

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 56 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

1. Sri Dipti Kr. Ghosh, Retired Senior Cashier, South Eastern Railway, residing at 194, Katadanga Road, P.O. Pingapara, P.S. Jagatdal, Dist. North 24-Pgs.

...Applicant.

- v e r s u s -

1. Union of India through the General Manager, South Eastern Rly., Garden Reach, Calcutta.
2. The Chief Personnel Officer, South Eastern Rly., Garden Reach, Calcutta.
3. The Financial Advisor and Chief Accounts Officer, S.E. Rly., Garden Reach, Calcutta.
4. The Divisional Railway Manager, S.E. Rly. Adra, District Purulia.
5. The Sr. Divisional Accounts Officer (Co-ordination) S.E. Rly., Adra, Dist. Purulia.
6. The Sr. Divisional Accounts Officer, S.E. Rly. Kharagpur, Dist. Midnapore.

... Respondents.

For the applicant : Mr. S.K. Dutta, counsel.
Mr. T.K. Biswas, counsel.

For the respondents : Mr. S. Chowdhury, counsel.

Heard on 19.5.98

Order on 19.5.98

O R D E R

D. Purkayastha, JM

Feeling aggrieved by orders dated 2.9.95 (Annexure-A/8 to the application) and dated 8.11.94 (Annexure-A/6 to the application) ^{a respondent} issued by the Senior Divisional Accounts Officer, S.E. Railway, Kharagpur, the applicant approached this Tribunal for quashing order on the ground that the Senior Divisional Accounts Officer, South Eastern Railway, Kharagpur has no authority for jurisdiction to cancel the office order dated 7.9.94 issued by Senior Divisional Accounts Officer (Annexure-A/5 to the application) which was passed in accordance with the order dated 9.8.94 issued by the Divisional Accounts Officer, Adra (Annexure-A/4 to the application). It is also stated that the applicant has not been paid pay & allowances for the period of superannuation as per judgment passed by this Tribunal in O.A. No. 6/98 dated 15.3.94 and subsequent order passed by the Tribunal in C.P.C. 139/94 on 19.12.94, ^{the entire} ^{Thought}

period of suspension of the applicant was treated to be spent on duty vide order dated 9.8.94 as per direction of this Tribunal. According to the applicant, he was placed under suspension w.e.f. 13.11.71 and he was discharged from the criminal case on 29.9.73 by the Sub-Divisional Judicial Magistrate, Purulia and thereafter the respondents i.e. Divisional Accounts Officer, Adra as a competent authority issued a chargesheet for imposing major penalty by an order dated 5.8.75. After completion of the enquiry, the applicant was punished by an order of permanent reversion to the post of Junior Cashier by the Divisional Accounts Officer, Adra. After hearing the submission of Id. counsel for both the parties, this Tribunal has quashed the departmental proceedings as well as the reversion order dated 5.8.75 by an order dated 15.3.94 with a direction upon the respondents to reinstate/restore the applicant to his original position and also to give him all consequential benefits. In pursuant to the said direction of this Tribunal passed in O.A. 6/88, the applicant was restored to his original position as per order of the Divisional Accounts Officer, Adra passed on 6.7.94. But the respondents did not make any payment in respect of the period of suspension in pursuant to the judgment and thereafter applicant filed a C.P.C. bearing No. 139/94 arising out of O.A. No.6/88 for drawing contempt proceeding under Contempt Court Act. That C.P.C. has been disposed of by the Tribunal on 19.12.94 holding that the applicant was paid all benefits as he is entitled as per judgment. But before ^{his} decision in the C.P.C. being No.139/94 on 19.12.94, the respondent, Divisional Accounts Officer, Adra passed an order on 9.8.94 stating that the entire period of suspension of the applicant as Sr. Cashier will be deemed to have been spent on duty. It was further stated that as due and drawn particulars of Sri Ghosh for the period from 13.11.71 to January, '88 have been prepared and was sent herewith to the Disbursing Officer to facilitate the payment of arrears. In pursuance of the said order, the Senior Divisional Accounts Officer, Kharagpur has also passed the similar order that the entire period of suspension i.e. 13.11.71 to 25.8.87 of the applicant as Sr. Cashier will be deemed to have been spent on duty (Annexure-A/5 to the application). Thereafter, suddenly by an order dated 8.11.94 (Annexure-A/6 to the application), the Sr. Divisional Accounts Officer, Kharagpur cancelled the previous order dated 7.9.94 passed by him. Thereafter

another letter dated 2.9.95 (Annexure-A/8 to the application) stating ^{if 5} that the pay & allowances for the intervening period i.e. from 13.11.71 to 25.8.87 is not admissible as per codal provision. Feeling aggrieved by the said order, the applicant filed this case for direction upon the respondents to make payment of the pay & allowances for the period of intervening period from 13.11.71 to 25.8.87. The respondents filed reply denying the claim of the applicant ^{though} since such period was treated as spent on duty.

② It is stated in the reply that the application is barred by res-judicata and this Tribunal in C.P.C. 139/94 has held that the applicant has been paid all benefits, and it would be evident from letter marked as Annexure-R/5 to the reply. It is also stated that office order of respondent No.5 is neither as per extant rules nor as per Tribunal's direction and the same can be denied by the competent authority i.e. Railway Administration. Moreover, the respondent No.6 has authority to alter or cancel the order passed by the respondent No.5. It is further stated in the reply that the application is baseless thereby it is liable to be dismissed.

