

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 821 of 2002

this the 29th day of April 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Vijay Charan, S/o Shyam Lal, aged about 59 years, R/o House  
No. 37, Azad Nagar, Sonkh Road, P.O. Krishna Nagar, Mathura.

Applicant..

By Advocate : Sri B.L. Kulkendra.

Versus.

1. Union of India through General Manager, Central  
Railway, Mumbai.
2. D.R.M. (P), Central Railway, Jhansi.
3. A.O.M., Central Railway, Jhansi.

Respondents.

By Advocate : Sri D.C. Saxena.

O R D E R (ORAL)

By this O.A., applicant has sought a direction  
to the respondents to serve the revocal order before this  
Tribunal and to take the applicant on duty till the pendency  
of the case and to pay him subsistence allowance from  
23.8.1997.

2. It is submitted by the applicant that he was placed  
under suspension from 23.8.1997, but till date neither he  
has been paid subsistence allowance, nor has been served any  
revocal order by any mode of communication, therefore, he  
is entitled for the relief as sought by him. It is further  
submitted by the applicant that he was suspended for the last  
five years and since he has not been paid any subsistence  
allowance, this is violative Articles 14 & 16 of the  
Constitution of India. Being aggrieved, he had submitted  
a representation on 16.4.1998, but the respondents have  
not decided the same. He has further submitted that as per



Railway Board's letter dated 23.8.1998, if the period of suspension exceeds three months and the charges against the delinquent employee could not be framed, the reason for his suspension should be communicated to him, but the respondents have not followed the said norms as stated by the Railway Board. Therefore, finding no other option, the applicant had to file the present O.A.

3. The respondents have opposed the maintainability of this O.A. and have submitted that the applicant had filed an O.A. earlier also bearing O.A. no. 1309/98 in which they had filed a reply stating therein clearly that the applicant's suspension was revoked as early as on 3.9.97, but in spite of it, the applicant has <sup>remained</sup> un-authorisedly absent from duty from 4.9.97. The said O.A. was dismissed vide order dated 9.5.2002 on the ground that the same was not properly framed.. However, ~~the~~ liberty was given to the applicant to file fresh O.A. properly framed ( page 9). The counsel for the respondents submitted that the order of revocation was, thus, served on the applicant by the reply filed in the earlier O.A. ~~revoked~~ <sup>also</sup>. Therefore, it is incorrect to say that the applicant has not been served with revocation order and since he has not been attending the office on his own, the present O.A. is totally mis-conceived and is liable to be dismissed.

4. I have heard both the counsel and perused the pleadings of this case as well as the case file of O.A. no. 1309/98.

5. Reply filed by the respondents in O.A. no. 1309/98 shows that the respondents had stated even at that time that the suspension had already been revoked by the competent authority on 3.9.97. Copy of the order dated 3.9.97 was also filed alongwith Counter reply as annexure CA-1. It is further stated by the respondents in the counter affidavit that the petitioner refused to receive the memo dated 3.9.97 and since he <sup>was</sup> ~~was~~ already under orders of transfer to Kundra (KOA)

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and he was being relieved to Kundra alongwith memo dated 03.09.97 after revoking the suspension. The counsel for the respondents has produced the original record to show that the applicant had refused to take the order dated 03.09.97. In view of the above facts, contention of the applicant's counsel that the order of revocation of suspension has not been drto served on the applicant till date, therefore, he is entitled to the subsistence allowance from the date of his suspension, just cannot be accepted for the simple reason that advocate represents the litigant and once the order was served on the applicant's counsel through written statement, it is deemed to have been served on the applicant as well. The respondents, infact, have shown the original record also to show that the applicant had refused to receive the order dated 3.9.97 at that time also, therefore, the contention of the applicant's counsel has to be rejected outright. If the applicant did not wish to take the order and even after knowing that his suspension has been revoked he did not wish to join his duties, he cannot blame the respondents for his own action..Admittedly the said order was filed by the respondents in the written statement even in the earlier O.A.No. 1309/98, it is thus clear that the applicant did not join the duties on his own. Therefore, no interference is called for in this case. The case being totally misconceived is dismissed with no order as to costs.



MEMBER (J)

GIRISH/-