

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No: 489 of 1992

Shri Jamil Ahmad ... .. Applicants.

Versus

Union of India & ors. ... .. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

The applicant, Shri Jamil Ahmad has filed this application under Section 19 of the Administrative Tribunal Act for quashing the order dated 14.8.1987 passed in departmental proceeding whereby punishment was awarded to him, order dated 4.3.1991 confirming the order of penalty passed by the competent authority and order dated 2.12.1991 confirming the order passed by the appellate authority, (Annexure-3), for direction, declaring the entire period of suspension as spent on duty and directing the respondents to promote the applicant and allow increments due to him.

2. The case of the applicant shortly stated is that he was Driver Grade-A in N.E. Railway and was posted at Bareilly city. A chargesheet involving major punishment was served on him on 6.10.1981 and <sup>he</sup> was also placed under suspension w.e.f. 14.10.1981. The allegations against him was that he disobeyed the orders of superior authority to report to duty after the expiry of his rest period to take back 54 Dn. from Mailani. As a result, the departure of 54 Dn. was delayed by 2½ hours. The order of suspension was

revoked on 23.10.81. He was again placed under suspension vide order dated 17.3.1983 (Annexure, A-5).

After the conclusion of the departmental inquiry, the applicant was removed from service by order dated 16.4.1983 (Annexure, A-6). On appeal, the penalty of removal from service was set aside and the inquiry was remitted to the disciplinary authority to get proper DAR inquiry conducted after affording reasonable facilities to the applicant to defend himself. He was, however, ordered to be placed under suspension on and from the date of original order of dismissal in terms of sub Rule 3 of Rule 5 of the Discipline and Appeal Rules, 1968.

The order of suspension however, was revoked by order dated 18.3.1986 (Annexure-B). Thereafter he was sent for medical examination whereupon, he was found medically unfit for the job of Driver. Accordingly, he was called to appear before a committee for an alternative appointment. He was offered the post of Caretaker which, according to him, was much below the rank of Driver. He, therefore, made a request to the authorities to allow him to retire and appoint his son in his place on a suitable post commensurate <sup>with</sup> ~~to~~ his qualification. Before the authorities could pass suitable order on his request, he retired w.e.f. 30.6.1986.

The Senior Divisional Mechanical Engineer N.E. Railway, Izzat Nagar vide order No. Ya/275/3/1 Sawari/281 dated 14.8.87 passed order in the

departmental proceeding whereby a sum of Rs. 100/- was ordered to be recovered from DCRG of the applicant by way of punishment and period of his suspension was to be treated as suspension.

3. The main question for consideration is whether the order passed by the punishing Authority for deduction of Rs. 100/- from the DCR gratuity of the applicant and for treating the period of suspension as suspension is legal and valid. The learned counsel for the applicant has stated that the order is against the provisions of Rule 2044-R II circulated by Railway Board's letter No. E(G&A) 86-R.G.6/19 (Annexure-10). By Annexure, A-10 copy of the Department of Personnel and Trainings O.M. No. 11012/15/85 East (A) 3.2.45 has been circulated. According to the circular, period of suspension is to be treated as duty if only a minor penalty is imposed after conclusion of the disciplinary proceedings .

4. The learned counsel for the applicant states that since the punishment of token deduction of Rs- 100/- from his gratuity has been passed, the order treating the period of suspension as period of suspension is against the instructions issued by the Railway Board referred to above. We are unable to accept the contention of the learned counsel. The order passed by the punishing Authority, Annexure, A-1 at page 19-21 clearly indicates that the misconduct of the delinquent, as ordinarily produced should have, resulted in his removal from service but for his retirement from

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service before the date of passing order awarding the impugned punishment. It would thus appear that the penalty of deduction Rs. 100/- was passed not because it was a case calling for minor penalty but because the applicant had retired from service at the time of passing order. In that view of the matter and having regard to the seriousness of the charge proved, this does not appear to be a case covered by the instructions of the Railway Board relied upon by the learned counsel for the applicant.

5. It was next argued that the punishing Authority was not competent to order deduction to be made from the amount of gratuity by way of punishment. It is not in dispute that the departmental proceeding had been initiated while the applicant was in service. There was, therefore, nothing wrong in the departmental proceeding continuing even after the superannuation. There is absolutely no material except vague and general allegation in para 4.20 of the petition that the D.R.M. passed the non-speaking order without giving him an opportunity of being heard. The D.R.M. is the appellate Authority. There is nothing to show that the applicant was not given opportunity to defend himself by the inquiry officer, at <sup>the</sup> inquiry stage. We are, therefore, unable to accept the contention of the learned counsel that the departmental proceeding is vitiated for not giving sufficient opportunity to the applicant to defend himself.

