

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 467/2013

Jodhpur, this the 17th day of November, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

LRs of Late Rejendra Kumar:-

1. Smt. Mohini w/o Late Shri Rajendra Kumar aged about 55 years, Resident of KA-65, Santoshpura, Massuria, Jodhpur (Raj.).
2. Ajay Kumar s/o Late Shri Rajendra Kumar aged about 24 years, Resident of KA-65, Santoshpura, Massuria, Jodhpur (Raj.)

.....Applicants

By Advocate: Mr. Anirudh Purohit on behalf of Mr. Poonam Chand Purohit

Versus

1. The Union of India through General Manager, North Western Railway, Head Quarter Office, Jaipur
2. The Divisional Railway Manager, North Western Railway, D.R.M. Office, Jodhpur.
3. The Chief Medical Superintendent, North Western Railway, Jodhpur
4. Senior Divisional Medical Officer, North Western Railway, Jodhpur.

.....Respondents

By Advocate : Dr. Vinay Chhipa

ORDER

Per Justice K.C. Joshi, Member (J)

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (a) By an appropriate order or direction, the impugned order dated 23.8.2012 (Annexure A/1) and 19.8.2013 (Annexure-A/2) may kindly be quashed and set aside and respondent department may kindly be directed to reinstate the applicant by revoking the orders of suspension as aforesaid and further be directed to provide all the arrears of service benefits along with simple interest @ 9% per annum with all consequential benefits.
- (b) Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.



(c) The cost of the O.A. may kindly be awarded in favour of the applicant.

(d) That the period rendered under illegal suspension may be reckoned as on duty.

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially employed on temporary basis on compassionate grounds as Hospital Helper vide order dated 19.07.1984. Thereafter he was promoted as Ambulance Driver in the pay scale of Rs. 950-1500. The services of the applicant were transferred from Railway Hospital to Health Centre, Bhagat Ki Kothi. He was declared successful in trade test and was accordingly promoted Ambulance Driver vide order dated 27.7.2000 in the pay scale of Rs. 4000-6000. The applicant requested for 20 days L.A.P. for domestic work which was sanctioned and accordingly he went to Ahmedabad where he fell sick and returned back to Jodhpur on 15.7.2012. In Jodhpur his conditions deteriorated and he was diagnosed with enteric fever and was advised to complete bed rest. After undergoing treatment, he was declared fit to resume duty from 27.8.2012. The applicant has further stated that while he was undergoing treatment, on 8.8.2012 one Shri Rajesh Chaudhary lodged FIR No.257/2012 at Mahamandir Police Station which contains offences u/s 420,467,468,471,120-B of Indian Penal Code. Pursuant to the FIR, the applicant was arrested on 27.8.2012 and was committed to jail on 3.9.2012. Thereafter he was released on bail vide order dated 1.3.2013. After release from jail, he requested the respondents to allow to resume duty, but it was informed that he is deemed to have been suspended w.e.f. 23.8.2012. Thereafter, the applicant filed representation dated 23.3.2013 to the respondent department appraising the factual aspects, but the respondents have not acted on the representation of the applicant. The respondent No.4 issued a corrigendum dated 19.8.2013 whereby the order dated 23.8.2012 was amended and the applicant was issued a fresh Standard Form-2 wherein the applicant was placed under deemed suspension w.e.f. 27.8.2012. Being aggrieved with the order dated 23.8.2012 (Ann.A/1) and corrigendum dated 19.8.2013 (Ann.A/2), the applicant has filed this OA praying for the reliefs as extracted above.

