

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

THIS THE 8th DAY OF 24th OCTOBER, 2010

Hon'ble Mr. S. N. Shukla, Member (A)

Hon'ble Mr. A. K. Bhargava, Member (J)

Original Application No. 361 of 2007  
(U/s 19 of Administrative Tribunal Act, 1985)

Bans Bahadur, aged about 61 years  
Son of Late Ram Samujh,  
R/o 76-13, Indrapuram,  
B.D.A. Colony, Kargena  
Badayun Road, Bareilly.

..Applicant

Present for Applicant: Shri A. K. Srivastava, Advocate

**Versus**

1. Union of India through General Manager,  
Northern Railway Baroda House,  
New Delhi.
2. Divisional Railway Manager,  
Northern Railway Moradabad Division  
Moradabad.
3. Senior Divisional Operating Manager,  
Northern Railway Division,  
Moradabad.
4. Senior Divisional Personnel Officer,  
Northern Railway Moradabad Division,  
Moradabad.

..Respondent.

Present for Respondents: Shri Prashant Mathur, Advocate

**ORDER**

( Delivered by Hon'ble Mr. A.K. Bhardwaj, Member (J)

The applicant has filed the present OA taking the following prayer:-

- a) That the respondents may be directed to pay the arrears of salary from 29.09.2000 to till the day of compulsory retirement, because the punishment order set aside by this Hon'ble Tribunal.
- b) That the Hon'ble Tribunal may grant such other and further reliefs as my deemed fit and proper in the circumstances of the case.
- c) To award the costs of the application in favour of the applicant.

2. The applicant was removed from service and the appeal and the revision petition preferred by him against removal order were decided against him. Assailing the order of his removal from service and also the orders dated 19.12.2006 and 11.7.2001 passed by concerned authorities deciding his appeal and revision, the applicant filed OA No. 136/03 before this Tribunal. By order dated 30.3.2005, this Tribunal allowed the said OA quashing the orders passed in appeal and revision petition and remitting the matter back to the appellate authority for fresh decision in the appeal preferred by applicant against removal order. In compliance of said judgement passed by this Tribunal in OA No. 136 of 2003 the Appellate Authority re-examined the appeal preferred by the applicant and the order passed by the Disciplinary Authority. Keeping in view the family circumstances of the applicant and also the fact that applicant had suffered

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mentally and financially for a period of 6 years, a lenient view was taken and the penalty of removal from service awarded by the Disciplinary Authority was reduced to compulsory retirement from railway service. In the said order it was also mentioned that the intervening period i.e. from 29.9.2000 till 15.6.2005 would be treated as 'dies non' (no work no pay). Having not assailed the decision of appellate authority of treating the intervening period as dies non, the applicant has claimed arrear of salary for the period during which he remained removed from service. In terms of F.R. 54 (4) where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate authority, the competent authority would determine after giving notice to the government servant of quantum of amount of wages proposed to be paid and after considering the representation if any submitted by the government servant would take final decision regarding intervening period. F.R.-54 (4) & (5) reads as under:-

- (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 (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held} the Government servant shall, subject to the provisions of sub rules (5) and (7), be paid such amount (not being the whole) of the 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 Government servant of the quantum proposed and after considering the representation, if

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any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice.

- (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 treated so for any specified purpose:

3. The term 'dies non' has been covered in {C & A.G., U.O. No. 1947-A/438-58, dated the 12<sup>th</sup> September, 1958, in G.I.M.F File No.II-(52)-E. V/58}. In terms of said instructions the period of service not covered by grant of leave shall have to be treated as 'dies non' for all purposes i.e. increment, leave and pension. The said instructions read as under:-

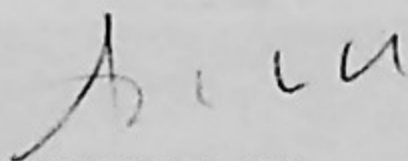
(2) Action for overstaying of leave:- Doubts were raised in certain quarters as to how the cases in which an official overstays the prescribed quantum of extraordinary leave, should be dealt with. The matter has been considered in consultation with the Department of Personnel and the Ministry of Finance, Department of Expenditure. It has been clarified that the amendment does not take away the power of the disciplinary authority to take appropriate disciplinary action for any misconduct and impose one of the penalties under CCS (CCA) Rules, 1965. Action can, therefore, be taken under these rules for unauthorized absence from duty or overstaying of leave even for one day, treating it as misconduct, if the facts and circumstances of the case warrant such an action."

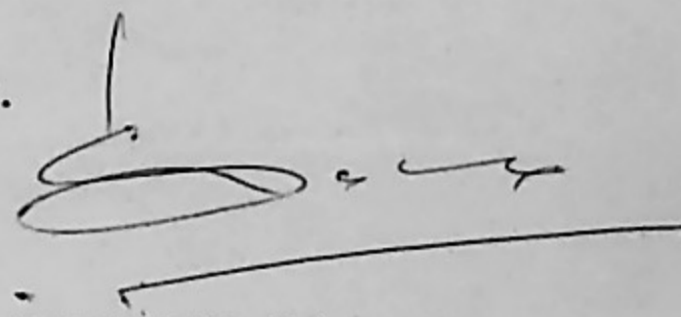
4. Thus treatment of period of service spent by applicant under removal as dies non and its civil consequences not only have effect on arrear of pay but also on increment and pension. Accordingly beside FR-54 (1), (4) & (5), the principle of natural justice and fair play also require and demand that before treating the period of removal of service of applicant as dies non, the concerned authority should have given a show cause notice to the applicant. Accordingly the decision of

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appellate authority of treating the period during which the applicant remained under removal as dies non is **quashed and set aside**. The Competent Authority is directed to decide such period in accordance with rules and law keeping in view the aforementioned findings i.e. after giving show cause notice opportunity to applicant to move representation.

The OA is disposed of with no order as to costs.

  
MEMBER (J)

  
MEMBER (A)

Uv/