

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.124/2002

Friday, this the 18th day of June, 2004.

C O R A M

HON'BLE MR.S.K. HAJRA, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Prasanna Kumar,
Ex-Head Clerk, Personnel Branch,
Southern Railway, Trivandrum Division,
Residing at : "Chakkalayil",
Thiruvambadi Post,
Alappuzha District.

..Applicant

[By Advocate Mr. T.C.G.Swamy]

Versus

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3.
2. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.

..Respondents

[By Advocate Mrs. Sumathi Dandapani]


The application having been heard on 15.6.2004, the
Tribunal on 18.6.2004 delivered the following]

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Head Clerk, Personnel Branch, Southern Railway, Trivandrum Division, was removed from service under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, with effect from 9.10.1995. Prior to his removal, he was not under suspension. He was not even placed under suspension in connection with the disciplinary proceedings in question. After the appeal and revision had been rejected, the applicant filed O.A. No. 721 of 1998 before this Tribunal

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wherein this Tribunal directed the reinstatement of the applicant in service and back wages for the period he was kept out of service. Thereafter, the respondents approached the Hon'ble High Court of Kerala for stay with regard to the payment of back wages alone in O.P. No. 10822 of 2001, which is pending. However, the order of the Tribunal as regards the payment of back wages, was stayed for the time being. In furtherance of this Tribunal's order, A/2 order was passed placing the applicant under deemed suspension with effect from 9.10.1995. The applicant, therefore, submitted a representation dated 26.4.2001 and in response to that, the applicant was directed to produce non-employment certificate in the prescribed format for the purpose of payment of subsistence allowance. Thereafter, again A/4 and A/6 representations and telegrams were forwarded by the applicant. The grievance of the applicant was that the respondents had not reinstated him on duty and no subsistence allowance was also paid. A copy of the enquiry report was sent to the applicant for which he submitted a detailed representation. Aggrieved by A/4 impugned order placing the applicant under deemed suspension, this O.A. was filed by the applicant seeking the following reliefs:-

- "(a) Call for the records leading to the issue of Annexure A-2 and quash the same;
 - (b) Direct the respondents to deem the applicant to be on duty with effect from 9.10.1995 and to grant him all the consequential benefits upto the date of Annexure A-1 (i.e. 23.1.2001) subject to such directions of the Hon'ble High Court of Kerala regarding back wages in O.P. No. 10822/2001 and full salary and allowances with effect from 24.1.2001 upto the date of reinstatement back to duties;
 - (c) Direct the respondents to reinstate the applicant back to duties, duly allowing him to discharge the duties attached to the post held by the applicant."
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2. The respondents have filed a detailed reply statement contending that the charges were that he had contracted second marriage with one P.N. Valsamma, while his wife, Smt. K.Omana was alive. It is stated that in O.A. No.721 of 1998, the Tribunal set aside the order of removal of the applicant from service on technical ground and directed to reinstate the applicant forthwith with all consequential benefits. The respondents preferred O.P. No. 10822/2001 as against the direction to pay the payment of arrears of pay and consequential benefits to the applicant herein and an interim stay was granted to the extent of payment of arrears of pay and consequential benefits. The applicant was reinstated in service on 12.4.2001 in compliance with the orders of this Tribunal in O.A. No. 721/98. But in the same order, he was placed under deemed suspension under Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968, with effect from 9.10.1995, i.e. from the date of removal from service. The said order is under challenge in this O.A. The O.P. No. 10822/2001 is pending before the Hon'ble High Court and there is an absolute stay of the orders of this Tribunal as far as the payment of arrears and consequential benefits are concerned. There was no procedural lapse nor have the respondents transgressed any rule. The respondents prayed for dismissal of O.A. being bereft of any merit.

