

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 395/89
TxXXXXXNox

198

DATE OF DECISION 17.4.1990

Shri Tejulal Ramlal Petitioner

Shri L.M.Nerlekar Advocate for the Petitioner(s)

Versus

Divisional Railway Manager, C.Rly Respondent
Bombay V.T.

Shri S.C.Dhawan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

L15
17/4

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

(6)

DA.NO. 395/89

Shri Tejulal Ramlal
vs.

... Applicant

Divisional Railway Manager,
Central Railway, Bombay V.T. ... Respondent

CORAM: Hon'ble Vice Chairman Shri G.Sreedharan Nair
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. L.M.Nerlekar
Advocate
for the Applicant

Mr. S.C.Dhawan
Advocate
for the Respondent:

ORAL JUDGMENT

Dated: 17.4.1990

(PER: G.Sreedharan Nair, Vice Chairman)

The applicant who was an Electric Fitter under the
proceeded
Respondent was prosecuted against departmentally and was
removed from service on 20.8.1968. A suit was filed by the
applicant challenging the removal but it was dismissed by the
City Civil Court. However, on appeal the High Court modified
the penalty to reduction of pay by two stages in the time scale
for a period of 3 years. Accordingly, the applicant was reinstated
in service. Against the judgment of the High Court the respondent
filed Special Leave Petition in the Supreme Court. The Special
Leave was granted and after hearing counsels on either side,
the appeal itself was disposed of by directing that "the inter-
regnum period be treated as period of suspension and the
respondent will be entitled to get suspension allowance as
permissible under the rules."

2. The grievance of the applicant is that the respondent
has allowed only the subsistence allowance during the aforesaid
period by granting 50% of the pay and allowances. According to
him, as only a minor penalty has been imposed by the High Court,

(2)

the suspension should be considered unjustified and full pay and allowances for the suspension period is to be paid in accordance with the O.M. dated 3.12.1985. Hence, he prays for a direction to the respondent to treat the period of suspension in accordance with the aforesaid O.M. and for payment of dues with interest.

3. The respondent has filed reply where it is stated that the O.M. relied upon by the applicant has no application in the instant case as it will govern only cases where employee is suspended by the department pending the departmental proceedings. It is pointed out that as the applicant was never suspended, he cannot claim the benefit of the aforesaid O.M. but is entitled only to the allowance as contemplated in the order of the Supreme Court.

4. It was argued by the counsel of the applicant that since the Supreme Court stated in the order dated 17.9.1988 "that the applicant will be entitled to get suspension allowance as permissible under the rules", this has to be treated as a case of actual suspension and the benefits as per the O.M. dated 3.12.1985 are to be allowed. We are unable to agree. No doubt the Supreme Court has said that the applicant will be entitled to suspension allowance as permissible under the rules, it is only in a case where an employee is suspended on account of initiation of a disciplinary proceedings for the imposition of a major penalty but he is finally awarded ~~with~~ only a minor ^{U.C.} penalty ~~through~~ the O.M. provides that full pay and allowances for the suspension period should be paid, since in such a case ~~the~~ suspension should be considered unjustified. In the present case there has not been any suspension at all as a matter of fact. By the order of the Supreme Court, the period from the date of

(S)

removal of the applicant from service till his reinstatement has been directed to be treated as a period of suspension. Indeed, this order has been passed after the imposition of the minor penalty by the High Court. As such, it will not be in order to treat this fictional suspension as wholly unjustified so as to attract the aforesaid O.M. and to make the applicant eligible for full pay and allowances for the said period. The expression "suspension allowance as permissible under the rules" cannot in our view be interpreted in that manner, though counsel of the applicant attempted to persuade us to do so.

5. It follows that the applicant is not entitled to the relief prayed. The application is dismissed.

6

(M.Y.PRIOLKAR)
MEMBER (A)

J. 807
17.4.1988

(G. SREEDHARAN NAIR)
VICE CHAIRMAN