CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 524 of 2005

Friday, this the 12th day of January, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P. Velayudhan,
S/o. Sankaran,
Postal Assistant,
Chungathara Post Office,
Chungathara : 679 334,
Malappuram District,
Residing at Poovathungal House,
Chungathara : 679 334. ... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Union of India, represented by
The Secretary, Ministry of Communications,
Department of Posts, New Delhi.

2. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram : 33

3. Post Master General,
Northern Region, Kozhikode – 673 011

4. Director of Postal Services,
Northern Region,
Kozhikode : 673 011 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The Original Application having been heard on 5.1.2007, this Tribunal on 12.1.07 delivered the following :

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This case has a chequered history. Initial suspension of the applicant took place in August 1982 on a contemplated disciplinary proceedings, which culminated into penalty of dismissal from service by August, 1984. Appeal against the same having been dismissed the applicant approached the Hon'ble High Court against the order of dismissal and appellate order by way of a writ petition No. 2861/95. The said writ petition was transferred to the C.A.T., and the same (TA No. 472/87) was disposed of by Annexure A-2 order dated 31-01-1989 with the following order:-

> "4. In the conspectus of facts and circumstances, we allow the petition, set aside the impugned order of dismissal dated 14.8.84 (Ext.P1) and the Appellate Order dated 28.11.84 at Ext. P3 and direct that the Disciplinary Authority should pass final orders on the Enquiry Report and give his findings after getting the comments of the petitioner thereon. The petitioner is directed to give his comments on the Enquiry Officer's report to the Disciplinary Authority within a period of one month from the date of communication of this order and the Disciplinary Authority should pass final orders after taking into account petitioner's comments within a period of two months from the date of receipt of the comments. The respondents are also directed to reinstate the petitioner with effect from the date of his removal and place him under suspension from that date subject to the outcome of the disciplinary proceedings. There will be no order as to costs."

2. The authorities had, in pursuance of the above order, had reinstated the applicant, but suspended him and proceeded against him and passed an order of dismissal vide order dated 24-10-1989. However, on appeal, the

penalty of dismissal was modified into one of reduction to the grade of Group D. The said order also stipulated that the period of absence from the date of dismissal till reinstatement in the lower post shall be treated as "non-duty" for all purposes, vide Annexure A-3 order dated 22-10-1992. This order was the subject matter in OA 1172/93 filed by the applicant, which was allowed by the Tribunal and the appeal preferred by the applicant was directed to be re-considered by the appellate authority, vide Annexure A4 order dated 15-02-1994. On the dismissal of the appeal, the applicant moved the Tribunal by filing OA 1468/94, which was however dismissed with a liberty to the applicant to move a revision petition, vide order dated 04.11.1994. The revisional authority, while confirming the appellate order, directed that in so far as regularization of the period of suspension/absence, the applicant was entitled to a notice and on his making the representation, the same be considered by the competent authority. Order dated 26-10-1995 at Annexure A-6 refers. In compliance with the same the authorities had issued show cause notice (Annexure A-7) and on the representation (Annexure A-8) made by the applicant the same was disposed of by the authority by Annexure A-9 order in which a part of the period was to be counted for purpose of pension. This was challenged in departmental appeal and the appellate authority had quashed the said order and directed the authority concerned to permit the applicant to make representation and the same having been made by the applicant, vide Annexure A-11, by Annexure A-12 order, the authorities had treated some portion of the period of absence

as of leave admissible and the rest as non duty, not to be counted for any purpose. Once again, the applicant preferred appeal and the same was disposed of with direction to the respondents to give notice to the applicant in respect of treatment of the period of absence and extent of pay and allowance. This having been processed, Annexure A-1 order restricting the extent of pay and allowance to the minimum (subsistence allowance) and declaring that the period of suspension/absence shall not count for any purposes came to be passed, against which the applicant preferred Annexure A-17 appeal, which was rejected vide Annexure A-18 order. It is against the Annexure A-1 and A-18 order that the applicant has come up before this Tribunal.

