

CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

CALCUTTA

Calcutta this the 11th day of October 2001

Original Application no. 263 of 1996.

Hon'ble Mr. Rafiq Uddin, Member-J

Hon'ble Maj Gen KK Srivastava, Member-A.

GVS Rao

.... Applicant

C/A Shri BC Sinha

Versus

Union of India & Others

.... Respondents

C/R. Sri AK Dutta

O R D E R

Hon'ble Mr. Rafiq Uddin, Member-J

The applicant, Sri GVS Rao, has filed this OA seeking direction to the respondents to treat the period from 24.11.1979 to 22.4.1993 as spent on duty and full pay and allowances for the intervening period be drawn and paid to your application. The application further seeks direction to the respondents to fix the pay of the applicant in the 4th Pay Commission Scales of pay and arrears be paid accordingly with all consequential benefits.

2. The facts of the case as emerges from the records are that the applicant while working as Apprentice Fireman Gr. I in Kharagpur was served with a charge sheet alleging that the applicant had filed a false certificate of belonging to (Konda Kapu) SC and in fact he was not a

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member of ST. A fullfledged inquiry was conducted against the applicant and on considering report submitted by the inquiry officer the Divisional Mechanical Engineer (P) SE Kharagpur ordered removal of the applicant from service w.e.f. 24.1.1979 vide order dated 31.10.1978. The applicant filed Writ Petition before High Court challenging the punishment order which came on transfer to this Tribunal and registered as TA 63 of 1991. This TA was disposed of vide order dated 19.3.1992. The operative portion of the order is as under:-

"Accordingly the order removing the petitioner from service is hereby quashed and since the petitioner is still continuing in service is allowed to continue till final order is passed (Subject to his date of retirement on superannuation) and we hope and trust that the order will be passed after complying the observations of the Hon'ble Supreme Court within 120 days from the date of receipt of a copy of this judgment. Further it is directed that a copy of the enquiry report should be furnished to the petitioner within thirty days from the date of receipt of a copy of this judgment and within thirty days therefrom the Petitioner will be at liberty to file his representation challenging the findings and within sixty days therefrom the disciplinary authority would pass final orders. In case an adverse order is passed the Petitioner will be at liberty to file an appeal, if so advised, within thirty days from the delivery of the order to the disciplinary authority and within 45 days therefrom the appellate authority should dispose of the appeal."

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3. In pursuance of the aforesaid order the departmental inquiry against the applicant was reopened by the respondents authority and copy of inquiry report was duly ^{R given} submitted to the applicant who also submitted his representation against the findings of the inquiry officer. The disciplinary authority, however, after considering the representation of the applicant upheld the earlier order of removal from service vide letter dated 30.7.1992 (Ann. A3) Thereafter, the applicant submitted the appeal to the appellate authority who after considering the relevant records passed the following orders vide order dated 22.4.1993:-

"... Considering these aspects, I have decided that the penalty of removal from service issued on you P/Notice No. DS/CUN/1131 dated 30.7.1992 issued by DME/KGP is reduced to that of reduction by 2 (two) stages in your existing time scale of pay of Rs. 1350-2200 (RIPS) on pay Rs. 1680/- P.M. for a period of 2(two) years with non cumulative effect, treating you as U.R. Candidate."

4. The applicant has not challenged the aforesaid order passed by the Appellate Authority. The applicant was reinstated on 22.4.1993 in compliance of the aforesaid appellate order. However, his grievance is that he is entitled to get all ^{the} pay and allowances for the period from 24.11.1979 to 22.4.1993 i.e. the date of reinstatement. He submitted representation on 10.8.1995 for this purpose. A notice was also sent by his counsel to DRM Kharakpur, but no action seems to have been taken by the concerned authority. Hence, he has filed this OA.

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5. Heard learned counsel for the parties and perused the records.

6. It is relevant to mention that in pursuance of the order dated 19.3.1992 passed by this Tribunal in TA no. 63 of 1991, the respondents have regularised the period of absence from duty of the applicant w.e.f. 24.11.1979 to 4.8.1992 vide order dated 13.5.1997 copy of which has been placed on the file today, given by the learned counsel for the respondents. The learned counsel for the applicant also concedes that the applicant has also received the payment of salary, allowances etc for this period.

7. It appears that by another order dated 12.5.1997, the respondents has treated the period of removal to reinstatement i.e. 5.8.1992 to 3.5.1993 as Leave Without Pay in terms of Rule(5) of Rule 1343 (FR 54) of Indian Railways Establishmen Code (IREC).

8. Learned counsel for the applicant has contended before us that the order dated 12.5.1997 has been passed in contravention of the Rule because the case of the applicant is covered by the provisions of Sub Rule(4) of Rule 1343 (FR 54) Whereas, the respondents has passed order under provision of Sub Rule(5) of Rule 1343 (FR-54) of IREC.

9. Learned counsel for the applicant further contended that the applicant is also entitled for payment of running

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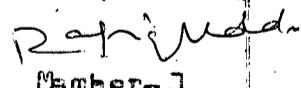
allowance which has also ^{not} been allowed to the applicant by the respondents while fixing his pay for the period in question. It is also pointed out that the order dated 12.5.1992 has been passed without issuing any show cause notice to the applicant in terms of Rule as held in 'A Abdul Razack Vs. Director of Postal Services' (1991) 17 ATC 829.

10. Considering the facts that the order dated 12.5.1997 has been passed by the respondents during the pendency of the present OA and the applicant has not given any opportunity to question their correctness. We dispose of this OA with the direction to the applicant to submit his representation containing all his grievances regarding regularisation of his period of absence as well as non payment of allowances etc and the respondents are directed to consider the same and pass appropriate orders as per extant rules within a period of three months from the date of communication of this order.

11. There shall be no order as to costs.



Member-A



Member-J

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