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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 113 of 1986
T.A. No.

DATE OF DECISION 17.10.'86

Shri Gagaji L. Tank Petitioner

Shri B. B. Gogia & Shri S. J. Vyas Advocate for the Petitioner(s)

Versus

Union of India (W. Rly) Respondent

Shri M. N. Udani Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI (Vice-Chairman)

The Hon'ble Mr. P. M. JOSHI (Judicial Member)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

O.A. 113/86

Per: Hon'ble Shri P. H. Trivedi, Vice-Chairman

JUDGMENT

The applicant was working as a Cleaner in Western Railway, Surendranagar, and after having been served with a charge-sheet in June 1974, was first suspended and eventually removed from service against which he preferred an appeal to the Divisional Supdt. Rajkot, which was rejected by an order dated 18.12.'76. The applicant challenged this order of removal and suspension, in regular Civil Suit no. 908 of 1977 which was decided on 31.7.'81. It was declared that the punishment order of removal and the appellate order of the Divisional Supdt. Rajkot, was illegal and null and void and of no effect and that the plaintiff (petitioner) continues to be in service on his original post with all benefits of pay, allowances, etc., till he is reinstated as if the impugned order was never passed. The Railways, however, were left free if they thought fit to do so, to proceed with the inquiry from the proper stage and pass the final orders in accordance with the rules and with the principles of natural justice. Orders were passed dated 19.9.'81, placing the applicant under suspension from 5.8.'76, the date of his removal from service. The applicant filed an Execution Case no. 371 in which the Railway Administration deposited the amount which was received by the applicant, and the same was disposed off on 30.7.'84. The applicant

claims that the Civil Court had declared that the plaintiff (applicant) is deemed to be in service continuously and accordingly the respondent has no authority to invoke Rule 2044-A 5(4) of the Railway Servants Discipline & Appeal Rules, 1968, of Indian Railway Establishment Code and all arrears of salary and other allowances under the decree should be paid to ^{him.} He has cited 1985 G.L.H. 1036, in which the Gujarat High Court has taken the view that the payment will be governed in such cases by the decree of the Court which was found to contain no ambiguity in that case. In reply, the respondent has stated that the decree passed by the Civil judge, Senior Division, Rajkot, in Civil Suit no. 908 of 1977, leaves the respondent free to proceed with the inquiry against the applicant from the proper stage and passing final order in accordance with the rules and in accordance with the principles of natural justice and accordingly a fresh order of suspension from the date of the original removal of service dated 5.3.'76 passed vide memo dated 19.9.'81, and after holding the departmental inquiry penalty was imposed on 21.7.'82 for reduction of the applicant to the scale of 196-232, on pay of Rs. 196 per month for a period of two years with effect on future increments.

We find that the orders in regular Civil Suit no. 908 of 1977 decided on 31.7.'81 on which the applicant relies are not inconsistent with the action of the respondents taken under

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of Indian Railway Establishment Code Rule 2044-A/or Rule 5(4) of Railway Servants Discipline & Appeal Rules, 1968. These Rules are statutory and clearly authorise the respondents to place the applicant under suspension from the date of removal from service. Necessary orders to do so have been passed by the respondent on 19.9.'81, although the relevant Rule even states that the Railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of removal. The orders of the Court in the relevant Suit specifically allow the respondent to proceed with the inquiry from the proper stage and accordingly the inquiry has been proceeded with and orders have been passed dated 21.7.'82. The execution application no. 371 of 1981, has also been disposed off by deposit by the Railway administration and its withdrawal by the applicant. Had there been any specific directive from a Court that the applicant was to be paid from the date of his suspension or that the respondents were directed not to start proceeding afresh or that they were directed to place the applicant under suspension only from a future date it could be construed that the relevant Rules authorising the respondent to place the applicant under suspension from the date of his removal were to that extent modified. This has not been found to be the case and therefore, we are obliged to conclude that the action of the respondents is not violative of the Court's orders and is within the authority given by the Rules and therefore in order.

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The application fails. No order as to
costs.

P. H. Trivedi
(P. H. TRIVEDI)
Vice-Chairman

P. M. Joshi
(P. M. JOSHI)
Judicial Member