3. Respondents have contested the OA and according to them none of the grounds raised in the OA is tenable.

4. Counsel for the applicant submitted that when the Court ordered reinstatement and then pass order of suspension, vide Annexure A-2 order, the case of the applicant cannot be treated as one of deemed suspension. And in accordance with the provisions of OM dated 30-05-1962 (extracted elsewhere below), where there is no deemed suspension, full pay and allowance is admissible. The counsel also argued that Rule 10(4) of the CCS (CC&A) Rules is applicable where the decision to hold further inquiry is by the administrative authorities and here, such a decision was only by the Court,

vide Annexure A-2 order and thus, provisions of Rule 10(4) of the CCS (CC&A) Rules cannot be applied. It has also been argued that the impugned orders suffer from complete non application of mind and as such, on the ratio in the decisions of R.P. Bhatt and Ram Chander, the orders are liable to be quashed and set aside. Lastly it has also been argued that in any event, when at one particular juncture, the authorities had held certain portion of the period in question to be treated as duty for the purpose of pension, even this limited concession had been taken away by the authorities by the impugned order.

5. The counsel for the respondents has, referring to para 11 of the counter, submitted that the entire action taken by the authorities was well within the provisions of rules and as such, the impugned orders deserve only to be upheld and the OA is liable to be dismissed.

6. Arguments were heard and documents perused. First a look at the relevant rules applicable to the facts of the case.

Vide F.R. 54, the same reads as under:-

> *54. (1) When a government servant who has been dismissed, removed, or compulsorily retired is reinstated as a result of appeal or review or would have been reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order the reinstatement shall consider and make a specific order*
>
> *(a) regarding the pay and allowances to be paid to the*

government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, prior to such dismissal, removal or compulsory retirement, as the case may be.

(3) In other case, the government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall, subject to the provisions of sub rule (7) be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be as a period spent on duty, for all purposes.

(4) In cases other than those covered by sub rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of con-compliance with the requirements of Clauses (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held), the government servant shall, subject to the provisions of sub rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory

retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in n o case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so far any specified purpose.

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be shall be converted into leave of any kind due and admissible to the Government servant.

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Vide rule 10 of the CCS (CC&A) Rules, the same reads as under:-

10. Suspension.(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a government servant under suspension

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was

made.

(2) A government servant shall be deemed to have been placed under suspension by an order of appointing authority

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation. The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government 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 a 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 government servant shall be deemed to have been placed under suspension by the appointing 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 further 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.

(5)(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is

modified or revoked by the authority competent to do so.

(b) Where a government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

7. Various sub Rules contemplate different situations and it is therefore, essential to know which of the sub rule would apply to the facts of this case.

Rule 10(1) relates to suspension by the competent authority.

Rule 10(2) relates to deemed suspension i.e., there is no need to pass separate order of suspension by the competent authority. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. No exception is made relating to an order under Rules 10(2) (***Union of India v. Rajiv Kumar,(2003) 6 SCC 516,***)

Rule 10(3) meets with a situation that an employee was initially kept under suspension, proceeded departmentally, dismissed or removed or compulsorily retired from service as a measure of penalty, and such an order on appeal or revision/review had been is set aside and the

matter remitted back to the disciplinary authority by such appellate or Revisional/reviewing authority for further inquiry or action. In that event, the initial suspension is deemed to have continued further. In Nelson Motis vs Union of India (1992) 4 SCC 717, the Apex Court has held, *"Sub-rule (3) is attracted only to those cases of dismissal etc. where the penalty is set aside under the CCS (CCA) Rules, and the case is remitted for further inquiry or action in accordance with the direction. The application is, therefore, confined to cases where the penalty is set aside by the appellate authority while hearing a regular appeal under Rule 27 or by the President exercising the power of revision under Rule 29 or of review under Rule 29-A. On all such occasions a reconsideration of the merit of the charge is involved. The grounds mentioned in Rule 27 (2) permit the appellate authority to re-appraise the evidence on the record for examining whether the findings recorded by the disciplinary authority are warranted by such evidence. So far non-compliance of a procedural rule is concerned, the appellate authority is enjoined, by clause (a) of Rule 27 to consider whether such non-compliance has resulted in the failure of justice or in the violation of any constitutional provision, before interfering with the punishment. In view of its sub-rule (3), the same consideration arises under Rule 29. Similarly, the provisions of Rule 29-A indicate that the power to review can be exercised by the President only on discovery of such new evidence which has the effect of changing the very nature of the case. Sub-rule (3) of Rule 10 is applicable to these groups of cases, where the interference with the penalty is connected with the merits of the charge against the government servant. On the setting aside of the order of punishment in such a case, the finding against the government servant disappears and he is restored to the earlier position. Consequently only if he was under suspension earlier, he will be deemed to have continued so*