3. The applicant filed rejoinder contending that once the applicant is reinstated the respondents have no authority whatsoever to invoke the provisions of Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968. Since the order of termination is set aside, the effect is that there was no order of termination. If there was no order of termination, the applicant must be deemed to have continued in service. Rule 5(4)

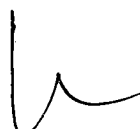
can be invoked only in cases where there are no directions of the Court/Tribunal as to how the intervening period is to be treated and as to how the question of pay and allowances should be settled. This Rule 5(4) can be applied only if the employee was put under suspension at the time of his removal from service. Therefore, the impugned order is liable to be set aside.

4. We have heard Shri T.C. Govindaswamy, learned counsel for the applicant and Smt. Sumathi Dandapani, learned counsel for the respondents.

5. Learned counsel for the parties took us through the pleadings, evidence and material placed on record. The learned counsel for the applicant argued that the Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968, cannot be invoked in this case in view of the directions of this Tribunal in O.A. No. 721 of 1998 dated 23.1.2001 as well as the directions of the Hon'ble High Court in C.M.P. No. 57108 in C.M.P. No. 17422/2001 in O.P. No. 10822/2001. Learned counsel for the respondents, on the other hand, submitted that Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968, is squarely applicable in this case, which cannot be faulted.

6. We have given due consideration to the arguments advanced by the learned counsel appearing for the respective parties.

7. It is an admitted fact that this Tribunal has given a direction in O.A. No. 721 of 1998 for reinstatement of the applicant in service. The operative portion of the order




aforesaid is as follows :

"In the light of what is stated above, we allow this application setting aside the impugned orders and directing that the applicant should be reinstated in service forthwith and given the consequential benefits, i.e. the arrears of pay and allowances. However, we make it clear that as the impugned order of removal from service has been set aside solely for the reason that the same has been issued by an incompetent authority, we give liberty to the respondents to take further action in the matter, i.e. to resume the proceedings from the stage of receipt of the enquiry report, to continue and complete the proceedings in accordance with law by the competent authority after reinstating the applicant and paying him the back wages. The applicant shall be reinstated in service and paid back wages for the period he was kept out of service within two months from the date of receipt of a copy of the order."

8. On perusal of the above order, it is evident that there was a specific direction that the applicant should be reinstated in service with all consequential benefits, including back wages i.e. arrears of pay and allowances, for the period he was kept out of service. It is also an admitted fact that the matter was taken up before Hon'ble High Court of Kerala in O.P. No. 10822 of 2001 by the department wherein they prayed for calling for the records leading to the case as far as the direction of this Tribunal to pay the arrears of pay and allowances for the period the applicant was kept out of service. The said O.P. is still pending. But that direction to pay the back wages to the applicant has been stayed by Hon'ble High Court for the time being in C.M.P. No. 17422/2001 dated 30.3.2001. Meanwhile, the applicant approached the Hon'ble High Court for vacation of stay in C.M.P. No. 57108/2001 in which Hon'ble High Court has passed the following order dated 10.1.2002:


"This petition is filed by the respondent in the Original Petition. The prayer in this petition is to vacate the stay order dated 30.3.2001 passed in C.M.P. No.17422/2001. In C.M.P. No. 17422 of 2001 the petitioner in the Original Petition sought stay of all further proceedings in pursuance of the direction to



effect the payment of salary and allowances as stipulated in Ext.P1 order pending disposal of the Original Petition. By order dated 30.3.2001 this Court granted interim stay to the extent of payment of arrears of pay and consequential benefits. Having heard the learned counsel for the petitioner and the respondents, we do not find any justification for vacating or modifying the stay order passed on 30.3.2001. Hence the prayer in C.M.P. No. 57108 of 2001 is rejected.


