

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.57/96

Friday, this the 19th day of December, 1997.

C O R A M

HON'BLE SHRI SK GHOSAL, ADMINISTRATIVE MEMBER

....

R Narayanasamy,
Retired Khalasi Helper,
Diesel Shed/Southern Railway,
Erode.

Residing at:
c/o Anwer Welding Works,
PN Road, Tiruppur--2.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through
the General Manager,
Southern Railway,
Park Town PO, Madras--3.
2. The Chief Personnel Officer,
Southern Railway,
Park Town PO, Madras--3.
3. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
4. Senior Divisional Mechanical Engineer,
Diesel Shed, Southern Railway,
Erode.
5. Divisional Mechanical Engineer,
Southern Railway, Erode.
6. Divisional Personnel Officer,
Southern Railway, Palghat.

....Respondents

By Advocate Smt Sumathi Dandapani.

The application having been heard on 4th December, 1997,
the Tribunal delivered the following on 19th December, 97:

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This Original Application was heard finally by ^{The} Single
Member Bench on 4.12.97 by agreement of the parties to the

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proceedings.

2. The relevant facts of the case can be briefly summarised as follows.

3. The applicant in this case retired on 31.5.95 as a Khalasi Helper, Diesel Shed, Southern Railway, Erode. He was initially appointed as a Khalasi under the Railways on 6.12.58.

4. On allegation of unauthorised absence for a number of days, the applicant was removed from service with effect from 5.7.74. His appeal against the order of removal from service was turned down by the appellate authority. He then filed OP No.2694/78-D before the Hon'ble High Court of Kerala. This was disposed of by the Hon'ble High Court (Single Bench) quashing the order passed by the appellate authority on the ground of non-service of second show cause notice and the appellate authority was directed to consider the appeal afresh. That order was taken up in appeal in WA No.319 of 1982 in OP No.2694/78-D. In the judgement dated 13.9.82, the Division Bench of the Hon'ble High Court set aside the order of removal from service as well as the appellate order and the authorities were directed to proceed afresh with the departmental inquiry from the stage of issue of the second show cause notice.

5. On resumption of the departmental proceedings, the applicant⁴⁹ thereafter⁴⁹ was deemed to have been placed under suspension with effect from 5.7.74, i.e. from the date of his initial removal from service, by the order dated 23.5.83 issued by the fifth respondent. In terms of Rule 5 (4) of the Railway Servants (Discipline & Appeal) Rules, 1968 (Annexure A.4) the

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resumed disciplinary proceedings resulted in the issue of an order of removal of the applicant from service with effect from 29.8.85. Though an appeal was preferred against that order, it came to be rejected.

6. The applicant then approached this Bench in OA No.K.103/88 impugning the order of removal of the applicant from service as well as the appellate order rejecting his representation against that order. The Tribunal in its judgement in that OA dated 26.6.90 set aside the appellate order and remanded the matter to the appellate authority for a fresh consideration of all the connected matters including the matter of quantum of penalty.

7. However, the appellate authority rejected the request of the applicant which was filed in pursuance of the judgement. Against that appellate order dated 26.6.90, the applicant submitted a revision petition before the third respondent, i.e. the Divisional Railway Manager, Southern Railway, Palghat. That revisional authority finally passed an order imposing the minor penalty of reduction in stage in the scale of pay of Rs.750-940. He also ordered simultaneously the reinstatement of the applicant in service. The reduction in stage in the scale of pay was ordered to be effective for a period of three years, non-recurring and without any loss of seniority. In obedience to that order dated 31.10.90 at Annexure A.6, the applicant resumed duty with effect from 12.11.90 and continued as such till he retired on superannuation.

8. In Annexure A.6 order, the revisional authority recorded the following findings:-

"Though the Disciplinary Authority and the



Appellate Authority have come to the rightful conclusion in awarding the penalty of removal from service, in view of the fact that this offence was committed in 1971-73 and that the employee has already suffered a lot in the interregnum 1970-73 and has requested for clemency and in view of the observations of the Central Administrative Tribunal I take a lenient view on humanitarian grounds and order that Shri R Narayanaswamy be reinstated in service as a Khalasi fixing his pay at Rs.750/- in grade Rs.750-940 (under IV PC) for a period of 3 years NR without loss of seniority. The intervening period from the date of removal to the date of reinstatement is to be treated as period not spent on duty (Neither duty nor leave)."