with effect from the date of the order of dismissal.

For application of Rule 10(4), there are three requirements for the application of Rule 10(4); (*i*) the government servant is dismissed, removed or compulsorily retired as a measure of penalty; (*ii*) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a court of law; (*iii*) the disciplinary authority, decides to hold a further inquiry against the government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders. (***Mahender Singh v. Union of India, 1991 Supp (2) SCC 127***) In Nelson Motis (*supra)* the Apex Court has held, *"Sub-rule (4) governs only such cases where there is an interference by a court of law purely on technical grounds without going into the merits of the case. In cases governed by the CCS (CCA) Rules, a court of law does not proceed to examine the correctness of the findings of the disciplinary authority by a reconsideration of the evidence. Unless some error of law or of principle is discovered, a court of law does not ordinarily substitute its own views on the evidence. But the matter does not end there. The scope of the sub-rule, for the purpose of automatic suspension has been further limited by the proviso as mentioned earlier in paragraph 6, which reads as follows:*

"Provided that no such further 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".

Rule 10(5) (a) stipulates that an order of suspension u/r 10(1) or deemed suspension u/r 10(2) or (3) or (4) shall continue to remain in force until it is modified or revoked by the competent authority. (See ***Union of India v. Rajiv Kumar,(supra))*** Rule 10(5)(b) re;ates to a situation when there be concurrent suspensions on two independent proceedings. Rule 10(5)(c) empowers the competent authority to modify or revoke the order of suspension.

Rule 10(6) is recently introduced, mandating the competent authority to have the order of suspension reviewed on the recommendation of the Review Committee constituted for the purpose before the expiry of ninety days and in case of extension of suspension, the same shall not be exceed 180 days at a time.

Rule 10(7) provides for automatic invalidation of an order of suspension (under Sub Rule 1) or deemed suspension (under Sub Rule 2) beyond 90 days unless it is extended after review for a further period before the expiry of 90 days.

Chapter III (Rules 52 to 55) of the Fundamental Rules deals with dismissal, removal and suspension. Rule 52 disentitles a government servant of pay and allowance on his dismissal or removal from service from date date of such dismissal or removal. Rule 53 deals with the entitlement in respect of a government servant who is placed under suspension. Rule 55 stipulates that no leave is admissible while a government servant is under suspension.

As regards Rule F.R. 54, 54-A and 54B, these relate to the extent of entitlement of pay and allowances of a government servant dismissed or removed or compulsorily retired from service as matter of penalty,

on being reinstated into service in respect of the period he was kept away from office due to such penalty order and the manner in which the period of absence prior to reinstatement has to be treated and each one deals with different situations.

Rule 54 deals with a situation when after dismissal/removal or compulsory retirement as a measure of penalty, the Government servant has been reinstated **"as a result of appeal or review".** This has close nexus with 10(3) of CCS (CC&A) Rules, 1965. The reinstatement could be either after complete exoneration or would have been for on certain technical ground. FR 54(2) takes care of the former situation (i.e. full exoneration, and obviously on merits) in which event, the initial suspension would have to be treated as fully unjustified and dismissal/removal/compulsory retirement was also not called for. In that event the Government servant would be entitled to his full pay and allowances etc., as if he had not been out of service at all. The only rider is given in proviso to rule 54(2) is that in case any delay in the proceedings be attributable to the government servant, for the period of such delay, the authorities could pass orders for payment as pay and allowance, of such amount (not being the whole of such pay and allowances) as the authorities may decide. In case the reinstatement be on technical grounds also, the Government servant is not entitled to full pay and allowances for the period he was under suspension or out of service and before passing such orders, notice should be given to the Government servant, vide F.R. 54(4). For cases falling under 54(2), the period of absence from duty including the period of suspension preceding dismissal etc., would be treated as period spent on duty for all purposes, while cases covered under 54(4), such a period would, unless directed by a specific order otherwise, would be treated as period spent on duty. Liberty is

