

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 411 OF 2000.

ALLAHABAD THIS THE 11th DAY OF March 2008.

Hon'ble Mr. Justice Khem Karan, Vice Chairman

Hon'ble Mr. K.S. Menon, Member-A

Abdul Karim Khan, son of late Abdul Rahim Khan, R/o 6, Kasia Road, Civil Lines, Gorakhpur.

.....Applicant

(By Advocate: Shri Sanjay Kumar

Versus.

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (P), N.E. Railway, Varanasi.
3. Divisional Railway Manager (M), N.E. Railway, Varanasi.

.....Respondents

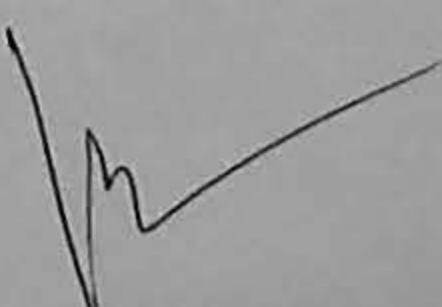
(By Advocate: Shri D.P Singh)

ORDER

By Justice Khem Karan, Vice Chairman

Applicant has prayed for commanding the respondents to regularize the period from 2.1.1985 to 13.6.1993 as on duty and pay salary and other consequential benefits.

2. His case, in brief, is that as a result of Departmental proceedings, he was removed from service w.e.f. 2.1.1985. He filed one O.A. NO. 350/1988 against that removal, which this Tribunal disposed of vide order dated 22.4.1992 (Annexure A-1) asking the Appellate Authority to decide the appeal on merits. He says that the Appellate Authority passed an order dated 9.6.1993 (Annexure A-2) setting aside the order of removal and reinstating him in service. Consequently he joined on 9.6.1993 at Chhapra. Later-on he was served with a major penalty chargesheet dated 16.8.1993 (Annexure A-3) saying that he was unauthorisedly absenting since 10.01.1981. After enquiry, a punishment of reduction in rank fixing his pay at Rs.825 was imposed vide order dated 7.11.1996. He retired on 30.11.1996. Appeal against the order dated 7.11.1996



preferred to the Divisional Mechanical Engineer (Power) Varanasi, went in his favour (Annexure A-5). The Authority concerned took the view that no such punishment could have been awarded against the applicant as he was nearing superannuation. This order dated 26.3.1998 became final. He represented to the General Manager, N.E. Railway, Gorakhpur for treatment of period from 2.1.1985 to 13.6.1993 and giving the benefit of salary etc but that remained pending till the filing of this O.A. in 2000. When the respondents informed him vide order dated 26.11.2001 (Annexure A-12) that period from 1.4.1981 to 9.6.1993 was treated as dies-non, he got this OA amended, praying for quashing the order dated 26.11.2001 and any such other order treating the said period from 1.4.1981 to 9.6.1993 as dies-non. He says, firstly there is no express order for treating the said period as dies-non and secondly no such order could have been passed without giving him a notice or opportunity of hearing.

3. The respondents filed reply admitting the fact that petitioner was reinstated vide order dated 9/10.6.1993 and thereafter formal disciplinary proceedings were initiated and as a result thereof, he was reduced in rank (pay scale of Rs.775-1025) as Engine Cleaner. Appeal against which went in his favour and punishment was quashed. They say that period from 2.1.1985 to 13.6.1993 has been regularized as having been spent on duty (which Shri D.P. Singh says was inadvertently stated in para 11). They go on to state that petitioner was duly intimated that period from 1.4.1981 to 9.6.1993 was treated as dies-non and there was no breach of any Rule nor requirement of any show cause notice etc.

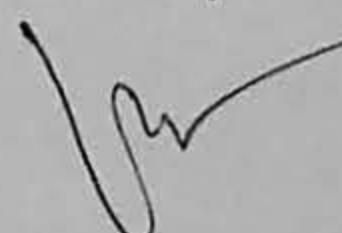
4. Applicant filed rejoinder affidavit saying that he claimed regularization of period from 2.1.1985 to 13.6.1993 under Rule 1343 of Establishment Code.

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5. Shri D.P Singh has contended that the O.A challenging order dated 26.11.2001 is highly time barred. He says that the prayer for quashing that period was made in 2005. Learned counsel for the applicant has stated that the original application was filed in 2000 and it was during the pendency of this O.A that order dated 26.11.2001 was passed. So when the applicant came to know, he got the O.A. amended so as to ~~change~~ challenge it. We think the plea of limitation as raised by Shri D.P. Singh cannot be accepted. It was during the period of this O.A. said order dated 26.11.2001 was passed. Once the Tribunal has allowed, the applicant to make amendments in the OA, so as to challenge the same, it cannot be said that O.A is time barred. In the circumstances, the O.A. cannot be said to be time barred.