(Emphasis supplied)

From the above extract of the relevant part of the order at Annexure A.6, it is clear that the intervening period from the earlier date of removal of the applicant from service to the date of his reinstatement was ordered to be treated as period not spent on duty. In fact, the follow up memorandum dated 18.12.90 issued by the sixth respondent at Annexure A.7 communicated the minor penalty imposed by the revisional authority and the finding that the period from the date of removal of the applicant from service, i.e. 20.9.85 till he resumed duty on reinstatement, i.e. 11.11.90 was treated as period not spent on duty. The applicant thereafter represented before the third respondent that the entire period from 5.4.74, i.e. when he was originally awarded the punishment of removal from service till 11.11.90, i.e. the day before he rejoined his duty on 12.10.90 after the issue of Annexure A.6 order, should be treated as on duty. This representation, which is at Annexure A.9 dated 15.1.91 specifically requested for a proper treatment under the relevant rules of the two periods, i.e.

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the period which was earlier declared as deemed suspension from 5.7.74 upto 20.9.85 and the period from 20.9.85, i.e. when he was again removed from service till 11.12.90, i.e. the day before he rejoined his duty on reinstatement on 12.11.90. He expressed his grievance that in the absence of a proper and adequate treatment of that total period from 5.7.74 to 12.11.90, he was suffering from loss of service of 16 years. Subsequently, he filed another representation before the Divisional Railway Manager, i.e. the third respondent, dated 10.1.95 requesting for a speedy action on his earlier application for treatment of the entire period from 5.7.74 to 12.11.90 as period spent on duty. He stated in that representation that he was due to retire on 31.5.95 and, therefore, expeditious action should be taken on his representation. This was followed up by the applicant with another detailed representation indicating the sequence of events and filed before the first respondent, i.e. the General Manager, Southern Railway, Chennai, dated 29.3.95, and reiterating that the entire intervening period between 5.7.74 to 11.11.90 should be treated as on duty. In that representation, the applicant also referred to the Railway Board's order NO.E (D&A)86 RG 6-19 dated 7.4.86 at Annexure A.8 incorporating the decision of the Government of India in the Department of Personnel & Training to the effect that where departmental proceedings against a suspended employee for the imposition of a major penalty would finally end with the imposition of a minor penalty, the suspension could be said to be wholly unjustified in terms of FR (54-B). Again on 25.5.95, the applicant made a further representation before the first respondent, which is found at Annexure A.12, requesting for the same relief.

9. In the OA, the provisions of Rule 1343 (FR 54) of the Indian Railway Establishment Code, Vol II has been cited in

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justification of the claim of the applicant that when a Railway servant who had earlier been removed from service is reinstated as a result of a review, the authority competent to order reinstatement shall make a specific order regarding (a) pay and allowances to be paid to the Railway servant for the period of his absence from duty including the period of suspension preceding his removal from service, and (b) whether or not the said period shall be treated as a period spent on duty (sub rule 1 of Rule 1343).

10. The applicant has further urged that in terms of provisions of Sub Rule 2 and Sub Rule 3 of the said Rule 1343, since the applicant should be deemed to have been fully exonerated in terms of Railway Board's order at Annexure A.8, the applicant is entitled to have the period of absence from duty including the period of suspension pending removal treated as a period spent on duty for all purposes.

11. In the alternative the learned counsel for the applicant has argued that if it is held that the applicant was not fully exonerated, then the period of absence before his reinstatement should be considered for payment of such amount to which the applicant would have been entitled had he not been removed from service or suspended prior to his removal from service as may be determined by the respondents after given him a notice of the quantum proposed to be paid to him and after considering the representation, if any, submitted by him in that connection. According to the applicant, no such proceedings under Rule 1343 and more specifically under Sub Rule 4 of that Rule have been conducted by the official respondents so far and, therefore, he feels aggrieved.

12. Finally, the applicant has impugned the order, called the Pension Calculation Sheet at Annexure A.13, which inter alia



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declares his qualifying service as only 18 years and 12 days and non-qualifying service as 18 years, 3 months and 14 days, including the period from 5.7.74 to 11.11.90 as a non-qualifying service. This pension calculation sheet is issued by sixth respondent bearing No.J/P 626/V/V 332/5/95 dated 17.5.95. It determines the quantum of pensionary benefits for the applicant based only on the qualifying service which has caused the grievance of the applicant.