available to the Government servant to have this period of absence converted into leave of any kind due and admissible to him, vide proviso to Rule 54(4).

FR 54A deals with a situation, where the dismissal or removal or compulsory retirement of a Government servant has been set aside by a court of law and reinstatement takes place, and provides for as to how to treat the period of absence, including the period of suspension prior to dismissal etc., FR 54(3) deals with the case where the order of the Court is on the basis of the merit of the case in which event, the period of absence etc., shall be treated as duty for all purpose and there cannot be any truncation in the pay and allowances. FR 54(2) however, deals with a situation when such reinstatement is in the wake of an order of the Court of Law, whereby the penalty order had been set aside on technical point. In that case, the extent of pay and allowance cannot be full but as specified by the competent authority and the period of absence and period of suspension preceding such absence shall be regularized as contained in Rule 54(5) referred to in preceding para.

Rule 54-B deals with the case as to how to treat the period of suspension when suspension is wholly unjustified or otherwise.

8. In addition to the above statutory provisions certain Government of India instructions also are relevant. Vide G.O.I. Instructions No. (4) under Rule 54, the same is as under:-

"(4) Regulation of pay on retirement on grounds of equity or Court judgement, etc.- The following questions in connection with the reinstatement of dismissed/removed/discharged

Government servants or the Government servants whose service had been terminated, came up for consideration:-

(1) xxxxxxx xxxxxxx xxxxxxx

(2) 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.

2. xxxxxx xxxxxx xxxxxx xxxxxx

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 made without following the procedure required under Article 311 of the Constitution. In such cases-

(i) xxxxxxx xxxxxxx xxxxxxx xxxxxxx

(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 where the reinstated Government servant has secured employment during any period between the dismissal/removal/discharge/termination and reinstatement, the pay and allowances admissible to him after reinstatement for the intervening period shall be reduced by the emoluments earned by him during such employment if such pay and allowances exceed such emoluments. If the pay and allowances admissible to him are equal to or less than the emoluments earned by him nothing shall be paid to him.

Provided that the amount to be paid under (i) and (ii) above will be determined subject to the directions, if any, in the decree of the Court regarding arrears of salary.

4. xxxxxx xxxxxx xxxxxx xxxxx

5. xxxxxx xxxxxx xxxxxx xxxxx

[G.I., M.H.A. No., O.M.No.F.2/9/59-Ests.(A), dated the 27th May, 1961 and the 30th May, 1962.] "

9. The argument of the counsel for the applicant is that if the Government servant is not "deemed to have been under suspension" payment of full pay and allowances for the intervening period and treatment of that period as of duty for all purposes will be automatic, compulsory and inevitable. According to the counsel, in the instant case, the applicant was first to be reinstated and then only suspended as per the order dated 31.01.1989 of this Tribunal (Annexure A-2) and the said order was implemented and hence, there is no 'deemed suspension' and therefore, the applicant is entitled to full pay and allowance and the period of suspension and absence should be treated as duty for all purposes. To substantiate his contention, counsel for the applicant has referred to Rule 10(4) of CCS (CC&A) Rules wherein reference is available with regard to the situation of deemed suspension and the same is when reinstatement is in pursuance of a Court order would and when it is the Disciplinary authority which decides to hold a further inquiry and not when the Court itself orders. This argument is far fetched. Decision to hold further inquiry in such case by the Disciplinary authority could be possible when the Court has passed an order purely on technical grounds without going into the merit of the case. Thus, what is relevant and significant is whether the Tribunal had earlier gone into merit of the case and upset the order of dismissal on merit or the quashing and setting aside the penalty order was purely on technical point. There can be no distinction between a case where further inquiry is as per decision of

