

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 621/93
T.A.NO.

DATE OF DECISION 30.7.98

Shri Prakash Sanmukhlal Petitioner

Shri P.K.Handa Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent

Mr.N.S.Shevde Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. Laxman Jha : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *Yes*
- 2, To be referred to the Reporter or not ? *Yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? *No*
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *No*

Shri Prakash Sanmukhlal,
working as Khalasi under
Wagoon Foreman, Sabarmati,
5, Gurudev Singh Sahibpura,
Jawahar Chowk, Railway Colony,
Sabarmati, Ahmedabad-380 019.

: Applicant

(Advocate: Mr.P.K.Handa)

Versus

1. Union of India
Through: The General Manager,
Western Railway,
Churchgate, Bombay-400 020.
2. Divisional Railway Manager,
Western Railway,
Baroda-390 004.
3. Sr.Divisional Mechanical Engineer,
Western Railway,
Baroda-390 004.

: Respondents

(Advocate: Mrs. N.S. Shevde)

: J U D G M E N T :

O.A.621/93


Date: 30.7.98

Per: Hon'ble Mr.V.Radhakrishnan

: Member (A)

The applicant was working as Khalasi under the respondents. He was removed from service in the year 1984 after taking disciplinary action against him. He challenged the removal order vide O.A.56/89 in this Tribunal. The Tribunal quashed and set aside the order passed by the disciplinary, appellate and reviewing authority and the respondents were directed to reinstate the applicant within one month from the date of receipt of the order. However, the disciplinary authority had at liberty to proceed with the disciplinary proceedings


after informing him that the disciplinary authority did not agree with the findings of the enquiry officer. The Tribunal directed that the applicant shall furnish a representation and after considering the same, the disciplinary authority shall pass appropriate orders. The manner in which the period from the date of his removal upto the date of his reinstatement in service was to be decided would depend upon the ultimate result of the departmental proceedings. On the basis of the judgment the disciplinary authority proceeded from the stage of serving copy of inquiry report and subsequently the applicant was awarded penalty of stoppage of one increment without future effect. The grievance of the applicant is that the intervening period from the date of removal from service till the date of reinstatement i.e. from 29.9.1984 to 11.4.93 was treated as not spent on duty. The applicant claims that Rule 5(4) of Railway Servant (Disciplinary & Appeal) Rules also as per the judgment of the Hon'ble Supreme Court in Nelson Motis vs. Union of India & Ors. the applicant should have been treated as under deemed suspension from the date of original date of removal from service and until the reinstatement. The applicant's case is that when the order of penalty of removal from service was quashed and set aside and the disciplinary authority proceeds with further inquiry and under such circumstances Rule 5(4) applies. He also claims that as per decision in Nelson Motis case, when the decision is taken to hold further inquiry under Rule 5(4) of the Railway



Servant (Disciplinary & Appeal) Rules, the charged official shall be deemed to have been under suspension from the date of original order of dismissal/removal until the reinstatement and for that period the charged official is entitled for subsistence allowance. But in this case the disciplinary authority has considered the period as not spent on duty which is illegal and void. The applicant also supported his case the judgment of the Hyderabad Bench of C.A.T. in Kothapalli Veer Krishna Prasad vs. General Manager & Others SLJ 1993 p.382. Accordingly, he claims the following reliefs:-

- "(i) In view of the facts mentioned in para 4 above the applicant prays to the Hon'ble Tribunal to quash and set aside the order passed by the respondent on 20.5.93 shown at Annexure A and the respondents may be directed to consider the period of removal from service i.e. 29.9.1984 till 11.4.93 (the date of reinstatement in service, as period under suspension as admissible under Rule 5(iv) RS (D & A), arrears should be paid to the applicant with all the consequent benefit of seniority, promotion etc.
- (ii) Any other relief which the Hon'ble Bench deems fit,
- (iii) Cost of the suit be awarded."

2. The respondents have contested the O.A. They admit that the applicant has been removed from service vide order dated 29.9.84 and thereafter the applicant preferred O.A.56/89 before this Bench. The Bench passed the following order:-



"The impugned orders passed by the Disciplinary authority, appellate authority and reviewing authority against the applicant are quashed and set aside. The respondents are directed to reinstate the applicant within one month from the date of the receipt of the copy of this order by them. However, the Disc. Authority will be at liberty to proceed with the disciplinary proceedings by first informing the applicant that he does not agree with the findings of the Enquiry Officer as contained in the Enquiry Report, which was furnished to the applicant, with the impugned Annexure-I order, which we have now quashed and directing him to make his representation, if any, as to why he should not hold him guilty of the charges. He may, thereafter, pass such orders in accordance with law, as he finds appropriate after considering such representation. The manner in which the period the date of his removal upto the date of his reinstatement in service in compliance with this order spent by the applicant in the proceedings is to be decided would depend upon the ultimate result of the departmental proceedings. The applicant is allowed to the above extent. The application is disposed off. No order as to costs."

3. Accordingly, the applicant was reinstated in service and thereafter the disciplinary authority issued him reasons for disagreement with findings of Inquiry Officer and requested the applicant to submit his representation if any. After the applicant had given his representation, the disciplinary authority after considering the applicant's case, imposed the penalty of stoppage of increment for one year without future effect. The period from the date

of removal i.e. 29.9.84 and upto the date of reinstatement i.e. 11.4.1993 was treated as period not spent on duty. They state that as the applicant was not fully exonerated of the charges, the intervening period cannot be treated as period not spent on duty.