3. The respondents have filed reply to the OA and submitted that the applicant requested for 20 days L.A.P. for his daughter's treatment out of Jodhpur and the same was sanctioned but in the present OA, the applicant has mentioned that he went to Ahmedabad for domestic work, which is contradictory to his leave application. It is also denied that the applicant has submitted medical certificate on 15.7.2012 whereas the true fact is that the medical certificate dated 15.7.2012 was presented first time by the applicant on 23.3.2013 after enlarging on bail by the Hon'ble High Court. The respondents have further submitted that the applicant was sanctioned leave from 25.6.2012 to 14.7.2012 and thereafter he remained unauthorizedly absent from duty w.e.f. 15.7.2012 and then arrested on 27.8.2012 and was sent to judicial custody on 3.9.2012. The applicant presented himself at Railway Hospital, Jodhpur on 23.3.2013 along with the medical certificate of a private medical practitioner covering period from 15.7.2012 to 26.8.2012 and requested for taking back him on duty, but looking to the seriousness of charges leveled against him, the administration decided to remain place the applicant under suspension, therefore, the applicant is not taken back on duty, however, he is getting subsistence allowance. The respondents have further submitted that respondent No.4 i.e. Senior Divisional Medical Officer is competent to suspend the applicant as per Schedule-II appended with the Rules of 1968. From perusal of the Sl.No.4 of the Schedule-II, it is ex-facie clear that the Junior Administrative Grade Officer and Senior Scale Officers holding independent Charge or in-charge of a Department in the division is empowered to place a Railway servant under suspension and may suspend any employee, who is running in the classes of non-gazetted staff, therefore, it is ex-facie clear that the answering respondent No.4 is competent enough to suspend the applicant and action of the respondents is just legal and in consonance with law.

4. Heard both the parties. Counsel for the applicant contended that the suspension order is passed by an authority, who is not competent authority to pass the

suspension order. Counsel for the applicant further contended that neither any chargesheet has been filed in the pending criminal case till date nor any disciplinary proceedings have been initiated against the applicant by the respondent department and the applicant is unduly facing the prolonged illegal suspension by the arbitrary action of the respondents. The counsel for the applicant further contended that the suspension of the applicant has not been periodically reviewed by the competent authority under the Railway Servants (Discipline and Appeal) Rules, 1968 which categorically provides that an order of suspension made or deemed to have been made under the Rules of 1968 shall not be valid after a period of 90 days unless the same is extended in the manner provided in Rule 5(7) of the Rules of 1968 and subsequent review and extension could not revive the order of suspension.

5. Per contra, counsel for the respondent has denied the contentions put forth by the counsel for the applicant and contended that serious charges are leveled against the applicant and he remained behind the bars for near about 6 months and looking to the seriousness and gravity of the charges on the applicant, the applicant is rightly placed under suspension and the orders are passed in consonance with the law and there is nothing illegal and the same are liable to be maintained.

6. Considered the rival contention of both the parties. From perusal of record it is evident that the applicant was deemed to have been suspended initially w.e.f. 23.8.2012 vide Ann.A/1 and thereafter as per corrigendum dated 19.8.2013 (Ann.A/2), he was deemed to have been suspended w.e.f. 27.8.2012. Further, vide order dated 1.4.2014 (Ann.R/2) the suspension of the applicant was extended upto 30.6.2014. The provision of Rule 5(6) of the RS (D&A) Rules, 1968 provides that - notwithstanding anything contained in sub-rule 5, an order of suspension made or deemed to have been made under sub-rule (1) or sub-rule (2) of this rule shall not be valid after a period of ninety days unless it is extended after review in the manner provided in sub-rule (7) of this rule, for further period before expiry of ninety days. In

the instant case, the respondents have extended the period of suspension vide order dated 1.4.2014, which is beyond the period of 90 days and thus not valid. Therefore, the order extending or reviewing the period of suspension cannot be said to be valid in the eyes of law.

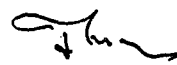
7. Accordingly, the order dated 1.4.2014 (Ann.R/2) is quashed and the applicant who was suspended from 27.8.2012 is entitled to be reinstated in service after expiry of 90 days from the date of suspension with all consequential benefits as per rules. However, the respondents are free to proceed on other aspect of the case in accordance with the law.

8. Since the applicant has expired, the LRs of the deceased employee would be entitled to get the benefits.

9. The OA stands disposed of accordingly with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

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