the Disciplinary authority and the other where such further inquiry is as per the direction of the Court. Though under Rule 10(4) there is no reference as to initiation of further inquiry on the decision of the Court, the principle as contained in Rule 10(4) can easily be adopted. (See ***Maimoona Khatun v. State of U.P., (1980) 3 SCC 578,*** **at page 583 which dealt with a similar situation in respect of applicability of the provisions of F.R. 54)** Payment of full pay and allowance is the logical corollary where reinstatement is on complete exoneration or honourable exoneration and where the setting aside of the order of dismissal is otherwise, payment would be only upto such proportion of such pay and allowances as the revising or Appellate Authority may prescribe. This view has been taken by the Apex Court in the case of ***B.D. Gupta v. State of Haryana, (1973) 3 SCC 149,*** wherein it has been held that "*This Court held that clause (b) of the Fundamental Rule 54 would be applicable* ***in all cases where the officer concerned is not honourably acquitted.***" (emphasis supplied)

10. Counsel for the applicant argued that there is no application of mind by the authority concerned while passing the impugned Annexure A-1 and A-18 orders. According to the counsel there is no inkling of consideration of various points contained in the representation/appeal. Since order determining pay and allowance for the period of suspension or for the period from the date of dismissal, removal or compulsory retirement from service is an appealable order vide Rule 23(v)(e) of the CCS (CC&A) Rules, 1965, the

appellate authority is expected to deal with each and every point raised in the appeal. And, failure to so consider would vitiate the appellate order as laid down in the case of -

(a) R.P. Bhatt vs Union of India (1986) 2 SCC 651..

(b) Ram Chander vs Union of India (1986) 3 SCC 103

In the latter case, the Apex Court, referring to the former, has held as under:-

*"**4.** The duty to give reasons is an incident of the judicial process. So, in R.P. Bhatt v. Union of India this Court, in somewhat similar circumstances, interpreting Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which provision is in pari materia with Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, observed: (SCC p. 654, para 4)*

It is clear upon the terms of Rule 27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same.

It was held that the word consider in Rule 27(2) of the Rules implied due application of mind. The Court emphasized that the appellate authority discharging quasi-judicial functions in accordance with natural justice must give reasons for its decision. There was in that case, as here, no indication in the impugned order that the Director General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms:

(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules. 1968, the Railway Board have carefully

considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under:

(a) by the evidence on record, the findings of the disciplinary authority are warranted; and

(b) the penalty of removal from service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you.

***5.** To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."*

11. In a very recent judgment of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713,*** the Apex Court had occasion to refer to the case of R.P. Bhatt and held as under:-

31. We may for the aforementioned purpose take note of the extant rules operating in the field. Requirements of consideration in an appeal from an order of the disciplinary authority by the Appellate Authority is contained in Rule 37 whereas the provisions as regards filing of a memorial are contained in Rule 40 thereof, which read as under:

37. Consideration of appeals.(1) In case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 20 and having regard to the circumstances of the case the order of suspension

is justified or not and confirm or revoke the other accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 23, the Appellate Authority shall consider:

(a) whether the procedure prescribed in these Rules has been complied with and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders:

I. setting aside, reducing, confirming or enhancing the penalty; or

II. remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

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40. Memorial. An employee whose appeal under these Rules has been rejected by the Chairman/Chairman-cum-Managing Director or in whose case such Appellate Authority has enhanced the penalty either on appeal under Rule 24 or on review under Rule 39(2) may address a memorial to the Chairman/Chairman-cum-Managing Director in respect of that matter within a period of 6 months from the date the appellant received a copy of the order of such Appellate Authority.

