

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

DATED THUR^SSDAY THE TWENTY FOURTH DAY OF AUGUST ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

Hon'ble Shri N.V. Krishnan, Administrative Member

and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION 359/86

T. Basheerkutty

.....Applicant

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1. The Divisional Railway Manager
Southern Railway,
Trivandrum.

2. The Senior Divisional Mechanical
Engineer (C & W), Southern
Railway, Trivandrum.

.....Respondents

M/s. K. Ramkumar, CP Ravindranath
and CM Joseph

.....Counsel for
applicants

Mrs. Sumathi Dandapani

.....Counsel for
respondents

JUDGMENT

In this petition, the petitioner, who was
working as C & W Khalasi in the Southern Railway seeks the
following reliefs:-

- i) To set aside the order at Annexure B passed by the second respondent dated 3.3.1984
- ii) To direct the respondents to give the applicant all the benefits that were due to him and pay him the arrears due to him as if the order of removal was never in force;
- iii) To issue such orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, and
- iv) To award the costs of the applicant in this proceedings. /

2. The petitioner was removed from service by an order dated 14.7.1981. He filed appeal against the order which was also dismissed. Then the petitioner moved O.P.5081 of 1981, against the order of removal, before the High Court of Kerala. As per judgment at Annexure-A, the order of removal was quashed. Accordingly, the petitioner was taken back in service on 28.11.1983. Thereafter, the second respondent passed Annexure-B order by which the petitioner has been placed under deemed suspension from the date of his removal from service to the date of his reinstatement in service i.e. 28.11.1983. The petitioner has taken up the matter in appeal. Annexure-C is the appeal memorandum. He claims that the appeal has not been disposed of till he filed the original petition.

3. According to the learned counsel for the petitioner, the order of deemed suspension, Annexure-B passed, in this case is illegal and unsustainable in law. It will not even come within the purview of Rule 5 of the Railway Servants (D&A) Rules 1968. He stated that no enquiry was contemplated or pending against the petitioner at

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that time or even after his reinstatement on 28.11.1983. Hence the suspension order issued in this case is against the statute and liable to be set aside.

4. The learned counsel for the respondents on the other hand submitted that the petitioner has challenged the impugned order at Annexure-B, without even disclosing the full facts. After the reinstatement by a memorandum No. V/P.227/IV/2013 dated 21.2.84, Annexure R-3, the petitioner was informed of the disciplinary action against him.. The petitioner sent Ext. R-4 reply to R-3 memorandum. Thereafter, an enquiry was conducted and Ext. R-2 report was submitted. Accordingly, relying on Ext. R-2 report and after complying with the procedural formalities, Ext. R-1 order was passed barring ^{by} ~~the~~ annual increments of the petitioner for a period of 36 months. When the order was sent to him, the petitioner adopted the tactics of avoidance and he refused to receive the said order. So it was displayed on the notice Board in the office between 6.11.1984 and 17.11.1984. The learned counsel for the respondents also submitted that the appeal at Annexure-C, which was filed against the order of suspension, was later dismissed, as per order dated 1.11.1988. The petitioner has not chosen to challenge neither Ext. R-1 nor the order dismissing the appeal, Annexure 'C', filed against the impugned order. Hence, according to the learned counsel there is no merit in the contentions of the petitioner.

5. We have examined the records produced by the respondents along with the counter affidavit. We are satisfied that


the petitioner was attempting to avoid notice and not cooperating with the respondents for completing the enquiry after hearing the petitioner. Ext. R-1 order had been passed and it was produced along with the counter affidavit filed by the respondents as early as on 15.12.86. But the petitioner has not challenged the same. It was also submitted by the learned counsel for the respondents that the appeal, Annexure-C filed against the impugned order, Annexure-B, suspension order, was also dismissed by order dated 1.11.88, and that the

petitioner has not chosen to challenge that order also. So, ^{we be} ~~unavoidable~~ ^{and it is} this petition is infructuous and this is only to be dismissed.

6. Accordingly, in the above facts and circumstances, we dismiss the application and close the matter.

7. There is no order as to costs.


(N. Dharmadan) 24/8/89
Judicial Member


(N. V. Krishnan)
Administrative Member

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