

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.94/87

Haribhai S.,
C/o. G.S.Walia,
Advocate High Court,
89/10, Western Rly.Colony,
Matunga Road,
Bombay - 400 019.

.. Applicant

vs.

1. Union of India
through
The General Manager,
Western Railway
Churchgate,
Bombay - 400 020.
 2. Divisional Railway Manager,
Western Railway,
Baroda Division,
Baroda.
 3. Sr.Divisional Mechanical
Engineer,
Western Railway,
Baroda Division,
Baroda.
 4. Chief Operating Superintendent,
Western Railway,
Churchgate,
Bombay - 400 020.
- .. Respondents

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil

Hon'ble Member(A) Shri L.H.A.Rego

Appearance:

1. Shri G.S.Walia
Advocate for the
Applicant.
2. Shri A.L.Kasturey,
Advocate for the
Respondents.

JUDGMENT

Date: 27-4-1988

(Per B.C.Gadgil, Vice-Chairman)

This matter involves a very short
point as to whether there can be retrospective
suspension as has been ordered against the appli-
cant.

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... 2/-

2. The applicant is a railway employee. After holding a departmental enquiry he was dismissed from service by an order dtd. 24-2-1986. He preferred an appeal to the Appellate Authority. The appeal was allowed. It was held that the correct procedure was not followed and there was non-observance of rules. On this ground the impugned penalty order was set aside and the applicant was ordered to be reinstated in service. Consequently a formal order dt. 29-1-1987 was passed that the applicant stands reinstated in service with effect from 24-2-1986(i.e. the date on which he was dismissed from service) without prejudice to further disciplinary proceedings. However, the applicant was placed under suspension with effect from 24-2-1986 by an order dtd.12-1-1987 (Ex.'E').

3. In this application Shri Walia for the applicant limited his challenge only to the retrospective suspension from 24-2-1986 till his reinstatement on 5-2-1987.

4. We have heard Shri Walia for the applicant and Shri A.L.Kasturey for the respondents. Rule 5 of the Railway Servants(Discipline & Appeal) Rules,1968 deals with the suspension of the railway employees in a pending departmental enquiry. These rules are practically similar to Rule 10 of the CCS(CCA)Rules. It is not necessary to reproduce the said rules in question. Suffice it to say, that under Rule 5(3) a provision is made that an order of suspension shall be deemed to have been

in force from the date of the original order of dismissal etc. if such original order has been set aside in an appeal or review and the case is remitted for further enquiry. Rule(4) deals with the setting aside of such order of dismissal removal etc. on account of a decision of a Court of Law. That sub-rule states, that in such a contingency the railway servant shall be deemed to have been placed under suspension by a competent authority from the date of the original order of removal and shall continue to remain under suspension until further orders. Thus sub-rule(3) applies when the delinquent was under suspension during the enquiry. It is this suspension that is continued if the order of dismissal etc. is set aside and the matter is remitted for fresh enquiry. However, Rule (4) suggests that it is not necessary that the delinquent should be under suspension during the enquiry and that he shall stand suspended from the date of original order in case that dismissal or removal is set aside by the High Court.

5. It is contended on behalf of the applicant that Sub-rule(4) would apply only when the delinquent was under suspension during the enquiry. In O.A.(G)76/87 this Bench has held, that this would lead to obvious discrimination and therefore it would be necessary to interpret Rule 10(4) in a manner consistent with the provisions of Rule 10(3). The Bench has further held that automatic suspension of the delinquent

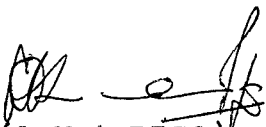
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from the date of original punishment contemplated in Rule 10(4) will come into operation only if the delinquent was already under suspension on the date of dismissal. In the present case, it is common ground that the applicant was not under suspension when the original impugned order of removal was passed. Thus in view of the above judgment it would not be possible for the administration to pass an order under Rule 5(4) that the applicant shall stand suspended with retrospective effect from 24-2-1986. The order will be inoperative in view of this position and the applicant would be entitled to his full salary upto 5-2-1987.

6. The application therefore succeeds. The order placing the applicant under suspension from 24-2-1986 to 5-2-1987 consequently stands cancelled with a direction to the respondents to pay to the applicant his entire salary for this period. However, it is made specifically clear that this order does not ^{also} effect suspension of the applicant from 5-2-1987 in case he has been placed under suspension from that date.

7. Parties to bear their own costs of litigation.


(B.C.GADGIL)
Vice-Chairman


(L.H.A. REGO) 27.4.88
Member(A)