

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

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Wednesday the 17th day of May 2000 (17-5-2000)

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PRESENT

The Hon'ble Shri D.V.R.S.G.DATTATREYULU, MEMBER(J)
and

The Hon'ble Shri S.MANICKAVASAGAM, MEMBER(A)

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O.A.No. 430 of 1991

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Pyare Lal .. Applicant

Vs.

Union of India through the General
Manager, Northern Eastern Railway, Ashok Marg, Lucknow
1. The Divl. Railway Manager, N.E. Rly. Ashok Marg, Lucknow

3. The Sr. Divl. Signal and Telecommunication Engineer
O/o the Divl. Railway Manager, N.E. Rly,
Ashok Marg, Lucknow

4. The Divl. Signal and Telecommunication Engineer
O/o the Divl. Railway Manager, N.E. Rly,
Ashok Marg, Lucknow

5. The Asst. Divl. Signal and Telecommunication Engineer
O/o the Divisional Railway Manager
N.E. Rly, Ashok Marg, Lucknow

.. Respondents

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Mr. D.S. Chaubey
D.M. Pandey

.. Advocate for the applicants

Mr. V.K. Srivastava .. Advocate for the respondents

Order pronounced by the Hon'ble Shri J. MANICKAVASAGAM
JUDGE (A)

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The applicant joined the respondent as a casual labourer in 1972. He was appointed against the regular establishment in 1978 as Peon. It is stated that the applicant continued to work in the wireless section of the office of the Divisional Railway Manager, N.E. Railway Lucknow, till ^{he} ~~he~~ proceeded on leave from 7.2.1985 on medical grounds.

2. It is further stated in the OA that the applicant was arrested on 28.5.1985 on account of his involvement in respect of an ~~offence~~ ^{offence} under Sec. 395 and 397 IPC and the applicant was kept under judicial custody till 25.9.1985 when he was released on bail. It is stated that though he approached the respondent department for taking him back duty he was not given any work. It is further stated that ~~the applicant was issued a charge sheet on 22.7.1989.~~ The applicant replied to the charge sheet stating that he was on leave from 6.2.1985 to 27.5.1985 and requested to regularise the above period as leave admissible under the rules and the subsequent period for being treated as suspension from 28.5.1985 in case he ^{was} ~~is~~ not given duty.

3. It is further stated that though the enquiry has been completed, no final order on the conclusion of the proceedings has been passed. It is further stated that the applicant was acquitted honourably by the District and Sessions Judge, Lucknow, vide judgment dated 10.12.1990. The applicant subsequently requested for reinstatement in view of his acquittal by the competent court. But there was no reply from the respondents. It is under these circumstances the applicant has come before the Tribunal seeking the following reliefs:-

- " (a) To direct the opposite parties to sanction the leave as admissible under the rules from Feb. 1985 to 27.5.1985 as admissible under the rules and to make payment of his leave salary and allowances accordingly;
- (b) to direct the opposite parties to allow the applicant

to resume his duty forthwith and to make payment of his back salary from 28.5.1985 as on duty and the intervening period prior to his resumption of duty may be directed to be treated as on duty for all purposes;

(c) To award the cost of this application".

4. ~~When~~ the matter was taken up for final disposal on 15.5.2000 the learned counsel for the applicant brought to our notice MPNo.1004 of 1999 and sought permission to amend the relief in the OA in the following manner:-

"Relief No.3 may be renumbered as No.4 and in its place the following relief may be inserted:-

" To quash the order dated 29.8.1991 removing the applicant from railway service contained in Annexure C-2 to the supplementary counter affidavit dated 24.3.1999 with all consequential benefits of salary, increment etc."

5. The respondents have filed a detailed ^{reply} resisting the claim of the applicant. It is stated that the applicant had reported sick for 30 days from 3.1.1985 to 5.2.1985 under MDN, Lucknow, without information to the officer-in-charge. The applicant also did not report to the concerned railway doctor. Thus he was discharged on and with effect from 6.2.1985 and has thus absconded from duty with effect from 6.2.1985. It is further stated in the reply that the applicant was kept under judicial custody from 30.5.1985 to 30.9.1985. It is further stated that the applicant was not given any duty as he was found guilty of the charges. The reply further proceeds to state that the charge memo dated 25.7.1987 was issued and an enquiry was conducted. Subsequently as the charges were held as proved the applicant was removed from service vide order dated 29.8.1991.

6. In reply to the above, the learned counsel for the applicant would say that the applicant ^{was} never issued with any suspension order nor was he taken back to duty. According to him, the whole thing is kept under suspended animation. The learned counsel would say that though the applicant was issued with the charge sheet and that in spite of the

allowance A/M

fact that when he prayed for subsistence/ nothing was
paid to him. The learned counsel/ ^{for the applicant} would say that the applicant
has not been informed till date of the outcome of the
disciplinary proceeding initiated against him. The learned
counsel would say that ~~that~~ he came to know of the final
order passed in the disciplinary proceeding, i.e. the order
dated 29.8.1991 only when the respondents filed the supple-
mentary counter-affidavit, along with a copy of the dismissal
order dated 24.3.1998. It is under these circumstances the
M.P. has been filed on 10.5.1999 for amending the relief
in the O.A., and the applicant has prayed for quashing of
the same.