③ Mr. Dutta, Id. counsel for the applicant firstly submits that the respondent No.6 being a Senior Officer of another Division has no jurisdiction to cancel the order of the competent authority despite the fact that he is senior to the competent authority. Moreover, he submits that as per provision of Rule 204(b), the respondent No.5 as competent authority had rightly passed the order in accordance with the provision of Sub Rule 2 of Rule 204 as embodied at page 32 of the Railway(Discipline and Appeal) Rules 1968. Since the order in question was issued by the competent authority in accordance with the rule, thereby respondent No.6 being the superior authority has no jurisdiction to cancel the said order without assigning any reason therein. Mr. Chowdhury, Id. counsel for the respondents submits that as per letter marked as Annexure-R/5 to the reply, it is found that the applicant has been paid subsistence allowance amounting to Rs.1,08,705.12 for the period from 13.11.71 to 1.2.88 and thereby the applicant should not have any grievance and claim for payment of any pay & allowances for the said period from 13.11.71 to 1.2.88. Moreover, the instant application is barred by res judicata since ~~in the C.P.C. bearing No. 139/94~~ this Tribunal has dismissed

the C.P.C. holding that the applicant has been paid all benefits as per direction given in the judgment and thereby the said issue cannot be readjudicated. After having considered the facts and circumstances of the arguments advanced by the Id. counsel for both the parties, it is seen that the Hon'ble Tribunal firstly at the time of disposing the application in CPC 139/94 on 19.12.94 made a observation in para 5 which runs as follows:

"We have considered the matter and also perused the judgment and we find that there is no specific direction given in our judgment as to how the period of suspension is to be treated. In absence of any specific direction, the only conclusion one can draw is that, the respondent OP is to pass order under extent rules as to how the period of suspension is to be treated to the applicant. We also note that in our judgment, no specific time limit was fixed for the implementation of the direction. However, we find that in view of the direction issued by the D.O.P.T. Govt. of India and also the various rulings of this Tribunal and also of the Hon'ble Apex Court, the respondent OP were expected to implement the judgment within a reasonable period i.e. within a period of 3 to 6 months. We find from the documents that the respondent OP has passed the first order in this regard on 20.5.1994, practically within a period of two months from the date of our judgment and the subsequent order was passed on 7.9.1994. However, this order was cancelled by another order dated 8.11.1994 and last order was passed on 1.12.1994 wherein he was paid the difference of pay and allowances between the Junior Cashier and Sr. Cashier. From these orders it would be clear that the respondent railways not sitting idle to implement the direction dated 15.3.93 of this tribunal. We find that the restoration of the applicant in the previous position was first required to be done as per our direction and the respondents OP had passed order immediately within a period of 2 months from the date of the judgment, and thereafter paid the difference of pay and allowances. We are, therefore, satisfied that the respondent OPs railway has complied with the order and there is no cause of filing the C.P.O. at the present."

4. From the observation made by the Tribunal it is found that the respondent is under obligation to pass a separate order as per rules as to how the period of suspension is to be treated under the circumstances. It is also found that since the Tribunal did not make any specific averments regarding entitlement of subsistence allowance or pay & allowances for the period of suspension in the original judgment, but the respondent before ^{my} decision ^{of} C.P.C. being No. 139/94 passed a separate order on that score that the period of suspension has been treated as duty. The Divisional Accounts Officer, Disciplinary Authority issued an order stating that his period of suspension shall be deemed to have been spent on duty. This question has been decided by the competent authority in pursuant to the direction in the judgment passed by the Tribunal. So there ^{sh}ould not be any hesitation in mind

that the applicant would be entitled to get benefit of pay and allowances for the period of suspension from 13.11.71 to till date of restoration as per rules as it was decided by the Competent Authority that the period of suspension was to be treated as spent on duty vide Sr. Divisional Accounts Officer's order dated 7.9.94 (Annexure-A/5 to the application). But the respondent No.6 has passed an order on 8.11.94 (Annexure-A/6 to the application) cancelling the previous order dated 7.9.94 without assigning any reason thereon. Hence it is not sustainable in law. It is also found that in response to the representation dated 26.7.95 made by Sri Ghosh, the Sr. Divisional Accounts Officer, Kharagpur intimated the applicant that his pay & allowances for the intervening period i.e. from 13.11.71 to 25.8.87 is not admissible as per codal provision. In order to justify the impugned order dated 2.9.95 (Annexure-A/8), Mr. Chowdhury, Id. counsel has drawn my attention to the letter marked as Annexure-R/5 to the reply) where it is stated that the applicant has been paid only subsistence allowance amounting to Rs.1,08,705.12 for the period from 13.11.71 to 1.2.88. But the subsistence allowance cannot be treated as full of pay & allowances of the applicant as admissible to him for the purpose of duty. So according to the rules, the applicant is entitled to Pay & allowances as admissible to him under the relevant rules.

5. In view of the aforesaid circumstances, I am of the view that in pursuant to the direction of the Hon'ble Tribunal passed in O.A. 6/88, the applicant is entitled to get benefit of pay & allowances on the basis of the order dated 9.8.94 passed by Sr. Divisional Accounts Officer who issued the suspension order and penalty as competent authority in respect of the Railway (Discipline and Appeal) Rules 1968 in this case. So his power can be interfered with by the Sr. Divisional Accounts Officer by cancelling the order dated 9.8.94 without justifiable grounds. Under the aforesaid circumstances, I am of the view that the applicant is entitled to get full benefit of pay & allowances for the period from 13.11.71 to 1.2.88 and he should be paid full pay & allowances as per order dated 1.12.94 (Annexure-A/7) after deduction of subsistence allowances paid to him during the period of suspension.