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6. The Supreme Court in the decision reported in 1993 Supreme Court (L & S) page 119 Jarnail Singh Versus Secretary, Ministry of Home Affairs and Ors. has held that the payment of pension or gratuity or both may be withheld by way of punishment provided there is finding either in the departmental inquiry or in judicial proceeding that the person had committed grave misconduct in discharge of his official duty. As has already been stated above, the applicant had disobeyed the orders of his superior Authority resulting in delayed departure of 54 Dn. by 2½ hours. This charge has been found to have been proved by the inquiry officer. The finding of the Punishing Authority is that the applicant had committed grave misconduct. That being so and having regard to the principle of law laid down by the Supreme Court referred to above, we are inclined to hold that the punishing Authority was within his jurisdiction in passing the impugned order directing deduction of Rs. 100/- from the gratuity of the applicant by way of punishment.

7. The learned counsel for the applicant states that placing the applicant under suspension in terms of sub Rule 3 of Rule 5 of the Departmental Appeal Rule 1968 was illegal because the order of suspension passed at the time of serving chargesheet on 15.1.1981 had been revoked by order dated 23.10.1981 Sub Rule 3 of Rule 5 of the Discipline and Appeal Rules 1968 reads as follows;

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"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders."

From the Rule quoted above it is apparent that where penalty of dismissal or compulsory retirement from service imposed is set aside and the case is remitted for further inquiry, the order of suspension shall be deemed to continue in force on and from the date of original order of dismissal. The learned counsel states that the order of suspension passed in this case had been revoked by order dated 23.10.1981. He was thus not under suspension in this case on the date, the order removing him from service was passed and as such sub rule 3 of rule 5 referred to above was not applicable in his case. Annexure A-5 filed by the applicant shows that the applicant <sup>was</sup> ~~was~~ put under suspension on 17.3.1983 in connection with one failure of engine case. The applicant was under suspension in that case on the date order for his removal from service was passed in the departmental inquiry. He was, thus, under suspension notwithstanding the fact that suspension pertained to some other case. That being so, provisions of sub Rule 3 of rule 5 referred to above in our opinion would be applicable to the case of the applicant.

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8. Coming to the question of regularisation of the period of suspension the learned counsel for the applicant submits that his case is to be governed by rule 2044 R-II FRSR quoted below;

"2044 (FR.54) Pay after re-instatement.-

(1) when a railway servant who has been dismissed, removed, compulsorily retired or suspended who is re-instatement shall consider and make specific order-

(a) regarding pay and allowance to be paid to the railway servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as period spent on duty.

(2) Where the authority mentioned in sub-rule(i) is of the opinion that the railway servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the railway servant shall be given ~~the~~ full pay and allowances to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be

(3)     xxx           xxx           xxx           xxx  
         xxx           xxx           xxx           xxx

(4) In a case falling under clause (2) the period of absence from duty shall be treated as a period spent on duty for all purpose."

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A bare reading of the Rules quoted above makes it clear that the competent Authority has to pass specific order with regard to the pay and allowances of a Railway servant who had been dismissed/removed/compulsorily retired or suspended for the period of his absence on duty and also whether or not, the said period shall be treated as period spent on duty on his reinstatement. In case, the Authority

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is of the opinion that the Railway servant has been fully exonerated or, in the case of suspension that it was wholly unjustified the period of suspension is to be treated as period spent on duty for all purposes.

9. Neither suspension order dated 16.10.1981 nor order dated 23.10.1981 whereby suspension order was revoked is before us. We are therefore not in a position to know as to how the period of absence from 16.10.1981 to 23.10.1981 was ordered to be treated.

The appellate Authority, while setting aside the order of removal of the applicant from service has passed specific order that the applicant may be placed under suspension after the revocation of his removal order in terms of sub-Rule 3 of Rule 5 of the Discipline & Appeal Rules, 1968. The above order of suspension was revoked by order dated 18.3.1986 in terms of sub-Rule 5 (c) of Rule 6 of the Rules. The competent Authority has passed specific order that the period of suspension of the applicant will be treated as on suspension. The implication of the above order is that the applicant will be entitled to such pay allowances for the period of suspension ~~as~~ as is allowed to a suspended employee.

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As the inquiry was to continue even after the revocation of the suspension order, the case of the applicant will not be covered by clause 2 of fundamental Rule 2044(FR-54) quoted above.

10. The applicant has neither been exonerated of the charges nor it has been found that the suspension was wholly unjustified. The inquiry officer has rather found that the charges framed against the applicant have been proved and that the applicant was guilty of gross misconduct which in the normal course would have resulted in his dismissal from service. The extreme penalty of dismissal however, was not passed because the applicant had retired by the time the final order in the proceeding was passed. For this reason also, the applicant will not be entitled to the benefit of Clause (2) of (F.R.-54) referred to above.

11. On a careful consideration of the facts and the circumstances of the case, we are of the view that the impugned orders are consistent with the Rules and that the same do not suffer from any legal infirmity as may warrant interference by this Tribunal.

12. In view of the foregoing conclusion, we find no merit in the argument of the learned counsel for the applicant that the applicant was entitled to the benefits of promotions as may have become due to him during the period of his suspension

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with consequential benefits and also that he  
be given the benefit of the grade of Driver  
'A' Special w.e.f. 2nd February, 1984.

In the result, this application is  
dismissed.

  
Member-J

  
Member-A

Allahabad Dated: 25.2.94

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