

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.602/08

Monday this the 11th day of January 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

D.Sundararajan,
S/o.G.Devarajan,
Technician Gr.II/Southern Railway,
Signal and Telecommunications Department,
Nanguneri R S and P O.
Residing at Selvin Nagar,
Eelayanmuthu Villaku, Moonthadaipu,
Nanguneri, Tamil Nadu.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Senior Divisional Signal
& Telecommunications Engineer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum – 14.

...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 11th January 2010 the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed this O.A under Section 19 of the
Administrative Tribunals Act, 1985 seeking the following reliefs :-

2
/

(i) Declare that the nonfeasance on the part of the respondents to take a decision under Rule 1345 of the Indian Railway Establishment Code Vol.II and to treat the period of suspension/deemed suspension between 31.10.1994 and 5.1.2006, as one spent on duty, with all consequential benefits including arrears of pay and allowances, promotion etc. is arbitrary, discriminatory and unconstitutional.

(ii) Direct the respondents 2 and 3 to take a decision under Rule 1345 of the Railway Establishment Code Vol.II treating the period between 31.10.1994 and 5.1.2006, as one spent on duty, and to grant all consequential benefits including arrears of pay and allowances, the benefit of promotion etc. at par with juniors.

(iii) To direct the respondents to pay interest at the rate of 9% per annum on the arrears of pay and allowances, calculated at least with effect from 1.2.2007, up to the date of full and final settlement of the same.

2. The material facts of the case are that the applicant was deemed to have been placed under suspension with effect from 31.10.1994 in connection with certain criminal proceedings initiated against him which ended in his acquittal. Thereafter, major penalty proceedings were also initiated against him by issuing a charge memorandum dated 10.3.1995 which culminated in the imposition of a penalty of removal from service and it was confirmed in the departmental appeal. This Tribunal set aside the said penalty by order dated 24.8.2000 in OA No.1550/97 with liberty to the applicant to proceed against him giving an opportunity to participate in the proceedings. Thereafter, the applicant was reinstated in service but he was placed under deemed suspension from the date of removal. The suspension continued till it was finally revoked with effect from 5.1.2006. However, the proceedings initiated against him still continued. In the meanwhile, he approached the Hon'ble High Court of Kerala in OP No.3221/02 challenging the proceedings. Vide judgment dated 24.1.2006, the High Court directed the respondents to finalise the disciplinary



.3.

proceedings within four months from the date of the judgment, but the disciplinary authority, vide Annexure A-1 memorandum dated 8.12.2006, dropped the entire proceedings holding that the Enquiry Officer was unable to prove the charges for want of adequate evidences and the non-availability of witnesses. Thereafter, the applicant sent the Annexure A-2 representation dated 25.5.2007 followed by the Annexure A-3 lawyer notice dated 27.10.2007. The request of the applicant was to regularise the period of suspension as duty and to give him arrears of pay and allowances without any further delay.

3. The respondents in their reply statement submitted that the Disciplinary Authority has no power to take a decision treating the intervening period as duty with all consequential benefits including pay and allowances as the penalty was awarded by the Disciplinary Authority and it has been confirmed by the Appellate Authority on appeal. They have also submitted that as per the judgment in OP No.3221/02 fresh enquiry proceedings were started vide Memorandum No.V/SG.155/DAR/33 dated 6.1.2004. Shri.V.P.Sudhakaran, the then Senior Section Engineer/Signal/Head Quarters was nominated as Enquiry Officer. Shri.V.P.Sudhakaran was retired from services and Shri.K.Francis, Assistant Divisional Signal and Telecommunication Engineer, Trivandrum was nominated as Enquiry Officer in his place. The applicant was advised to verify the records vide letter No.V/SG.155/DAR/33 dated 18.7.2006 and the enquiry officer notified five dates for enquiry on 7.4.2006, 25.4.2006, 16.5.2006, 25.5.2006 and 12.6.2006. The applicant attended only one enquiry on 16.5.2006. Due to non cooperation of the applicant the enquiry



.4.

could not be completed in the proper manner. Apart from this, the victim Shri.K.Madhavan Nair did not attend the enquiry on the last three occasions. The witness Shri.Zacharia P Issac, Station Master, Mararikulam also did not turn up for enquiry, Shri.Krishnan Kutty, Circle Inspector/Railway Protection Force/Kollam, another witness has already expired. The only witness who attended the enquiry was Shri.K.A.Varghese, Technician/Grade.I/Signal/Alapuzha. He stated that he has not seen the incidents. The Enquiry Officer submitted his report vide memorandum dated 1.8.2006 stating that the charges were not proved and consequently the case was dropped. They have, therefore, submitted that there was no violation of justice in conducting the Discipline and Appeal Rules enquiry against the applicant.

4. We have heard counsel for the parties. The Rule 1345 of the Indian Railway Establishment Code Vol.II deals with the manner in which reinstatement after suspension has to be treated, which reads as under :-

"1345. (1) When a railway servant who has been suspended is reinstated (or would have been so reinstated but for his retirement (including premature retirement) while under suspension the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and

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

(2) Notwithstanding anything contained in Rule 1343 where a railway servant under suspension dies before the disciplinary or the court proceeding instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been



entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the railway 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 railway servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the railway servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, 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 sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the railway servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the railway servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government 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 -



.6.

(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 or quasi-permanent railway servant.

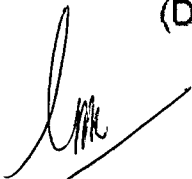
(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule(5) shall not be less than the subsistence allowance and other allowances admissible under Rule 1342."

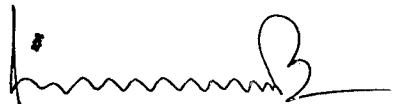
5. The reading of the aforesaid rule would show that the competent authority is duty bound to take a decision as per the aforesaid provision contained in the rule. In our view, the competent authority in the respondents' department has failed to perform its statutory duty.

6. In view of the above position, we allow this OA and direct the 2nd respondent, namely, the Senior Divisional Signal and Telecommunications Engineer, Southern Railway, Trivandrum Division, Trivandrum, who is the competent authority in the matter, to take appropriate action under the aforesaid rule and communicate the same to the applicant within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 11th day of January 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

asp