

CENTRAL ADMINISTRATIVE TRIBUNAL: MUMBAI BENCH: MUMBAI

TUESDAY, THIS THE 6TH DAY OF JULY, 1999.

ORIGINAL APPLICATION NO.900 OF 1992

Shri Justice S.Venkataraman, .. Vice-Chairman.

Shri S.K.Ghosal, .. Member(A).

M.G.Harne,
Ex.TTI, Western Railway,
Ratlam C/o Muktabai G.Harne,
New Area Ward, Weekli Market,
House No.2461, Bhusaval,
District: Jalgaon.

.. Applicant.

(By Advocate Shri V.M.Bendre)

v.

1. The Union of India,
through General Manager,
Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager,
Ratlam, Western Railway.
3. Chief Commercial Superintendent,
Western Railway, Churchgate,
Bombay.
4. Senior Divisional Commercial
Superintendent, Western Railway, Ratlam. .. Respondents.

(By Standing Counsel Mr. A.L.Kasturey)

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O R D E R

Justice S.Venkataraman, Vice-Chairman:-

The applicant was dismissed from service on 22-4-1982.
The Tribunal quashed that order in the light of the decision
of the Supreme Court in UNION OF INDIA AND OTHERS v. MOHAMMED

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RAMZAN KHAN (1990 SC 56). However, the Tribunal gave liberty to the respondents to furnish copy of the inquiry report and an opportunity to the applicant to make a representation against it and to then pass appropriate orders. The applicant's grievance is that he has not been paid arrears of salary from 22-4-82 till the date of this application. He has, therefore, sought for a direction to the respondents to pay the entire wages and consequential benefits. He has also challenged that part of the order which has been subsequently passed by the Disciplinary Authority stating that for the above period the applicant will not be entitled to salary on the doctrine of 'no work no pay'.

2. The respondents have contended that after the disposal of the earlier case, they have reinstated the applicant on 27th January, 1992 and he was subsequently kept under suspension by an order dated 3-2-1992, that the applicant is not entitled to claim any salary for the period from 22-4-1982, the date of earlier order of dismissal upto 27-1-1992, the date of reinstatement. They have also contended that as the applicant never turned out any work, he is not eligible to claim the arrears of salary during the above period on the doctrine of 'no work no pay'.

3. The fact that the earlier order of dismissal was set aside is clear from the order of the Tribunal and from the very fact that the respondents have again passed a fresh order. When once the order of penalty of dismissal from service was

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quashed by this Tribunal, then in the normal course the applicant would have been entitled to the salary from the date he was dismissed from service till the date of his reinstatement as a consequence of the Tribunal's order quashing the penalty. However, as the Tribunal has given liberty to the respondents to revive the disciplinary proceedings and continue the same from the stage of furnishing copy of the inquiry report, the provision contained in Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968 comes into operation. As per that sub-rule (4) where a penalty of dismissal imposed upon a Railway servant is set aside or declared or rendered void in consequence of a decision of Court of law and the Disciplinary Authority decides to hold a further inquiry against him on the allegations on which the penalty of dismissal was originally imposed the Railway servant shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal and shall continue to remain under suspension until further orders.

4. In the instant case, as the respondents have decided to continue the disciplinary proceedings on the same charge against the applicant by furnishing copy of the inquiry report, the applicant must be deemed to have been kept under suspension from 22-4-1982 till further orders. When once, the applicant is deemed to be under suspension, then it follows that he is eligible for subsistence allowance for that period. In the instant case, the respondents have stated that they have paid

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him subsistence allowance from 3-2-1992 on which date they again passed a fresh order of suspension. As such, the applicant is entitled to subsistence allowance from 22-4-1982 till 27-1-'92 on which date the respondents reinstated him.

5. For the above reasons, this application is allowed in part, and the respondents are directed to pay to the applicant subsistence allowance from 22-4-1982 till 27-1-1992 as per rules. This shall be done within 4 months from the date of receipt of a copy of this order. No costs.


(S.K.GHOSAL)
MEMBER(A)


(S.VENKATARAMAN)
VICE-CHAIRMAN.

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