant could not be finalised as the matter was subjudice. The applicant continued under suspension from 24.3.55 to 11.7.72 and the High Court finally decided the matter in the year 1976. Finally on 11.8.87, the General Manager, North-Eastern Railway, Gorakhpur passed orders for treating the period from 24.3.55 to 11.7.72 as under suspension.

6. I have perused the order dated 31.8.1963. It clearly recites that the General Manager had decided that the order of dismissal should be set aside. It also recited that further inquiry should be held against the applicant under the rules as contained in Chapter XVII/RI. The operative portion of the order is as under:

"Now, therefore, the undersigned hereby -

- i) sets aside the said order of dismissal from service; and
- ii) directs the said Shri Kamata Nath, Booking Clerk, shall under Sub-Rule (4) of the Rule 1706-RI be deemed to have been placed under suspension with effect from 26.11.1961(FN) and shall continue to remain under suspension until further orders."

8. For giving relief to the applicant, the effect of the order dated 31.8.63 has to be examined against

the backdrop that the disciplinary proceedings were eventually dropped. It is true that the order dated 11.8.87 passed by the General Manager, North-Eastern Railway, Gorakhpur, that from 31.8.63 to 14.7.72 the applicant shall be deemed to be under suspension has not been challenged in this application. Yet, for adjudicating upon the grievance of the applicant and for giving relief to him, it will be necessary to examine the legality of the said order.

9. Learned counsel for the respondents contends that this application cannot proceed in the absence of a challenge to the said order. Eventhough there is no challenge to the same, the respondents have based their defence on it and have come to the Tribunal, well aware of the fact that the legality of the said order may be subjected to scrutiny. Therefore, having regard to the totality of the facts of this case, it will not be in the interest of justice to throw out this application on a mere technical ground. Moreover, no prjudice will be caused to the repsondents if the Tribunal records its findings on the question whether the General Manager had the jurisdiction to pass the order dated 11.8.87. No factual controversy has to be resolved for deciding the said question.

10. Reliance is placed by the Counsel for the respondents upon Rule 2044-B of the Indian Railway Establishment Code, Vol. III which reads as follows:

"When a railway servant who has been suspended is re-instated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

- a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or the date of the retirement on superannuation, as the case may be; and
- b) whether or not the said period shall be treated as a period spent on duty."

11. The question is whether the aforequoted rule

is applicable to the period from 31.8.63 to 11.7.72. It is nobody's case that any order was passed ~~on~~ or after 31.8.63. In fact it is the respondent's own case that the order of suspension continued to last, but eventually disciplinary proceedings were dropped in the year 1987. The rule clearly provides that a railway servant who is under suspension should be reinstated. Here no order ^{of reinstatement} either express or implied was passed till the applicant retired from service in July 1972. It is the common case that the applicant retired from service as a suspended employee. Therefore, it is evident that the aforequoted rule could not be evoked by the General Manager. His order, therefore, was without jurisdiction and was void. It is a settled law that a party need not take steps to get a void order out of his way. He can take the plea that a void order should be ~~annulled~~ ^{ignored} if it is sought to be enforced against him in any legal proceedings.

12. Having taken the view that the order dated 11.8.87 was non est, the respondents have no jurisdiction to treat the applicant as a suspended employee from 24.3.55 to 11.7.72. I have seen that disciplinary proceedings initiated against the applicant were dropped unconditionally, it follows that the applicant is entitled to be paid his salary from 24.3.55 to 11.7.72 on the footing that he was in continuous and uninterrupted service during ^{the said} such period. The respondents shall, therefore, compute the amount payable to the applicant and pay him such amount after deducting the payments made to him towards subsistence allowance etc. The payment shall be made within a period of six months from the date of production of a certified copy of this order by the applicant before the relevant authority.

13 I am not inclined to award any interest to the applicant because it cannot be said that the General Manager and the Railway administration did not act bonafide in treating the applicant under suspension.

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14. It is stated by the counsel for the respondents that nothing would be payable towards the gratuity to the applicant as he was in unauthorised occupation of the Government accommodation and he is saddled with the liability of paying penal rent. The respondents shall give a statement of the amount payable to the applicant as gratuity. Such a statement shall be given by the respondents to the applicant within a period of three months from the production of a certified copy of this order by the applicant before the competent authority. If any amount remains to be paid to the applicant, the same shall be paid.

15. With these directions this application is disposed of finally, but without any order as to costs.

S K Dhaon
(S K Dhaon)
Vice Chairman