7. At the time of arguments the learned counsel
appearing for the respondents, to a query made by us
as to when the applicant was placed under suspension,
the learned counsel could not throw any light on this
aspect. We also could not elicit any information as to
whether the applicant has been paid subsistence allowance
or not during the pendency of the disciplinary proceeding.

8. On going through the rejoinder affidavit filed
by the applicant we find that the averments are vague
and we are astonished to see the applicant stating
that he did not remember ~~to~~ have received memo dated 25.7.1987,
that is the charge memo. The rejoinder goes on to state
that the applicant has never received the order of removal
dated 29.8.1991.

9. We have heard the learned counsel for both sides
and perused the records.

10. On a careful analysis of the pleadings we
prima facie do not believe the statements made by the
applicant for the simple reason that the applicant
took part in the disciplinary proceedings initiated against
him and he ^{say he has not} cannot ~~received~~ the charge sheet dated
25.7.1987. Therefore the contention of the applicant
that he did not receive the charge memo dated 25.7.1987
has to fail.

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A/S

11. ⁵ ~~we gave the anxious conclusion to~~ ^{again} the assertion made by the applicant that he became aware of the impugned order removing him from service dated 29.8.1991 only on 24.3.1998 when the supplementary counter was filed by the respondents. ~~In this connection it is~~ pertinent to point out that ~~soon after~~ conclusion of the inquiry proceedings the applicant ought to have taken up with the authorities for passing final orders thereon. In case the respondents fail^{ed} to pass any order he should have agitated the matter before the appropriate forum at the relevant point of time for redressal of his grievance. But the applicant did not care ~~as~~ to bother as to what had happened to the disciplinary proceedings initiated against him. Therefore the miscellaneous petition filed after nine years seeking to amend the relief has no substance and the same is rejected.

12. In so far as the conduct of the disciplinary proceedings are concerned, we find that the applicant was charge sheeted for unauthorised absence in 1987 and this had resulted in his removal from service vide order dated 29.8.1991. Further when the applicant has been removed from service, for unauthorised absence a valid inquiry in a manner known to law has to be ^{during} conducted and/the period of suspension he is entitled for subsistence allowance. In this case we are astonished to note that both sides are not able to throw any light as to whether the applicant was paid any subsistence allowance during the period of suspension or not.

13. We further find that the respondents have handled the whole issue in a casual manner right from the beginning without any application of mind and even the paperbook filed by them do not reflect the correct position. We also note that even with regard to judicial custody of the applicant there is inconsistency with regard to the period of judicial custody of the applicant, with differing dates. Further there is nothing on record to show as to when the applicant was placed under suspension

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and as to whether the applicant has been paid subsistence allowance or not. All that is evident is that the applicant the applicant has been issued with the charge sheet on 25.8.1987, for unauthorised absence which had resulted in his removal from service. In this connection we would like to mention that ~~the applicant~~ it is not the duty of the Tribunal to make roving enquiry on the above aspects and this Tribunal cannot play the role of the administration. We would like to observe that both sides have not presented their case in a proper manner and this stand is deprecated and in such circumstances there cannot be an effective adjudication of the matter.

14. We further find that the applicant has been acquitted by the Criminal Court on 10.12.1990. But the applicant has been proceeded against for unauthorised absence resulting in his removal from service. But here again the applicant has got the remedy of appeal which he has not exhausted.

15. As already observed this Tribunal cannot make a roving enquiry as to the applicant's period of suspension, as to whether ^{he} has been paid subsistence allowance or not or as to whether the suspension has been revoked or not or whether the applicant has made any appeal or not and ~~xx xx also~~ this Tribunal cannot play the role of the administration. We are very unhappy to express our displeasure in the manner in which the whole *matter* has been handled by the respondent. We further hold that without adequate documentary evidence we cannot come to ^a fair and ^ujustifiable conclusion.

16. We further find that the applicant has approached this Tribunal on 4.11.1991 through this OA, apparently when he came to know about the removal order dated 29.8.1991. Under these circumstances we are also not inclined to give any relief in a pre-emptive manner. However the fact ~~that~~ remains that the applicant is entitled for subsistence allowance and salary for the leave period.

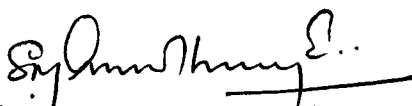
17.. In the light of the discussion above and in given facts and circumstances of this case we hold that ends of justice would be met if the following directions are issued:-


(a) The respondents shall consider ~~the issue~~ and decide by a speaking order with regard to payment of leave salary for the leave period as also payment of subsistence allowance within three months of receipt of a copy of this order by them.

(b) The applicant shall prefer an appeal against the order dismissing him from service dated 24.3.1998 ~~against~~ to the appellate authority within one month from the date of receipt of a copy of this order by him.

(c) Even though the appeal preferred by the appeal would be time barred, we direct the appellate authority to condone the delay as a special case in preferring the appeal and the appellate authority shall dispose of the appeal by a reasoned/speaking order within two months of receipt of the appeal from the applicant.

18. The OA is allowed to the extent indicated above with no order as to costs.


(S. MANICKAVASAGAM)
MEMBER (A)


(D.V.R.S.G. DATTATREYULU)
MEMBER (J)

17.5.2000

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