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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this theth6....day of June....1997

Coram : Hon'ble Mr. T. L. Verma, JM
Hon'ble Mr. S. Dayal, AM

Original Application No. 741 of 1993.

H.S.Sharma s/o. late Pandit Parsu Ram,
working as FWI, IR, Northern Railway,
Etawah. Applicant.

(Through counsel Sri R.P.Srivastava & Sri P.K.Kashyap)

Versus

1. Union of India through General Manager, Northern Railway, New Delhi.
2. The Chief Track Engineer, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway, Allahabad.

.....Respondents.

(Through Counsel Sri S.N.Gaur)

ORDER

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

In this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks a direction to the respondents to treat the intervening

period from 25.1.1985 to 14.12.1987 as spent on duty and make payment of full pay and allowances to the applicant for the said period, with all consequential benefits including seniority, promotion and increments.

2. The applicant while working as P.W.I. under the administrative control of Divisional Railway Manager, Northern Railway, Allahabad was served with major penalty charge-sheet. In the disciplinary proceeding, the charges framed against the applicant were held to have been proved. The Disciplinary Authority agreeing with the report of the Enquiry Officer imposed on the applicant penalty of removal from service by order dated 25.1.1985. ~~The~~ Appeal filed against the order of the disciplinary authority was dismissed by order dated 27.7.1987. The applicant, thereafter, filed a review application before the Chief Track Engineer, Northern Railway, Baroda House, New Delhi. The review application was allowed by order dated 27.11.1987 and the punishment of removal from service was moderated to punishment of with-holding of increment for a period of two years. The applicant was thereafter reinstated and he resumed his duties with effect from 15.12.1987. The contention of the applicant is that the order regarding regularisation of the intervening period from the date of removal from service to the date of reinstatement should have been passed along with the order passed on review application, as provided under Rule 2044 of the Indian Railway Establishment Code, but the same was not done inspite of repeated representation. He, therefore, filed O.A.No.575 of 1992 for issuing a direction to the

respondents to decide the representation of the applicant dated 13.4.1988 and subsequent reminder dated 19.3.1991 respectively by reasoned and speaking order in accordance with law within a period of two months from the date of receipt of the copy of this order. The respondent No.2 by his order dated 12.10.1992 has decided that intervening period i.e. from 25.1.85 to 14.12.1987 be treated as leave due. This application has been filed impugning the above decision of the respondent No.2 on the ground that the same has been passed without application of mind and that the same is contrary to the provisions of Rule 2044 of the Indian Railway Establishment Code.

3. The respondents have contested the claim of the applicant. In the counter-affidavit filed on their behalf it has been stated that the applicant was not put under suspension while disciplinary proceeding was pending against him and that the period from the date of his removal from service to the date of reinstatement in service has been rightly regularised by the competent authority in terms of the provisions of Rule 2044 of the Indian Railway Establishment Code. The applicant, therefore, has no cause of action for this application.

4. We have heard the learned counsel for the parties and perused the record very carefully. The argument of the learned counsel for the applicant are in two folds ; (i) that the provisions of rule 2044 of the Indian Railway Establishment Code does not stipulate two separate orders one for period of suspension and other for absence during the intervening period from the date of removal from service of the Government servant and his reinstatement on the order being set-aside or moderated by Appellate Authority or the Court. The Reviewing Authority therefore, should have pass order regarding regularisation of the intervening period in the order whereby the punishment of removal from service was moderated to with-holding of increment for a period of ~~two~~ years. The rule 2044 of the Indian Railway Establishment Code is being extracted below for convenience of reference :-

"2044 (F.R.54) :- (1) When a railway servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal ~~of~~ review ~~of~~ would have been so re-instated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order re-instatement shall consider and make a specific order -

(a) Regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be ; and

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

(2) Where the authority competent to order

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re-instatement/ of opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the railway servant shall, subject to the provisions of sub-rule (b), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be ;

Provided that where such authority is of opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the railway servant, it may, after giving him an opportunity to make his representation and after considering the representation, if ~~any~~ any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall, subject to the provisions of sub-rule (7) , be paid for the period of such delay only such proportion of such pay and allowances as it may determine.

(3) In the case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

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(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set-aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held, the railway servant shall, subject to the provisions of sub-rules (6) and (7) be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case

may be , as the competent authority may determine 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.

Provided that except in the case of such railway servants as are governed by the provisions of the Payment of Wages Act, 1936, (4 of 1936), any payment under this sub-rule shall be restricted to a period of three years immediately preceding re-instatement or retirement on superannuation, as the case may be.

(5) In a case falling under sub-rule(4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose ;

Provided that if the railway servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the railway servant."

