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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR.

Date of Decision: 28.2.2002

OA 322/98

1. Mukesh Sharma s/o Late Shri Vishnu Kumar Sharma
2. Brijesh Sharma s/o Late Sh. Vishnu Kumar Sharma
3. Smt. Shashi Sharma d/o Late Vishnu Kumar Sharma
4. Naresh Sharma s/o Late Sh. Vishnu Kumar Sharma

LRs of Late Vishnu Kumar Sharma, last employed on the post of Driver A Spl. in Loco Shed, Ranapratapnagar, Western Railway.

... Applicants

V/s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Mechanical Engineer, Western Railway, Churchgate, Mumbai.
3. Divisional Rly Manager, Western Railway, Ajmer Division, Ajmer.
4. Divisional Mechanical Engineer, Western Railway, Ajmer Division, Ajmer.
5. Chief Operating (Power) Manager (COPM), Western Railway, Churchgate, Mumbai.

... Respondents

CORAM:

HON'BLE MR. JUSTICE O.P. GARG, VICE CHAIRMAN

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

For the Applicant ... Mr. B. Khan

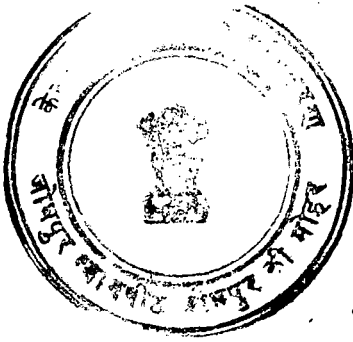
For the Respondents ... Mr. S.S. Vyas

O R D E R

PER HON'BLE MR. A.P. NAGRATH, ADM. MEMBER



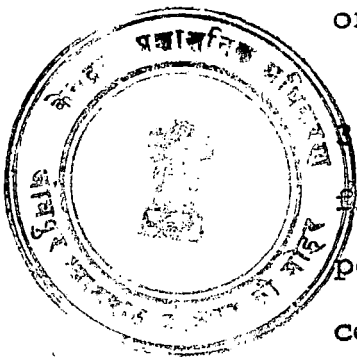
The original applicant of this application, Late Shri Vishnu Kumar Sharma, was removed from service vide order dated 2.8.91 consequent to departmental proceedings conducted against him for having caused a train accident. His appeal against the said order was rejected by the Divisional Railway Manager vide order dated 3.3.92. The applicant challenged this order by filing OA 111/93 before this Bench. Vide order dated 27.10.94 the orders of the disciplinary authority and the appellate authority were set aside. However, the respondents were given liberty to continue with the departmental proceedings from the stage the proceedings stood vitiated. This stage was identified as the stage of issue of NIP (notice of imposition of penalty). A fresh notice of imposition of penalty was issued by the DRM vide letter dated 13.2.97 (Ann.A/2), by which the ~~applicant~~ applicant was removed from service. He preferred an appeal against the same and the appellate authority i.e. the Chief Operating Manager vide order dated 5.4.99 (Ann.A/15) modified the penalty on purely humanitarian considerations to that of "compulsory retirement".



2. The only point of contest on behalf^e of the applicant, who was substituted by the legal heirs Mukesh Sharma and others, was that the period of suspension from 11.5.90 to 10.8.91 and intervening

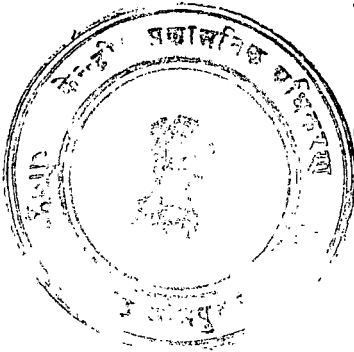
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period from 11.8.91 to 21.9.95 was wrongly treated as period 'not spent on duty'. While quoting provisions of para-4 of Rule-1343 of Indian Railway Establishment Code Vol.II (for short, the Code) and para-2 of Rule-1344 of the Code, the learned counsel submitted that it was obligatory on the part of the competent authority to first issue a notice to the charged official and the quantum proposed and it was only after considering his representation in that connection, appropriate order could have been passed. His plea was that in the instant case no such notice was served upon the applicant and thus the action of the respondents in unilaterally treating the period as period 'not spent on duty' was erroneous.



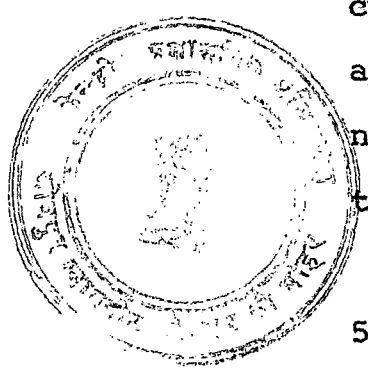
We have perused the facts carefully. We find that the decision regarding the intervening period from 11.5.90 to 21.9.95 was taken by the competent authority only on 17.1.2000. The applicant stood compulsorily retired by order dated 5.4.99. In such a situation, the decision to regulate the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, has to be governed only by Fundamental Rules which specifically provide for such eventualities. The learned counsel for the applicant, while pleading