4. The applicant has filed rejoinder in which he mostly reiterated the arguments given in the O.A. The respondents have filed a sur-rejoinder and have stated that the Tribunal has not given any orders to place the applicant under suspension and the applicant's period from removal to reinstatement has been correctly decided as 'not spent on duty' by the disciplinary authority.

5. Mr. Handa, learned counsel for the applicant states that the applicant's case is directly covered under the judgment of the C.A.T. Hyderabad *ibid.* In that case the applicant was removed from service and the penalty was set aside by the Tribunal purely on technical grounds and direction was given to the respondents to reinstate the applicant and pay him all the benefits. The disciplinary authority proceeded to hold a further inquiry. The question was as to whether the applicant shall deem to be placed under suspension from the date of removal from service and the date of reinstatement. It was held so as per Rule 5(4) of the Railway Servants (D & A) Rules, 1968. In the judgment of Hon'ble Supreme Court in *Nelso Motis versus Union of India & Ors.* 1993 SC (L & S) ¹³ held that though the charged

official was not under suspension earlier he shall be deemed to be so from the date of original date of removal provided that the other conditions are satisfied. Only order be in such case where the railway servant should be paid subsistence allowance during the period deemed suspension. This ruling squarely covers the present case. Hence, he prays for the application should be allowed.

6. Mr. Shevde, learned counsel for the respondents contested the argument of Mr. Handa and stated that the Tribunal had passed no orders to treat the intervening period as suspension and the applicant was not exonerated as he was given punishment of stoppage of increment and as such disciplinary authority had correctly treated the intervening period as not spent on duty.

7. We have heard both the learned counsels and gone through the documents. In this connection the reference of Rule 5(4) of RS (D & A) Rules would be necessary and it is as follows:-

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the railway servant shall be deemed

to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders provided no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case."

- 3 8. The above rules lays down that the railway servant shall be deemed to have been placed under suspension by the competent authority from the date of original order of dismissal, removal or compulsory retirement and shall be continued to remain under suspension until further orders are passed by the competent authority. Accordingly, the railway servant shall be deemed to have been placed under suspension from the period referred to and that deemed suspension is on the basis of operation of Rule 5(4) and as such the orders of disciplinary authority should not be ~~re~~ in-consistent to Rule 5(4). The Tribunal in the earlier order had quashed and set aside the punishment orders and the respondents were directed to reinstate the applicant with liberty to the disciplinary authority to proceed with the disciplinary proceedings by first informing the applicant that he did not agree with the finding of the Enquiry Officer and after allowing the applicant to make a representation, the disciplinary authority would pass such orders in accordance with law. The manner in which the period from the date of removal

upto the date of his reinstate in service in compliance with the order spent by the applicant in the proceedings is to be decided would depend upon the ultimate result of the departmental proceedings." It will be seen that the Tribunal directed to reinstate the charged official with liberty to the disciplinary authority to proceed further with the inquiry. The Hon'ble Supreme Court in Nelson Motis vs. Union of India & Ors. 1993 SCC (L & S) 13 held that Sub-Rule 10(4) of CCS (CCA) Rules is applicable in regard to Government servants who are not under suspension on the date of removal, dismissal, etc. Similarly, Rule 5(4) of Railway Servant (D & A) Rules, 1968 on the same lines applies to Railway Servants. In other words the railway servant though not earlier under suspension shall be deemed to have been placed under suspension from the date of original order of their dismissal or compulsory retirement, provided that the other conditions mentioned in sub-Rule (4) of Rule 5 of the said rules are satisfied. As the respondents have taken a decision to hold further inquiry as referred to Rule 5(4) in respect of the applicant he should have been treated as under deemed suspension from the date of original order of removal until the date of reinstatement. It is not even necessary for the authorities to pass any order to place the railway servant under suspension from the original date of removal. It is quiet clear that the applicant should be treated as under suspension under

the rule from the date of removal i.e. 29.9.1984. Once it is agreed that the railway servant shall be treated under deemed suspension as a natural corollary he shall be entitled for subsistence allowance for the period of suspension under Rule 53 (ii) F.R. It is not possible to accept the argument of the respondents that as the applicant was not exonerated and he was given punishment of stoppage of increment, the intervening period should be treated as period not spent on duty. The Respondents have no authority to refuse payment of subsistence allowance as per Rules for the intervening period. In other words there is no discretion for the competent authority to refuse payment of subsistence allowance even if penalty is imposed after fresh inquiry. In case the railway servant had been exonerated it would have been necessary to treat the period as duty. Even if the penalty is imposed, there is no alteration for the competent authority but pay subsistence allowance for the intervening period from the date of removal upto the date of reinstatement. Accordingly, we allow the application and direct the respondents to pay subsistence allowance as per rules, to the applicant from the date of his removal from service i.e. from 29.9.1984 upto the date of reinstatement i.e. 11.4.1993 within a period of eight weeks from the date of

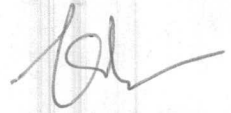
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receipt of a copy of this order.

With the above order, O.A. stands disposed of.
No costs.



(Laxman Jha)
Member(J)



(V. Radhakrishnan)
Member (A)

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