13. The applicant has sought the following reliefs:-

"(a) Call for the records leading to the issue of Annexure A.13 and quash the same to the extent it treats the entire period from 5.7.74 to 11.11.90 as non-qualifying for pension;

(b) Declare that the applicant is eligible to have his period of service from 5.7.74 to 19.9.85 treated as duty for all purposes including pay and allowances, pension etc;

(c) Declare that the applicant is eligible to have the period from 20.9.85 to 11.11.90 treated as duty/qualifying for the purpose of pension, increment etc etc;

(d) Declare that the applicant is eligible for the payment of pay and allowances for the period from 20.9.85 to 11.11.90 as calculated as provided under sub rule (4) of Rule 1343 of the Indian Railway Establishment Code, Vol.II;

(e) Direct the respondents to grant the benefit of the declarations as prayed for under (b), (c) and (d) above forthwith; and

(f) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

14. The respondent Department, i.e. the Southern Railway, has opposed the grant of the above reliefs prayed for by the

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applicant. The main line of defence taken on behalf of the respondent Department is that the period from 5.7.74 to 11.11.90 was not treated as spent on duty and, therefore, it was counted as non-qualifying service for pensionary benefits along with other periods of non-qualifying service (Extra Ordinary leave, absence, etc). According to the official respondents, the applicant was placed under deemed suspension with effect from 5.7.74, i.e. the date of his removal from service in the first instance by Annexure A.4 order dated 23.5.83, when in compliance with the order passed by a Division Bench of the Hon'ble High Court of Kerala in Writ Appeal No.319/82 in OP No.2694/78(D) dated 13.9.82, the disciplinary proceedings were resumed. The resumed disciplinary proceedings again culminated in the award of punishment to the applicant of removal from service with effect from 20.9.85 vide Annexure A.5 order. In obedience of the subsequent order of the Tribunal in OA No.K 103/89 dated 23.3.90, the appellant, after being granted personal hearing, was again awarded the same penalty of removal from service under order No.J/M 226/XIV/DSL/DAR dated 26.6.90. Finally, the order of the Revisional Authority, i.e. the order at Annexure A.6 imposing a minor penalty of reduction in the scale of pay for a period of three years without loss of seniority was passed. It was ordered simultaneously there that the period from 20.9.85, i.e. from the time the appellant was removed from service on the second occasion by the order passed by the competent authority in departmental proceedings in compliance with the order of the Hon'ble High Court of Kerala, till the time that the applicant resumed his duty on reinstatement would be treated specifically as period not spent on duty.

15. The respondent Department has further stated that though finally no specific order was passed by the respondent Department

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concerning the earlier period from 5.4.74 to 17.9.85, subsequently in response to the applicant's representation, the matter was re-examined by the Revisional Authority, i.e. the third respondent, and it was decided to treat that period from 5.7.74 to 17.9.85 as deemed suspension. This order was communicated to the applicant through letter No.J/P 227 XIV/DSL/DAR/V 332 dated 29.1.96.

16. According to the respondent Department, the entire period from 5.7.74 to 11.11.90 has thus been treated adequately and properly by the respondent Department. The first part, i.e. the period from 5.7.74 to 19.9.85 has been treated as deemed suspension and the second part, i.e. the period from 20.9.85 to 11.11.90 has been treated as period not spent on duty.

17. On behalf of the respondent Department, it has also been clarified that when the penalty of reduction to a lower stage in the time scale of pay for a specific period was imposed on the applicant, that penalty was prescribed under the relevant conduct rules as a major penalty. It was only after the said penalty was imposed on the applicant on 31.10.90 that under the Railway Board's letter No.E(D&A)90 RG 6-112 dated 16.11.90 that the reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting pension was prescribed as a minor penalty. The respondent Department has also argued that the applicant cannot admittedly be treated as having been fully exonerated and, therefore, sub rules (2) and (3) of Rule 1343 (FR 54) are obviously not attracted in his case.

18. At the threshold, I must observe that the contentions made on behalf of the respondent Department on these two latter

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points in the preceding paragraph have not been denied on behalf of the applicant. I also find that there is considerable force behind these assertions made by the respondent Department.