~~From~~

The provisions of rule extracted above deal with the payment of salary and allowances to the railway servant for the period of suspension on reinstatement on the orders of competent authority on the conclusion of the disciplinary proceeding. Rule 2044(2) deals with cases where the railway servant under suspension dies before the disciplinary ~~order~~ or Court proceeding instituted against him are concluded . Sub rule (3)

of the aforesaid rules deals with cases where the authority competent to order reinstatement is of opinion that the suspension was wholly unjustified. Sub-rule (4) of the rule deals with cases other than those covered by sub rule (2) . A plain reading of the ^{rule} ~~said~~ rule (4) of the aforesaid rules makes it abundantly clear that in cases where removal or compulsory retirement from service is set-aside by appellate ~~order~~^{or} reviewing authority, the competent authority may after giving notice to the Railway servant may determine as to how the period intervening his removal from service to the reinstatement be treated, ~~after giving notice to the railway servant.~~ ~~After considering the representation if any, submitted by him.~~ The provision, in our opinion, do not stipulate that the order regulating the period of suspension or the intervening period from the date of termination to the date of reinstatement in service should be determined by the reviewing authority himself while passing the order in revision application. The language of the order, in our opinion, clearly suggest that the order in regularising the intervening period as mentioned above has to be passed by the competent authority after the order of the reviewing authority is passed. This becomes more clear by sub-rule (5) of the aforesaid rules which provides that in cases falling under sub-rule (4) the period of absence from duty including period of suspension preceding ~~is~~ his dismissal or compulsory retirement shall not be treated as a period spent on duty unless competent authority specifically directs that it shall be so treated for any specified ^{purpose} ~~period~~. From the rule position as discussed

above, it is, thus, clear that the reviewing authority was under no legal obligation to determine as to how the period during which the applicant was absent from duty ~~on account of his~~ ^{from the date of} dismissal from service to the date of his reinstatement while disposing of the review application. This has to be done by the competent authority after issuing notice to the railway servant and after considering the representation, if any, filed in that behalf.

5. It was argued that the competent authority did not issue any notice to the applicant as to what proportion of the pay and allowances of that period should be granted to him. The averments in the Counter-affidavit do not indicate whether any notice was issued by the competent authority as required under sub-rule (4) of rule 2044 of the Code. From the order passed in O.A.No.575 of 1992, it appears that the applicant had submitted representation on 13.4.1988 and reminder dated 19.3.1991 for treating the period from the date of removal of the applicant from service to the date of his reinstatement as duty period. ^A the direction was given in the said O.A. to the respondents to dispose of the aforesaid representations of the applicant by reasoned and speaking order. The representations of the applicant have since been decided by order dated ~~xxx~~ 14.10.1992 and it has been ordered that the period from 25.1.1985 to 14.12.1987 ~~be~~ regularised as leave due. It would thus appear that the impugned order

has been passed after considering the representation submitted by the applicant for treating the relevant period as duty period. The purpose of law in our opinion has been served by considering the representation of the applicant before passing order under sub-rule (4) of rule 2044 of the Indian Railway Establishment Code.

6. It was next argued that the punishment of withholding of increment for two years is a minor punishment and according to the instructions issued by the Railway Board where minor penalty is imposed on the conclusion of the disciplinary proceeding, the period of suspension should be treated as on duty. In support of this contention the applicant has filed photo copy of the Railway Board's instructions contained in letter dated 21.3.1980. In terms of the instructions issued in the aforesaid letter period of suspension is to be treated as duty if only a minor penalty is imposed after conclusion of the disciplinary proceeding. In the instant case the applicant was initially removed from service. ~~from~~ The reviewing authority, however, moderated the punishment to withholding of increment for a period of two years. ~~The applicant was not put under suspension during the period of enquiry.~~ ^{The applicant was not put under suspension} The Railway Board's instructions relied upon by the learned counsel for the applicant pertaining to ~~the~~ ^{where} cases ~~whether~~ ^{where} the govt. servant is put under suspension during the period of the inquiry is held and that the disciplinary inquiry culminates in minor penalty. These instructions

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have no application where the disciplinary proceedings result in dismissal of the railway servant.

7. Proviso to ~~rule~~ sub-rule (4) of rule 2044 of the Indian Railway Establishment Code provides that if the railway servant so desires the competent authority may direct the period of absence from duty including the period of suspension preceding removal be adjusted against leave of any kind due. The respondents have made specific averments in para 6 of the counter-affidavit that the applicant was asked for his consent by sending a letter. It has been averred that the applicant did not give any reply to the aforesaid letter of the respondents. The applicant in reply to the above averments ~~has~~ ^{does} not deny to have received communication from the respondents. In case the applicant was not inclined to accept the adjustment of his period from absence against leave due, he should have made a representation to that effect. In that case the respondents would not pass any order ~~according~~ to that effect.

8. In view of the facts and circumstances of the case discussed above, we find no merit in this application and dismiss the same leaving the parties to bear their own costs.

Member-A

Member-J

(pandey)