

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 140 of 2009

Friday, this the 1st day of January, 2010

CORAM:

***HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER***

C.A. Johnson,
S/o. Abraham,
Senior Trackman, Southern Railway,
Under S.E/P.Way/Alapuzha,
Chamakkallingal House,
Konnathady Central P.O.,
Via. Vellathuval, Idukki District.

Applicant.

(By Advocate Mr. M.P. Varkey)

v e r s u s

1. Union of India represented by
General Manager, Southern Railway,
Chennai : 600 003
2. Divisional Railway Manager,
Southern Railway,
Trivandrum : 695 014
3. The Divisional Engineer (S),
Southern Railway,
Trivandrum : 695 014
4. Divisional Personnel Officer,
Southern Railway,
Trivandrum : 695 014

Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 01.01.2010, the Tribunal on the same day delivered the following :

**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The issue is short and simple. In the wake of a train accident (6128 Express) between at the level crossing No. 27 between Thuravur and Shertalai

on 24-04-2003, the applicant who was working as the Gate Keeper was tried departmentally as well as under criminal proceedings, and was removed from service w.e.f. 31-03-2004, vide Annexure A-1. Prior to the above order of removal from service, the applicant was kept under suspension from 24-04-2003 to 20-05-2003. Challenge by the applicant against the said order, vide OA No. 172/2003 was successful to the extent that the said order was quashed and set aside and the applicant ordered to be reinstated, however, with a latitude to the department that the proceedings may continue from the stage of issuance of charge sheet. Annexure A-3 order dated 27th March, 2007 read with Annexure A-5 review order dated 14th December 2007 refers. Criminal proceedings resulted in the acquittal of the applicant of the alleged offence, vide Annexure A-4 Judgment dated 12th March 2007. The applicant was reinstated in service vide Annexure A-6 order dated 31st July 2007. There was no indication therein as to whether the authority desired to proceed with the disciplinary proceedings. The applicant resumed duties on 14-08-2007. Thus the applicant was away from the office for the following periods:-

(a) From 24-04-2003 to 20-05-2003 on suspension

(b) From 01-04-2004 to 13-08-2007 (From date of removal till date of reinstatement)

2. The applicant filed a representation for treating the above period as duty in view of the quashing and setting aside of the penalty order, vide Annexure A8 representation dated 31st March 2008. As there was no response, the applicant moved this OA on 26th February 2009, seeking the following reliefs:-

(a) For a declaration that the applicant is entitled to count his period of suspension from 24-04-2003 to 20-05-2003 as duty and paid accordingly; and also that the period under penalty from 31-03-2004 to 13-08-2004 as duty with back wages and with consequential benefits.



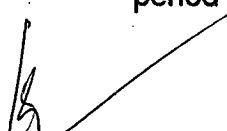
(b) Such other order or orders or directions as deemed fit.

3. Respondents have contested the O.A. They have, in their counter, stated that disciplinary proceedings have since been commenced vide charge sheet for Major Penalty dated 22-10-2009 and as such, the applicant is not entitled to the reliefs claimed.

4. Counsel for the applicant argued that after the honourable acquittal from the criminal court, after the setting aside of the penalty order and after the reinstatement of the applicant, the respondents did not choose to proceed with the disciplinary proceedings, neither at the time when the applicant claimed back wages, vide Annexure A-8 representation nor at the time when the OA was filed and notice issued in February 2009. It is after more than 2 years of reinstatement, that the department has issued the charge sheet and claim that the applicant is not entitled to the relief claimed. Even under such circumstances, the applicant is entitled to certain amount as per the rules in vogue. Rule 2044A is the relevant rule in this regard.

5. Counsel for the respondents submitted that when proceedings are pending, regularization of the period of suspension etc., need not be considered.

6. Arguments were heard and documents perused. It appears, prima facie, that issue of charge sheet in October 2009 on the basis of a latitude given by the Tribunal way back in March, 2007 is a clear afterthought, unless the records show that the matter had been under consideration for issue of a fresh charge sheet since the decision of the Tribunal was communicated. Be that as it may, the issue of fresh charge sheet may have some link with the period of suspension from 24-04-2003 to 20-05-2003 as the suspension was on



account of the same incident, which is the subject matter of the charge sheet now issued. As such, the question as to how to treat this period of suspension could well be decided after the proceedings are completed. However, in so far as the period from 01.04.2004 (and not 31-03-2004 as claimed, as the applicant was removed from service from the afternoon of 31-03-2004) to 13-08-2007, that period has to be got regularized in accordance with the provisions of IREM. The applicant has relied upon the provisions of Rule 2044-A which reads as under:-

"1. where the dismissal, removal or compulsory retirement of a railway 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 regularized 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 railway 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 1343 (FR 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 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.