(2) The learned counsel for the respondent No.1 submits that the petitioner has not reinstated the respondent in service till now. The learned counsel points out that since the stay order passed by this Court was confined to the payment of arrears of pay and consequential benefits, the petitioner was liable to reinstate the respondent in service in compliance with the direction in the impugned judgement. We find that the submission of the learned counsel for the respondent No.1 is right and justified. If the petitioner in the Original Petition has not reinstated the respondent No. 1 in service so far, he shall be reinstated in service forthwith and the matter shall be reported to this Court before the next day. "

9. In the above order, a very specific direction was issued by the Hon'ble High Court that "if the petitioner in the Original Petition has not reinstated the respondent No.1 in service so far, he shall be reinstated in service forthwith and the matter shall be reported to this Court before the next day." However, as aforesaid, Hon'ble High Court granted interim stay to the extent of payment of arrears of pay and consequential benefits. The position is that both the Tribunal and Hon'ble High Court directed the official respondents to reinstate the applicant in service forthwith. The spirit of these orders is very clear in the sense that he should be reinstated with all consequential benefits. The learned counsel for the official respondents submitted that the applicant had been reinstated in service vide A2 order dated 12.4.2001 with immediate effect in compliance with the orders of this Tribunal in O.A. No. 721/98. But as per para 2 of the same order, the applicant had been placed under suspension with effect from 9.10.1995, i.e. from the date of removal from service and he would continue to remain under deemed suspension until further orders. It is clear that the direction



of the Courts were not for a technical reinstatement. The fact that applicant was never placed under suspension at the time of removal from service or even at the time of holding the disciplinary proceedings earlier. The question is whether the Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968, can be invoked in a case like the applicant. This has to be appreciated with special reference to the order of this Tribunal, which set aside the termination order.

10. We have gone through Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968 and also the decision reported in AIR 1963 SC 687, Khem Chand vs. Union of India and Others, wherein Rules 12(3) and 12(4) [which are akin to Rule 5(4)] have been elaborately dealt with and Hon'ble Apex Court found that such an action, as has been done in the case of the applicant, is not justified. Moreover, we find that the impugned order did not express about the proposed action that the department wants to take in compliance with the order of this Tribunal. Since the matter is pending before Hon'ble High Court in O.P. No. 10822 of 2001, we are not expressing any opinion on any point on merit. However, We are convinced that the A2 impugned order so far as it relates to placing the applicant under deemed suspension with effect from 9.10.1995, i.e. from the date of removal from service, was not passed in conformity with the rules and also in true spirit of the orders of this Tribunal as well as Hon'ble High Court. Hon'ble High Court gave a specific direction that if the petitioner in the Original Petition has not reinstated ^{by} the respondent No.1 in service so far, he shall be reinstated in service forthwith and the matter shall be reported to that Court before the next day. Learned




counsel for the parties has said nothing whatsoever transpired on the next day before Hon'ble High Court. Normally the Courts cannot interfere with the suspension orders. But the case in hand impels us to do so for the reason that it is not in the spirit of the directions of the Courts and no changed circumstances warranting a suspension were brought out in the impugned order. The contention of the applicant that the impugned order had been passed to defeat the Court orders, has some force.

11. In view of the facts and circumstances, we are of the view that the second para of A2 order dated 12.4.2001, which is reproduced hereunder, is liable to be set aside and the applicant is to be permitted to continue in service revoking the order of suspension passed under Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968, since it is not squarely applicable in this case.

" In terms of Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968, Shri K. Prasannakumar, Head Clerk, Personnel Branch, Trivandrum Division, is deemed to have been placed under suspension with effect from 09.10.1995, i.e. from the date of removal from service and shall continue to remain under suspension until further orders."

12. In the result, the aforesaid para of the A2 impugned order is set aside with a direction to the respondents to permit the applicant to continue in service forthwith revoking the order of suspension. Regarding the payment of arrears of pay and consequential benefits as per order in O.A. 721/1998, since the matter is pending before Hon'ble High Court in O.P. No. 10822 of 2001, we cannot pass any order and the same shall be subject to the outcome of that O.P.



13. O.A. is allowed as indicated above. No order as to costs.

(Dated, the 18th June, 2004)


K.V. SACHIDANANDAN
JUDICIAL MEMBER


S.K. HAJRA
ADMINISTRATIVE MEMBER

CVR.