19. Learned counsel for respondents has then specifically argued that sub rule (4) of Rule 1343 is not applicable in the case of the applicant. According to her only those 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 non-compliance with the requirements of Clause II of Article 311 of the Constitution and where no further inquiry is proposed to be held (special category) are covered under that sub rule. Consequently, it has been further contended that there is no requirement of paying an amount to be determined by the competent authority in the respondent Department to the applicant after giving notice to the applicant and after considering his representation, since his case does not come under the special category.

20. I feel it is necessary to quote the relevant provisions of Rule 1343 for a proper consideration of this case, since both sides have found these provisions as of critical importance for their respective cases.

"1343. (FR 54)--(1) When a railway servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order--

(a) regarding the pay and allowances to be paid

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to the railway 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;
and

(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 railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the railway 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 or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the railway servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall, subject to the provisions of sub rule (7), be paid for the period of such delay only such amount 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 treated 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

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dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the railway servant shall, subject to the provisions of sub rules (6) and (7), be paid such amount 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 railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed 60 days from the date on which the notice has been served as may be specified in the notice:

Provided that any payment under this sub rule to a railway servant (other than a railway servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936), shall be restricted to a period of three years immediately preceding the date on which orders for reinstatement of such railway servant are passed by the appellate authority or reviewing authority or immediately preceding the date of retirement on superannuation of such railway servant, as the case may be.

(Rly Board's letter No.F(E)III 68 SPN/3 dt 16.10.74)

(5) In a case falling under sub rule (4), the period of absence from duty including the period of suspension preceding the dismissal, removal or compulsory retirement, as the case may be,

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shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specific purpose; provided that if the railway 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 railway servant.

NOTE--The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary railway servant; and

(b) leave of any kind in excess of five years in the case of permanent railway servant.

(6) The payment of allowances under sub rule (2) or sub rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso of sub rule (2) or under sub rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 1342 (FR 53).

(8) Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are

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equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the railway servant."

(Emphasis supplied)

From a careful reading of the entire set of provisions of Rule 1343 quoted verbatim above and considering the facts of the case, it would appear that the respondent Department has complied generally with the requirements of sub rule 1(b) of Rule 1343. However, from the pleadings and the materials placed before me, it is clear that the decision to be taken in the light of sub rule 1(a) of Rule 1343 has not been taken yet by the respondent Department.

21. After considering in this context the arguments of the learned counsel for the applicant as well as the learned counsel for the respondent Department, I am not convinced that the requirement laid down by sub rule 1(a) of Rule 1343 has even indirectly been complied with. The respondent Department has doubtless passed orders under sub rule 1(b) of rule 1343, namely that one part of the period from 5.7.74 to 11.11.90 should be treated as period under deemed suspension and the other part as period spent not on duty. Even after passing these latter orders, it is still incumbent on the respondent Department to pass an order regarding pay and allowances to be paid to the applicant for that total period of his absence from duty, including the period of deemed suspension.

22. Further, I am unable to persuade myself to accept the interpretation given by the learned counsel for the respondent Department that rule 1343 deals with only those cases where the order of removal from service, which was passed in the case of the applicant, is set aside by the revisional authority solely on the ground of non-compliance with Article 311 of the Constitution and where no further inquiry is proposed to be held. Admittedly,



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the case of the applicant does not come under that category (which for convenience I have called 'Special Category' above). But the crucial question is whether sub rule (4) of Rule 1343 deals only with that Special Category of cases.

23. A plain reading of the provisions of sub rule (4) of Rule 1343 quoted above, clearly indicates that the Special Category of cases, i.e. where the order of removal from service is set aside by the revisional authority solely on the ground of non-compliance of Article 311 of the Constitution and where no further inquiry is proposed to be held is subsumed in a broader category of all kinds of cases under that sub rule, which excludes only those cases where authority competent to order reinstatement of a railway employee who had been earlier removed from service ultimately forms the opinion that the railway servant who had been removed from service or compulsorily retired has been fully exonerated. Therefore, sub rule (4) of Rule 1343 only exclude the cases which are covered under sub rule (2) of that Rule and includes all other cases including the special category of cases where the order of dismissal, removal or compulsory retirement from service is set aside by the reviewing authority solely on the ground of non-compliance of Article 311 of the Constitution and where also no further inquiry is proposed to be held. Any other construction of the provisions of sub rule (4) of Rule 1343 is evidently cannot be sustained as appropriate or warranted.