(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 regularized in accordance with the provisions contained in sub-rule (5) of Rule 1343.

3. If the dismissal, removal or compulsory retirement of a railway servant is set aside by 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.

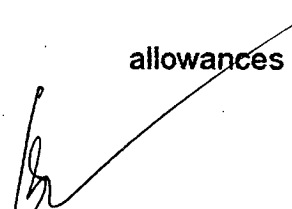
5. Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments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

7. The rule is specific that when reinstatement is effected without holding any further inquiry, the period of absence from the date of removal from service till the date of reinstatement shall be treated in accordance with the provisions contained in para 2 or 3 as the case may be, under the said rule. The term "without holding further inquiry" attains significance in that the authorities could in the very order of reinstatement spelt out about holding further inquiry in which event, the period of absence from the date of removal till the date of reinstatement could be co-related to the further inquiry. In the instant case, there has been no such mention in the order of reinstatement, vide Annexure A-6, which reads as under:-

"While disposing of court case No. OA/172/05 filed by C.A. Johnson, challenging the penalty issued by DA (DEC/S/TVC) Hon'ble Central Administrative Tribunal has quashed the penalty cited above. In compliance with the directives of Hon'ble Central Administrative Tribunal, the penalty issued to Sri. C.A. Johnson vide letter No. V/T(E)/5/1/244/03-04/2 of 19.03.2004 is hereby cancelled and he is restored as Sr. GK under SE/P.Way/ALLP."

8. Again, the criminal court has thoroughly acquitted the applicant, vide Annexure A-4 which reads - *"In the result, the accused is found not guilty of the offences alleged under Sections 336 and 338 of the I.P.C. And he is acquitted of those offences, under Section 255(1) of CrI.P.C."*

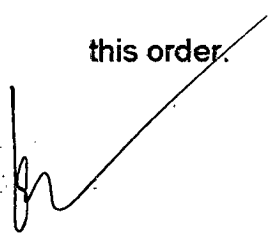
9. When a Railway servant is acquitted by court of law in criminal proceedings, the period between the date of acquittal and the date of joining duty should be treated as duty for all purposes and full pay and allowances should be paid to him for this period, vide R.B's No. E(D&A) 62 RG 30 dated 12-10-62 and E(D &A) 6 RG 6-48 of 5.9.70: (NR S.N.5111) – . If the acquittal is on benefit of doubt, then again, the Railway servant should be allowed pay and allowances as directed by competent authority under Rule 2044 – RII and the



period treated as duty or non-duty as the case may be. (R.B's No. E (D&A) 69 RG 6-48 dated 5-9-79. Further, an acquittal by a court is acquittal from the charges framed against the accused and it has to be treated as such and no further distinction is possible as honourable or otherwise, vide R.B's No.(D&A) 84 RG 6-26 dated 29-04-1985. {as spelt out at page 67 of 'Digest of Discipline Appeal and Conduct Rules' 8th Edition, by B.S. Mainee}

10. Thus in the instant case, had there been no charge sheet at all, the applicant would certainly be entitled to full pay and allowances on the basis of the above rules. However, now that a charge sheet has been issued (merit of which is yet to be decided), the applicant is entitled at least to that amount as per the provisions of para 2 of Rule 2044-A, which shall not be less than the the subsistence and other allowances under Rule 2043. In case the applicant is exonerated from the charges, he would be entitled to full pay and allowances and the period shall be treated as of duty for all purposes. At that time, the authorities would also pass suitable orders as to the period of suspension from 24-04-2003 to 20-5-2003.


11. In view of the above, the OA is disposed of with the direction to the respondents to consider the case of the applicant for payment for the period from 01-04-2004 to 14-08-2007 in accordance with the provisions of Rule 2044 A, read with para 7 of Rule 2044. Respondents are directed to further consider the case of the applicant for full pay and allowances depending upon the decision that may be arrived at in the disciplinary proceedings vide charge sheet dated 22nd October, 2009. This order (relating to payment of dues) shall be complied with, within a period of 3 months from the date of communication of this order.



12. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1st January, 2010)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. KBS RAJAN)
JUDICIAL MEMBER

CVR.