

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 18TH NOVEMBER 1986

Present: Hon'ble Shri Ch. Ramakrishna Rao,

Member (J)

Hon'ble Shri P. Srinivasan,

Member (A)

APPLICATION NO.931/86(T)

Sri N.I. Inamdar,
major, At and Post Chinchali,
Railway Station, Taluka Raibag,
Dist. Belgaum.

Applicant

(Shri G. Balakrishna Sastry, Advocate)

1. The Union of India by its
Secretary to the Railway,
Department, New Delhi.
2. The General Manager,
South Central Railway,
Secunderabad, Andhra Pradesh.
3. The Divisional Personnel Officer,
South Central Railway, Hubli.

(Shri M. Sreerangaiah, Advocate)

The application has come up for hearing before
this Tribunal, to-day, Member (A) made the following:-

P. S. Srinivasan

,2/-

O R D E R

This is a transferred application received from the High Court of Karnataka (HCK).

2. The applicant is an employee of the Indian Railways. When he was working as Assistant Station Master at Hatkanaggle Railway Station, an accident took place, as a result of which, he was suspended from service and disciplinary proceedings taken against him thereafter. He was awarded the punishment of removal from service w.e.f. 31.8.1969, but the order levying the penalty was quashed by the ^{High Court of Karnataka} giving the respondents ~~an~~ liberty to resume the disciplinary proceedings according to law. Thereafter, the applicant was reinstated in service by order dated 2.6.1973, but by order dated 5.12.1973, he was removed from service and his appeal against the order of removal as well as the writ petition moved before ^{Court} ~~High~~ ^{Court} against the said order were dismissed. The ~~High~~ ^{Court} however, advised him to file a revision petition against the penalty. In response to this revision petition, an order dated 30.7.1980 was passed by which the penalty of removal from service was reduced to reduction in pay to the lowest stage of the pay scale for a period of three years, postponing future increments also. By the same order, the General Manager, South Central Railway (R2) directed that the period of suspension undergone by the applicant from 27.6.1968 till the date of his joining duty,

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as a result of that order, would be treated as leave due and leave without pay. It appears that he did not have much leave to his credit, and so he was not given any pay for the balance of the period. However, in a writ petition No. 4394/78, ^{Court} ~~High~~ ^{of} ordered payment to the applicant/full pay for the period from 27.6.1968 to 12.12.1973, less subsistence allowance, if any, paid to the applicant during the ~~said~~ ^{id} period.

3. In the present application, the applicant desires that we should direct the respondents to give him pay or subsistence allowance for the period from 13.12.1973 to 3.9.1980 when he rejoined duty after reinstatement.

4. Shri G. Balakrishna Sastry, learned counsel for the applicant, contends that under rule 2044 of the Indian Railway Establishment Code, Vol.II, R2 had the discretion to allow some amount to the applicant in respect of the period from 12.12.1973 till the date he rejoined duty; but he had not exercised the discretion in the applicant's favour. He urged that the period being long, the applicant could not carry on without any remuneration. Since the punishment of removal from service had been reduced and he had been reinstated in service, he should have been given at least subsistence allowance for the intervening period, if for nothing else, on humanitarian grounds.

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5. Shri M. Sreerangaiah, counsel for respondents, vehemently opposes the claim of Shri Balakrishna Sastry. He contends that R2 acted well within his powers in directing that the applicant's absence during the period from 12.12.1973 to 3.9.1980 should be treated as period spent on leave due and leave without pay.

6. We have considered the matter carefully, and are of the view that since the punishment of removal from service was reduced by the revisional authority, and since the applicant was actually reinstated in service, R2 should have allowed atleast subsistence allowance to the applicant for the intervening period.

7. Dealing with a similar case, the High Court of Tamilnadu (then Madras) in UNION OF INDIA v. R. AKBAR SHERIFF (AIR 1961 Madras 486) had to interpret Rule 2044 and observed:

"(24)xxxxx Even in a case where the acquittal is not honourable, rule 2044 does not empower the railway authority to forfeit the whole of the salary. The denial of the salary to the plaintiff cannot be justified as an act of legitimate exercise of power of discretion under rule 2044."

In view of this, we would direct the respondents to pay the applicant the subsistence allowance which he would have been entitled to under rule 2043(1)(ii)(a) for the period **he was treated** as on leave without pay. This order will not

apply to any period for which he was treated as on full pay or half-pay leave, and was paid some salary. This will apply only for the period for which the applicant was treated as on leave without pay: for that period, he should be paid subsistence allowance equal to the pay and allowances that he would have been entitled if he had been on half-pay leave.

8. In the result, the application is allowed as indicated above. There will be no order as to costs.

Ch. Ramakrishna Rao *P. Srinivasan*
(CH. RAMAKRISHNA RAO) (P. SRINIVASAN)
MEMBER(J) MEMBER(A)
18.11.1986. 18.11.1986.

dms.