24. Further, under sub rule (5) of Rule 1343 quoted above, it is evidently permissible for the respondent Department to direct whether the period of absence of the applicant from 5.7.74 to 11.11.90 though declared as a period not spent on duty generally,



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should be treated or not treated as on duty for any particular purpose, like fixation of pensionary benefits. It seems to me that the respondent Department, in fairness to the applicant, should take up proceedings for ultimately issuing an appropriate direction also in this behalf.

25. In the light of the detailed discussion made above, the application is allowed and the revisional authority in the respondent Department, i.e. the first respondent, is directed to take action in the light of the provisions of sub rule 1(a), sub rule (4) and sub rule (5) of Rule 1343 of the Indian Railway Establishment Code, Vol II. The proceedings under these provisions shall be completed by the respondent Department within a period of six months from the date of receipt of a copy of this order by the first respondent, under intimation to the applicant.

26. There will be no order as to costs.

Dated the 19th December, 1997.


SK GHOSAL
ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.1316/95

Dated this the 21st day of October, 1997.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

P.K.Vasanthan,
Aslum Cottage,
Kannanchalvaram-670 594, Retired Telegraphist,
Central Telegraph Office, Kannur.

..Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Chief General Manager, Telecom,
Kerala Circle, Trivandrum.
2. The General Manager(Operations),
Kerala Telecommunications,
Trivandrum.
3. Union of India represented by Secretary
to Government, Ministry of Communications,
New Delhi.

(By Advocate mr.MHJ David J)

The Application having been heard on 25.9.97, the Tribunal
on 21.10.97 delivered the following:

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HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

When the applicant was working as a Telegraphist under the second respondent, he was removed from service with effect from 25.10.1982 by an order of the second respondent pursuant to an ex parte enquiry held against him for alleged misconduct of unauthorised absence from duty from 1.9.1979 to 1.10.1980. This order was challenged by the applicant in O.P.No.8422/82 before the High Court of Kerala. The O.P. was disposed of directing the applicant to file an appeal. The appeal filed by the applicant was dismissed and the Revision Petition filed against that also had the same result. The applicant then challenged

the orders of the Disciplinary, Appellate and Revisional Authorities in O.A.110/87. Before the Disciplinary Authority held the applicant guilty and imposed on him the penalty, he had not given the applicant a copy of the enquiry report and an opportunity to make representation against the finding of the enquiry officer. The Tribunal held that the failure on the part of the Disciplinary Authority to give the applicant a copy of the enquiry report and an opportunity to make a representation, amounted to denial of natural justice and violated the provisions of Article 311(2) of the Constitution and, therefore, set aside the penalty. However, it was observed that the order did not preclude the Disciplinary Authority from reviving the disciplinary proceedings from the stage of receipt of enquiry report and passing a fresh order after affording an opportunity to the applicant. It was further directed that as to how the period spent during the proceedings would be treated would depend on the decision of the respondents about continuing or dropping of the disciplinary proceedings. Thereafter, the applicant was reinstated in service by order dated 28.11.1989 of the Divisional Officer(Telegraphs), Calicut. Thereafter on 4.10.1990, a copy of the enquiry report was supplied to the applicant, giving him an opportunity to make his representation. He submitted his representation and was also given a personal hearing by the Disciplinary Authority. However, the Disciplinary Authority imposed on the applicant a penalty of compulsory retirement from service by order dated 30.8.1991. Thereafter the applicant was served with a memo dated 4.3.1992 directing him to show cause why the

period between 1.2.79 to 13.8.1981, 1.9.1981 to 22.9.1982 and 25.10.82 to 1.12.89, should not be treated as dies non. In his explanation (Annexure A6), he pleaded that the period of absence may be regularised by granting leave and the period between 25.10.1982 to 1.12.89 may be treated as duty for all purposes.

