

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.

Date of order : 18.2.1998.

O.A. No.249/97

Nanag Ram son of Shri Bheru Ram, aged about 54 years, resident of C/o. Shri Ramesh Chand Sharma, Brahmupuri, Jodhpur, last employed on the post of Train Examiner (redesignated as Section Engineer - II) at Phulera Jn., District Jaipur, Western Railway.

... Applicant.

V e r s u s

1. The Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Additional Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Senior Divisional Mechanical Engineer (E), Western Railway, Jaipur Division, Jaipur.

... Respondents.

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. V.D. Vyas, Counsel for the Respondents.

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CORAM :

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

Hon'ble Mr. Gopal Singh, Administrative Member.

...

PER HON'BLE MR. GOPAL SINGH

Applicant Shri Nanag Ram has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the order dated 22.7.1997 (Annex. A/2) and also the order dated 17.7.1997 (Annex. A/1) to the extent it relates to

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regularisation of the intervening period from the date of compulsory retirement to the date of the order of reinstatement.

2. The contention of the applicant is that the appellate authority vide its order dated 17.7.1997 had set aside the penalty of compulsory retirement from service and ordered immediate reinstatement of the applicant. While complying with the order of the appellate authority, the Senior Divisional Mechanical Engineer (Establishment), Jaipur, issued the order of reinstatement of the applicant to a lower grade, i.e., of Fitter grade-1 instead of reinstating him on the post of adhoc Train Examiner.

3. The learned counsel for the respondents has raised preliminary objections about the maintainability of the application on the point of jurisdiction of the Bench in the matter. Secondly, the learned counsel for the respondents had contended that the applicant was a permanent Fitter and, therefore, he could have been reinstated on the post of Fitter only, where the applicant had a lien.

4. We have heard the learned counsel for the parties and perused the records of the case. About jurisdiction, Rule 6 (2) of the Central Administrative Tribunal (Procedure) Rules, 1987, provides as under :-

"6.(2) - Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

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It is also seen that the applicant has given Jodhpur address in his application. The preliminary objections of the learned counsel for the respondents is, therefore, not acceptable and it was decided to hear the case on merits.

5. It is seen from the order Annexure A/1 dated 17.7.1997 that the appellate authority has ordered as under :-

"अतः उपरोक्त " अनिवार्य सेवा निवृति " के आदेश को निरस्त कर कर्मचारी को तुरन्त नैकरी पर बहाल किया जाता है और अन्तरिम काल को निलम्बन या अर्जित अवकाश द्वि कर्मचारी आवेदन करता है, तो माना जाए । "

From the order aforesaid, it is very clear that the appellate authority had set aside the punishment of compulsory retirement from service and has also ordered immediate reinstatement of the applicant. In pursuance of this, the Senior Divisional Mechanical Engineer (Establishment), Jaipur, vide his letter dated 22.7.1997 (Annex. A/2) has reinstated the applicant on the post of Fitter grade-1 in scale Rs. 1320-2040 (RP). Learned counsel for the respondents has all along maintained that the applicant could have been reinstated on the post of Fitter only where he holds a lien. In our view, it has not been very specifically mentioned in the order Annexure A/1 as to on which post the applicant should be reinstated. The meaning of the 'reinstatement' as given in the Webster's Encyclopedic Unabridged Dictionary is 'to put back or establish again as in a former position'. It would thus be clear that the reinstatement would mean ^{again} putting back or establish~~s~~ as in a former position. Thus,

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in our opinion, the applicant should have been reinstated on the post he was earlier holding, i.e., adhoc Train Examiner.

6. The applicant was imposed penalty of removal from service on 18.2.1997 and the orders setting aside this penalty as also for his reinstatement were passed by the appellate authority on 17.7.1997 (Annex. A/1). The appellate authority in his order dated 17.7.1997 has ordered that this intervening period may be treated as 'suspension' or adjusted in 'earned leave' (if requested by the applicant). It is also seen that the applicant has not joined his duties in compliance of the order dated 22.7.1997 (Annex. A/2). Thus, the entire period from 18.2.1997 till date has to be regularised. Since the applicant was not under suspension immediately before the penalty of compulsory retirement from service was imposed upon him, he cannot be treated as under suspension from the date of his compulsory retirement as has been ordered by the appellate authority. Since the penalty of compulsory retirement from service has been set aside by the appellate authority and no other penalty has been imposed upon the applicant, the period of absence from 18.2.1997 to 17.7.1997 cannot be treated as under suspension and should be treated as spent on duty on full pay and allowances. Further, since no penalty has been imposed by the appellate authority and the appellate authority has not ordered his reinstatement in the lower grade, it was not correct on the part of the Administration to

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reinstate the applicant on the post of Fitter and not of adhoc Train Examiner. As such the order dated 22.7.1997 (Annex. A/2) deserves to be quashed and the period from 18.2.1997 till his assuming duty as adhoc Train Examiner deserves to be treated as spent on duty with full pay and allowances.

7. The O.A. is accordingly allowed and disposed of with the following observations :-

- (i) The order dated 22.7.1997 (Annexure A/2) is set aside;
- (ii) The applicant should be reinstated as adhoc Train Examiner; and
- (iii) The period from 18.2.1997 till the date of joining of the applicant on reinstatement as adhoc Train Examiner be treated as spent on duty with full pay and allowances.

8. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

2/3/98

(A.K. MISRA)
Judl. Member

cvr.

8/10/98
8/10/98
8/10/98

Present
Khaman Lal
J. V. D. 2003

Part II and III destroyed
in my presence on 25/3/2004
under the supervision of
Section Officer as per
order dated 29/12/2003

97
Section Officer (Record)