for treating the period as spent on duty placed reliance on the cases of Sahabuddin SK v. Union of India and Others, (1988) 8 ATC 483, and Union of India and another v. Shri Chandi Ram and another, 1990 (3) (CAT) SLJ 189. We find that these two cases are of no help to the applicant as in these cases the charged official was finally acquitted of the criminal charge against him. The rules for regulating the period of absence in the case of an employee exonerated of the charge are different from the instant case. In the case before us the applicant had not been exonerated by the Tribunal. The order of disciplinary authority dated 24.5.90 and order of the appellate authority thereon, were set aside by the Tribunal in OA 111/93 on the ground that the orders were issued by the authority lower than the competent authority. While setting aside the order, the Tribunal permitted the department to continue with the proceedings from the stage of issue of NIP. No doubt, the applicant was put back in service on 21.9.95 but by further order dated 13.2.97 he was again removed from service. This order got modified by the appellate authority to that of compulsory retirement. Paras-1343 & 1344 relied upon by the applicant relate to a situation where the order of dismissal, removal or compulsory retirement is set aside and no further proceedings are continued. In



this case the Tribunal clearly permitted the department to continue with the departmental proceedings. These proceedings finally culminated into compulsory retirement of the original applicant.

4. We have also perused the orders dated 17.1.2000 (Ann.A/16), whereby the DRM Ajmer has decided the intervening period from 11.5.90 to 21.9.95 as period 'not spent on duty'. While doing so, a ~~xx~~ reference has been made to sub para 4 and 5 of Rule-1343 (FR 54) and sub para 2 to 5 of Rule-1344 (FR 54 A) of the Code. The learned counsel for the respondents emphasised that because of the fact that ultimately the proceedings culminated into compulsory retirement of the applicant, In such a situation, there was no need to give any notice to the applicant before taking a decision on the intervening period.



5. Interestingly, we find that the DRM Ajmer while taking a decision has specifically made reference to sub para 4 and ~~xx~~ 5 of Rule-1343 (FR 54) and sub para 2 to 5 of Rule-1344 of the Code. A careful reading of these paras controverts the stand of the respondents themselves that there was no need to give any ~~x~~ notice to the applicant before taking a decision to regulate the intervening period. We observe that counsel on either side have referred to the same provisions of the Code while interpreting these

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provisions in a totally contradictory manner.

6. However, having said that, we find that in the instant case, ^u~~where~~ the applicant was taken on duty ^u~~for the intervening period~~ after the Tribunal set aside the earlier orders of the disciplinary and appellate authorities while permitting the respondents to continue with the departmental proceedings. It is not the case of the applicant that after that order he got reinstated and has continued as such. In fact, he was only taken on duty for the intervening period while ^u the proceedings continued. This resulted finally in imposition of a penalty of compulsory retirement. In such circumstances, the provisions of Rule-1343 & 1344 of the Code become inapplicable. To cover such a situation there are specific orders of the Government of India for regulating the pay of the charged official. This has been clarified by Govt. of India's orders dated 27.5.61 and 30.5.62, as incorporated in Order No.4 under FR 54. In para 1(2) of Order No.4 the following question has been raised :

"Whether in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a court of law or by an appellate/reviewing authority to have been made without following the procedure required under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory."

This question has been answered in para-3 of the said order in the following terms :

"3. Regarding question (2) stated in para 1 above, it has been decided that FR 54 is inapplicable in cases where dismissal/removal/discharge from or termination of service is held by a court of law or by an

appellate/reviewing authority to have been without following the procedure required under Article 311 of the Constitution. In such cases -

(i) if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/discharge/termination under Rule 12(3) or 12(4) of Central Civil Services (Classification, Control and Appeal) Rules, 1957 or a corresponding rule, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension;

(ii) if the Government servant is not "deemed" to have been under suspension as envisaged under (i) above, the payment of full pay and allowances for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory, provided that -

(a) the arrears should be paid subject to law of limitation;"



7. In the instant case it was decided to continue with the departmental proceedings. The option available to the respondents was to have kept the applicant under deemed suspension but they had decided to take him back on duty w.e.f. 21.9.95. Obviously, this situation would get regulated by (ii) above as the applicant was not under deemed suspension. The payment of full pay and allowances

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217

for the intervening period and treatment of that period as duty for all purposes will be automatic and compulsory subject to the law of limitation, which is three years from the date of passing of the order by the Tribunal. Had the applicant not been taken on duty then the competent authority was within its rights to treat the period of suspension and further intervening period as period 'not spent on duty'. But they have reinstated the original applicant on 21.9.95, the previous period cannot be treated as period 'not spent on duty' in terms of the clear decision of the Government as contained in para 3(ii) of Order No.4, which regulates the pay ~~x~~ on reinstatement on grounds of equity or court judgement etc. Since he was reinstated ~~consequent~~ consequent to orders of the Tribunal in OA 111/93 on 21.9.95, the full pay and allowances become payable w.e.f. 1.9.92 to 20.9.95.




8. In the backdrop of the circumstances as discussed above, we allow this OA partly. While we do not find any reason to interfere with the order of compulsory retirement, we direct the respondents to pay to the legal heirs of Late Shri Vishnu Kumar Sharma, the original applicant, full pay and allowances from 1.9.92 to 21.9.95 when the original applicant was taken back on duty by treating this period as duty for all purposes. The

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applicant is also entitled to all consequential benefits as a result of this order, which the respondents shall comply with within a period of three months from the date of this order. No order as to costs.




(A.P. NAGRATH)
MEMBER (A)


(JUSTICE O.P. GARG)
VICE CHAIRMAN

12/1/7
1/12/76
J. J. J.

R/Copy
34/3
B. J.
H. J.

Part II and III destroyed
in my presence on 3-7-07
under the supervision of
section officer [signature] as per
order dated 11-15-07
Section officer (Recd)