6. We have heard Shri Sanjay Kumar Om, appearing for the applicant and Shri D.P. Singh for the respondents. There is no dispute between the parties that the relevant period from 2.1.1985 to 13.6.1993 is the period intervening between the date of removal from service and the date of reinstatement, pursuant to appellate order dated 9.6.1993. We put a pointed query to the parties counsel as to whether such a period could be treated to be as unauthorized absence from duty so as to treat the same as dies-none.

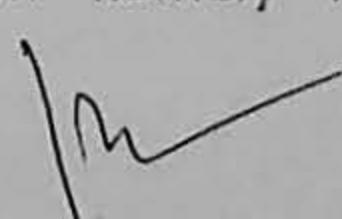
7. Learned counsel for the applicant drew our attention to para 1343 of the Establishment Code (Annexure A-1), which is para-materia to Fundamental Rule 54 (a), according to it if dismissal, removal or compulsorily retirement is set aside by the Court on merits, the period intervening between the date of dismissal, removal or compulsorily retirement including the period of suspension preceding such dismissal, removal or compulsorily retirement as the case may be and the date of reinstatement shall be treated as on duty for all purposes and he shall be paid full pay and allowances for the period in question. This provision Rules out



the possibility of treating any such period as dies-non. Otherwise also when the servant is removed from service, he cannot be treated to be absent from duty. Absence from duty implies that the employee is in employment.⁴ One who stands removed from service, has no opportunity to work. His position will stand restored on setting aside of that removal either by the Court or by the Appellate or Revisional Authority. He gets occasion to work only on orders of reinstatement. So our view is that period in question from 2.1.1985 to 13.6.1993, could not have been treated as dies-non or not on duty. The mandate of the provision mentioned above is that the period has to be treated as on duty for all purposes. So the communication dated 26.11.2001 or any other order treating the period from 2.1.1985 to 13.6.1993 as dies-non are not found to be valid. The said order of 2001 deserves to be quashed with a direction to the respondents to treat the said period as on duty for all purposes as provided in Rule 1343 of Establishment Code.

8. Shri D.P. Singh has contended that in view of law laid down by the Apex Court in ***Kendriya Vidyalaya Sangathan Vs. S.C. Sharma , 2005 Supreme Court Cases (L&S) 270***, the applicant is not entitled to full back wages for the period in question because he has not pleaded that he was not gainfully employed somewhere else during this period.

9. Shri Sanjay Kumar Om has submitted that when the Rule itself says that the intervening period shall be treated as on duty for all purposes and the applicant shall be paid the full pay and allowances for the period to which he would have been entitled, had he not been removed, the question of disallowing the back wages should not arise. We think when the applicant has not pleaded that he was not gainfully employed else where, he is not entitled to the wages for the period in question namely from 2.1.1985 to 13.6.1993.



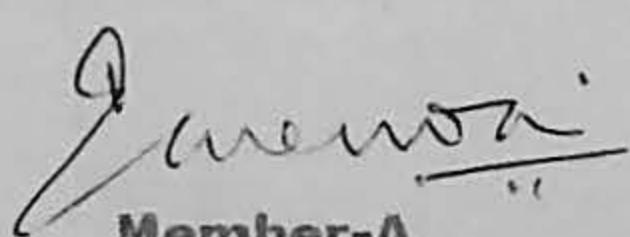
10. We have not been able to understand as to how the applicant has made a prayer for regularizing the period from 1.4.1981 to 1.1.1985. This was made by way of amendment. Shri Om has not addressed us in regard to the period from 1.4.1981 to 1.1.1985, so we do not enter into the question as to whether period from 1.4.1981 to 1.1.1985 could or could not have been treated as dies-none or as not on duty. Shri Om confined his arguments only to the period from 2.1.1985 to 13.6.1993.

11. Applicant has retired on 30.11.1996. If the period in question from 2.1.1985 to 13.6.1993 is treated, as on duty for purposes of pensionary benefits, the applicant will be benefited in the pension as that period will also be counted towards qualifying service and his pay on 13.6.1993 may also be increased.

12. So this O.A. is finally disposed of. Order dated 26.11.2001 treating the said period as dies-non is hereby quashed with a direction to the respondents to regularize the period from 2.1.1985 to 13.6.1993 as on duty with all consequential benefits, except the wages for the period from 2.1.1985 to 13.6.1993. His pension shall, accordingly, be re-determined and arrears, if any, shall be paid, within a period of four months from the date, a certified copy of this order is produced before the respondents. .

No order as to costs.

C Jm. cm
17.3.08


Member-A

Vice-Chairman.

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