2. The first respondent vide his order dated 26.5.1992(Annexure-A7) ordered that the period between 26.10.82 and 30.11.89 shall not be treated as duty for any purpose. Aggrieved by this order, the applicant made a representation to the first respondent, pointing out that the period between 26.10.82 and 30.11.89 was not period of unauthorised absence, but the period between termination of service and reinstatement and that therefore, the period is liable to be treated as duty for all purposes. The applicant approached this Tribunal in O.A.1639/92 challenging the Annexure-A7 order seeking a declaration that the period between 26.10.82 and 30.11.89 is to be treated as duty for all purposes and for consequential directions to the respondents. During the pendency of the said Original Application, the second responden issued an order on 3.11.1992(Annexure-A9), ordering that the period between 26.10.82 and 30.11.89 shall be treated as duty for the limited purpose of pensionary benefits only. This order was again challenged by the applicant in O.A.No.1475/93 seeking a direction to the respondents to treat the period from 26.10.82 to 30.11.89 as duty and to pay him the arrears of pay and allowances as also to revise his retiral dues. The above said Original Application was disposed of by the Tribunal

by order dated 22nd March, 1994 directing the competent authority to pass an appropriate order regarding treatment of the period between 26.10.82 and 30.11.89, bearing in mind the provisions of Section 54-A(5) of the Fundamental Rules.

3. Pursuant to the above direction, the applicant was served with a notice (Annexure A11) proposing to treat the period between 25.10.1982 and 30.11.11989 as duty for the purpose of pensionary benefits only and to pay him only 50% of the pay and allowances for this period and directing the applicant to produce non-employment certificate. The applicant submitted Annexure A12 reply contending that he was entitled to get full pay and allowances for the period in question and the period has to be treated as duty for all purposes. He also produced a non-employment certificate. He reasserted his claim making Annexure-A13 representation to the first respondent. However the second respondent passed the impugned order at Annexure-A1 holding that the applicant would be entitled only to 50% of the pay and allowances for the period between 25.10.82 and 30.11.89 and that the said period would be treated as duty only for the purpose of pensionary benefits, though the non-employment certificate was accepted. The appeal filed against this order was dismissed by the 1st respondent by Annexure-A2 order. The applicant has, therefore, filed this application for having the impugned orders quashed, for a declaration that the applicant should be deemed to have continued in service during 25.10.82 and 30.11.89 and was entitled to full pay and allowances and for a direction to respondents to pay the applicant the arrears of pay and

allowances including increment with 18% per annum and to revise his pensionary benefits accordingly.

4. The respondents contest the application and have filed a detailed reply statement. They mainly contend that the applicant has been awarded a penalty of compulsory retirement and was not exonerated. It has also been contended as the applicant was abroad during the period in question, without verification of the Passport, which the applicant did not produce for verification, it is not possible to find that he was not profitably employed.

5. The only question that needs consideration is whether in the facts and circumstances of the case, the impugned orders limiting the back wages to 50% of the pay and allowances and treating the relevant period as duty only for the purpose of pension, is just and proper. Learned counsel of the applicant argued that as the Tribunal had in its judgment in O.A.1475/93 held that the only rule in F.R. that would govern the case was F.R.54(A)(2) which require the competent authority to determine the amount of back wages to be paid subject to the minimum subsistence allowance, it is not open to the respondent after accepting the non-employment certificate to deny to the applicant full back wages and limit it to 50% and to treat the period as not duty for any purpose. He has further argued that as the order of removal from service was set aside by judgment dated 27.9.1989, the period between 26.10.1982 and 30.11.1989 during which the applicant was kept out of service has to be regularised by deeming that the applicant continued in service, especially when no order was passed by the Disciplinary

Authority under Rule 10(4) of the C.C.S.(CCA) Rules and therefore the applicant is entitled to full pay and allowances with even increment for the period from 26.10.82 to 30.11.89. We are unable to agree with the argument of the learned counsel. As has been held by the Tribunal in its order in O.A.1475 of 1993, the provisions of the Fundamental Rules which govern the case are F.R.54 A(2) and F.R.54 A(5). The Tribunal had directed the competent authority to pass appropriate order according to the Rules within sixty days. Pursuant to the above direction, the Annexure-All notice was given and after considering the reply of the applicant, the impugned order Annexure A1 has been issued. The argument of the learned counsel that the applicant is entitled to full pay and allowances for the period is not sustainable as the relevant Rules specifically state that full pay and allowances would not be admissible. The applicant was not exonerated in the disciplinary proceedings but was found guilty and awarded a penalty of compulsory retirement. Rule 54-A read as follows:

"F.R.54-A.(1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule(2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause(1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to

the provisions of sub-rule (7) of Rule 54, 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 no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice:

(ii) 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, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, 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, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, 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.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal or to less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."

