

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 365/1996  
P.A. No.

199

DATE OF DECISION : 17.02.2000.

Dinesh Kumar Saroj Petitioner

Mr. Y.K. Sharma, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent(s)

Mr. R.K. Soni, Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *no*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

*Gopal Singh*  
( Gopal Singh )  
Adm. Member

*A.K. Misra*  
( A.K. Misra )  
Judl. Member

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR.

O.A. No. : 365/1996

Date of Order : 17.2.2000

Dinesh Kumar Saroj S/o Shri Panna Lal, aged about 42 years, working as Ticket Collector under Divisional Commercial Manager's Squad, Northern Railway, Bikaner. R/o Quarter No. 88-T, Near Guard's Running Room, Bikaner.

..Applicant.

Versus

1. Union of India through General Manager,  
Northern Railway, Headquarters Office,  
Baroda House, New Delhi.
2. Divisional Railway Manager,  
Northern Railway,  
Allahabad Division,  
Allahabad.
3. Senior Divisional Personnel Officer,  
Northern Railway,  
Allahabad Division,  
Allahabad.
4. Senior Divisional Commercial Manager,  
Northern Railway,  
Allahabad Division,  
Allahabad.
5. Divisional Railway Manager,  
Northern Railway,  
Bikaner Division,  
Bikaner.
6. Senior Divisional Personnel Officer,  
Northern Railway,  
Bikaner Division,  
Bikaner.
7. Senior Divisional Commercial Manager,  
Northern Railway,  
Bikaner Division,  
Bikaner.

..Respondents.


Mr. Y.K. Sharma, counsel for the applicant.

Mr. R.K. Soni, counsel for respondents No. 1 to 7.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member,

Hon'ble Mr. Gopal Singh, Administrative Member.

*Gopal Singh*  


..2.

PER HON'BLE MR. GOPAL SINGH :

Applicant, Dinesh Kumar has filed this application under section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to treat the applicant as under deemed suspension in terms of Rule 5 (4) of Railway Servants (Discipline and Appeal) Rules, 1968 (for short, the rules) and to arrange payment of the subsistence allowance alongwith interest at the rate of 12% per annum.

2. Applicant's case is that the applicant was initially recruited and appointed as Ticket Collector on 03.5.1980 at Kanpur Railway Station of Allahabad Division. The applicant was suspended vide respondents' order dated 22.6.1983 (Annexure A/2) effective from 17.6.1983. He was served with a charge-sheet on 22.6.83 and vide respondents letter dated 27.7.1983 he was transferred to Bikaner Division. The applicant was dismissed from service vide respondents order dated 30th July, 1985 (Annexure A/4). He was not paid any subsistence allowance for the period of suspension. The applicant approached the Allahabad Bench of the Central Administrative Tribunal vide OA No. 251/1987 for payment of subsistence allowance and OA No. 393/1987 against the dismissal orders. OA No. 251/1987 was decided on 09.1.1989 with a direction that the suspension allowance due to him for suspension period should be paid to him within three months from the date of receipt of that order. Accordingly the applicant was paid subsistence allowance for the period from 17.6.1983 to 30.7.1985 by the Allahabad Division. The OA No. 393/87 was disposed of vide order dated 15.4.1993 setting aside the removal order. The applicant thereafter joined his duties on 21.11.1994. The contention of the applicant is that the period from 31st July, 1985 to 20.11.1994 be treated as deemed suspension in terms of rule 5(4) of the rules and the payment of subsistence allowance for the said period be paid to him.

*Gopal Singh*

3. Notices were issued to the respondents and they have filed their reply. It is submitted by the respondents that the question of payment of subsistence allowance for the period in question is under correspondence between Bikaner and Allahabad division.

4. We have heard the learned counsel for the parties and perused the record of the case.

5. For better appreciation of the case Rule 5(4) of the Rules is reproduced below:-

(4) 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 that no such 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.)

6. Further orders issued by the Railway Board in regard to deemed suspension are reproduced below :-

5. Subsistence Allowance on Deemed Suspension under Rule 5(4) : As per this rule if the court exonerates an employee on technical grounds the disciplinary authority is at liberty to deem him under suspension from the date of original removal and continue the proceedings. In such a case of deemed suspension an employee may demand the review of the subsistence allowance from the expiry of first 90 days from the deemed date and demand an enhanced subsistence allowance, even though such a suspension order was issued at a much later date due to a deeming provision available in the rules and was necessitated due to the court's orders. In such cases there is no question of any review as demanded and not more than 50% of pay can be paid as a subsistence allowance upto the date orders were passed of deeming suspension and thereafter the review may be done after the expiry of 90 days from that date. (Authority: MA Jilani V. DME SCRLY, CP38/93(OA 371/91))

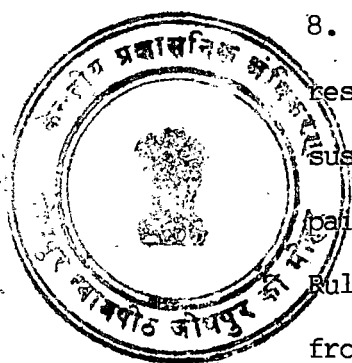
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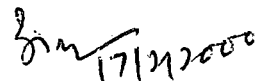
decided by CAT/HYD 11.11.91).

7. The applicant was dismissed from service on 30.7.1985 and the Allahabad Bench of the Central Administrative Tribunal quashed this order of dismissal vide their order dated 15.4.1993 in OA No. 393/1987 and consequently the applicant was reinstated in service on 21.11.1994. Thus in terms of the above rules the period from 31.7.1985 to 20.11.1994 is to be treated as deemed suspension and subsistence allowance is to be paid for that period. We are, therefore, of the view that the application has much strength and deserves to be allowed.

8. The OA is accordingly allowed with a direction to the respondents to treat the period from 31.7.85 to 20.11.94 as deemed suspension and subsistence allowance for the said period may be paid to the applicant in accordance with the order No. 5 under Rule 5 of the Rules cited above. Since the applicant was dismissed from service by the Bikaner Division and was reinstated by the Bikaner division on the orders of Central Administrative Tribunal, Allahabad, the subsistence allowance would also be paid by the Bikaner division alongwith the interest at the rate of 12 % per annum from 15.4.1993, the date of the order of Allahabad Bench of the Central Administrative Tribunal till the date of actual payment.

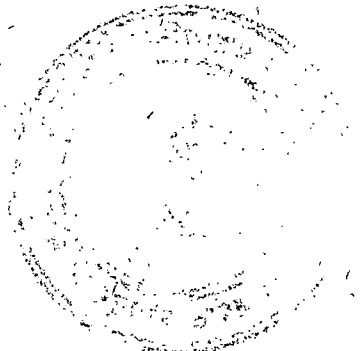
9. The parties are left to bear their own costs.

  
(GOPAL SINGH)  
MEMBER (A)

  
(A.K. MISRA)  
MEMBER (J)

2/16/84  
2221  
2/2/2000

R/comp  
2/2  
(Davidson)



Part II and III destroyed  
in my presence on 26.9.2006  
under the supervision of  
section officer [signature] as per  
order dated 23/8/2006

Section officer (Records)

2/2 comp  
2/2  
H.C.D.  
2/2