32. The Appellate Authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter partes was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the civil court. But, it did not apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his

part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

38. In para 13 of the memorial the appellant at the first opportunity raised a contention that the order of the Appellate Authority was not a speaking order at all, besides drawing the attention of the Chairman-cum-Managing Director to the subsequent event namely the judgment and decree passed by the civil court. The said authority again did not apply its mind while passing his order dated 31-3-1981. When such a contention was raised, it was obligatory on the part of the Chairman-cum-Managing Director while exercising its statutory jurisdiction to show that he had applied his mind to the contentions raised. Such application of mind on his part is not apparent from the order. The departmental proceedings are quasi-criminal in nature.

12. Now what is to be seen is whether the case of the applicant could get the support of the afore-cited decisions. While the decision in the case of Narinder Mohan Arya contained ad-verbum repetition of the order of the Managing director in response to the memorial, the decision does not contain the order of the appellate authority. The order of the Chairman and Managing Director, which was set aside on the ground that the said order does not reflect application of mind reads as under:-

> "I have considered the memorial dated 15-11-1980 submitted by Shri N.M. Arya against Order No. NRO: PER:80:3287 dated 29-9-1980 of the Appellate Authority, rejecting his appeal and confirming the penalty of removal from service.
>
> I have also considered the enquiry proceedings and the relevant records.
>
> I do not find any reason to interfere with the order of the Appellate Authority and the competent authority. The memorial is rejected."

13. The above order certainly does not mention as to what are the

contents of the memorial. Grounds as might have been contained in the memorial have not been itemized. Even without a look at the memorial, the above order could be passed. It was on account of the same that the Apex Court had held that application of mind is not apparent from the order. In contra distinction to the above in the case of the applicant, a perusal of the impugned Annexure A-1 and A-18 orders would go to show that both the impugned orders do contain summary of the contentions of the applicant in the representation/appeal. Significantly, the authorities have not simply (and mechanically) reproduced the representation/appeal but have certainly congealed the crux of various grounds which cannot be possible save when they have studied the representation and appeal as the case may be and understood the same and thus, the manner of reflection of the contentions contained in the representation or appeal in the respective orders clearly goes to confirm that there has been full application of mind even while extracting the points raised by the applicant and while considering the same before arriving at the decision which is evident from the words used, "gone through the representation" in Annexure A-1 order and "gone through the petition" in Annexure A-18 order. Thus, the contention of the counsel for the applicant that there has been no application of mind cannot but have to be rejected. This vital difference makes the case laws relied upon by the applicant's counsel as of any assistance to the applicant.

14. The learned counsel for the applicant argued that when Annexure A-9

order dated 18-03-1996 passed by the Director of Postal Services that the period from 15-11-1989 to 26-11-1992 be treated as period not spent on duty for any purpose except pension, even that little benefit has been taken away as per the impugned order, and hence the impugned orders are illegal. Records show that the earlier order dated 18-03-1996 was quashed and fresh representation was allowed to be made, and on the same, the authorities have passed Annexure A-12 order dated 08-05-1998 whereby certain period had been treated as leave admissible and remaining period treated as non duty. This order dated 08.05.1998 also stood quashed by Annexure A-14 order, with a direction to the competent authority to issue a fresh show cause which was issued vide Annexure A-15 order dated 18-05-1989. In response to the same, Annexure A-16 representation was made by the applicant and it was in response to the same that Annexure A-1 order was passed. And on appeal, the same was confirmed by Appellate authority, vide impugned Annexure A-18 order. How to treat the period of suspension and period of absence is a matter of discretion. Save when there is a complete exoneration or when suspension was totally unjustified, in so far as treatment of the period is concerned, the same is left to the authorities to decide. There is no compulsion that there must be a specific order in this regard. In fact, one of the GOI instructions under Rule 54 (OM dated 25-05-1962 and 09.08.1962 read with FR 54, 54-A and 54 B) provides that in the absence of specific order as to how to treat the period of suspension/absence, such a period has to be treated as non-duty only. In

the instant case, the impugned Annexure A-1 order does contain specifically that the period cannot be treated as duty for any purpose. The appellate authority had considered the appeal against the said stipulation but was disinclined to modify the same. Thus, the decision by the appellate authority also cannot be faulted with.

15. In view of the above, the OA fails and is dismissed but with no orders as to costs.

(Dated, the 12th January, 2007)

N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.