A mere reading of the above quoted provisions of the Fundamental Rules would clearly show that where the dismissal, removal or compulsory retirement is set aside

by the court solely on the ground of non-compliance with the requirements of clause (1) or clause(2) of Article 311 of the Constitution and where he is not exonerated on merits, the Government servant would not be entitled to full pay and allowances for the period between the dismissal, removal or compulsory retirement and reinstatement, but would be entitled to be paid the amount not being the whole of the pay and allowances, subject to the provisions of sub-rule (7) of Rule 54. The above period, according to clause (ii) of sub-rule 2 of F.R.54-A, is to be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54. Sub-rule(5) of Rule 54 reads as follows:

" (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 for any specified purpose:"

In this case, as directed in the order of the Tribunal in O.A. No.1475/93 after giving the applicant a notice and taking into account the explanation submitted by him and the non-employment certificate, the impugned order Annexure-A1 was passed holding that the applicant would be entitled to 50% of the pay and allowances for the period between 26.10.82 and 30.11.89 and that the said period would be treated as duty for the purpose of pensionary benefits only. The above decision is in full conformity with the provisions contained in F.R. 54-A(1),(2) and (5) as also sub-rule(5) of F.R.54. Therefore, we do not find any infirmity in the order and also find that the appellate order Annexure-A2 refusing to interfere with Annexure-A1 order, is also perfectly justified.

6. Learned counsel of the applicant argued that as no order of deemed suspension was passed in this case under sub-rule (4) of Rule 10 of the CCS(CCA) Rules by the competent authority and as no decision was taken to hold a further enquiry at the time when the applicant was reinstated, there is no suspension or deemed suspension in the case of the applicant and therefore, since the penalty of removal from service having been set aside, the applicant is entitled to entire pay and allowances. This argument has also no force at all. Sub-rule (4) of Rule 10 of the CCS(CCA) Rules mandates that when the dismissal, removal or compulsory retirement imposed upon the Government servant is set aside by a court, if the disciplinary authority decides to hold a further enquiry, the Government servant shall be deemed to have been placed under suspension and would continue on suspension from the date of the original order of dismissal, removal or compulsory retirement until further orders. No order of the disciplinary authority is required to deem that the Government servant was placed under suspension. In the case on hand, as the removal from service of the applicant was set aside on technical grounds and as the disciplinary authority has decided to hold an enquiry, though much after the reinstatement, the period during removal and reinstatement is deemed to be suspension.

The continuance of suspension is only until further orders. The order of reinstatement issued in this case by the disciplinary authority is to be held as "further orders" contemplated in sub-rule (4) of Rule 10 of

CCS(CCA) Rules. That apart even without the aid of the provisions of sub-rule (4) of Rule 10 of CCS (CCA) Rules and even without the deemed suspension, the payment to the applicant for the period during his removal and reinstatement, will be the sum not being the whole of the pay and allowances, but subject to sub-rule (7)) of F.R. 54. Sub-rule (7) of F.R. 54 only lays down that the amount determined shall not be less than the subsistence allowance and other allowances admissible under Rule 53. The competent authority in this case has after considering the case of the applicant held that the amount that is payable to the applicant for the period in question, is only 50% of the pay and allowances.

7. Learned counsel of the applicant argued that as the deemed suspension was prolonged not for the reason attributable to the applicant, the competent authority should have reviewed the quantum of subsistence allowance and therefore, what was determined to be paid to the applicant as per the impugned order is less than what is payable according to sub-rule (7) of F.R. 54.

8. This argument has also no force at all as the provisions of F.R.53 do not contemplate varying of the subsistence allowance for any period subsequent to the period of first 3 months of deemed suspension, whereas they provide for enhancement of the subsistence allowance or reduction of the subsistence allowance depending on the opinion of the disciplinary authority in regard to the reason for prolongation of the "suspension" and not deemed suspension.

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9. The legal position regarding the payment of pay and allowances for the period between removal from service of the applicant and his reinstatement and the treatment of the period being as discussed above, we find no infirmity in the impugned orders.

10. In the result, the application fails and the same is dismissed, leaving the parties to bear their costs.

Dated the 21st day of October, 1997.

Sd/-

S K GHOSAL
ADMINISTRATIVE MEMBER

Sd/-

A V HARIDASAN
VICE CHAIRMAN