

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.765/90

Dt. of order: 14.12.1994

Roshan Lal Gupta

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.Manish Shandari

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

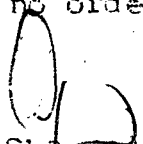
In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Roshan Lal Gupta has prayed that the order dated 31.10.90 (Annx.A1) issued by the Divisional Railway Manager, Jaipur Division, rejecting the claim of the applicant for payment of terminal dues may be quashed and the respondents may be directed to grant all pensionary benefits to the applicant and make payment thereof including the amount due as a result of the applicant's reinstatement in service as if he had never been removed from service.

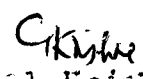
2. The factual position of the case is that the applicant while working on the post of Assistant Teacher, Primary School, Phulera, Jaipur Division, was dismissed from service on 19.8.78. He preferred an appeal against the order of dismissal which proved futile. However, in Revision, the General Manager, set aside the order of dismissal and ordered fresh enquiry. Thereafter, a fresh enquiry was conducted and penalty of stoppage of 2 increments for a period of 2 years without future effect was imposed against which he filed an appeal. The Appellate Authority exercising the powers of the Revisionary Authority, imposed on the applicant the penalty of removal from service vide order dated 20.7.1982. His appeal against the said order of removal from service was rejected. The applicant filed a writ petition against the order of penalty of removal from service before the High Court of Rajasthan at Jaipur, which was transferred to this Tribunal and registered as T.A. No.627/86. The Tribunal vide

order dated 5.6.1989, set aside the orders of the Disciplinary Authority and the Appellate Authority and directed that the applicant be taken back in service w.e.f. 20.7.1981. The Tribunal further directed in this order that the applicant would be deemed to be under suspension w.e.f. 20.7.1981 and the DRM Jaipur, the Appellate Authority, will consider the appeal preferred by the applicant vide his appeal memo dated 10.6.1981. The appeal was to be decided within a period of 3 months from the date of the receipt of a copy of the Tribunal's order dated 5.6.1989. The aforesaid order of the Tribunal was received by the respondents on 7.6.'89. However, action as directed by the Tribunal has not been taken within the stipulated period of 3 months. However, the applicant was deemed to be under suspension without in the first instance ^{being} ~~be~~/reinstated in the service. Simultaneously a notice dated 8.9.'89 was issued by the DRM, Jaipur to the applicant for enhancing the penalty of with-holding of increments to that of removal from service. The applicant submitted a representation against the aforesaid proposed action. The applicant retired from service on 30.9.1989. He also asked for settlement of his pensionary dues. In an order dated 21.8.'90 passed in O.A.No.208/90 filed by the applicant, the Tribunal directed the respondents to take a decision on the representation of the applicant within a period of 2 months. The applicant's representation was rejected by the DRM, Jaipur's letter dated 31.1.90 (Annx.A1). The reason for rejection of the representation was that the Appellate Authority had imposed on the applicant the penalty of removal from service on 22.9.89 and that the order in this regard had been sent to the applicant's home address which was returned. The applicant's case is that the order of removal had never been served upon him and, until the order is served it does not come into force. Once the applicant had retired from service on 30.9.1989, ~~any~~ action could be taken against him only under the provisions of Pension Rules.

3. The respondents in their reply have stated inter alia that the order of removal from service which was issued on 22.9.89 was served upon the applicant as per the provisions laid down in this regard. The applicant ~~did not~~ superannuate on 30.9.89 but was removed from service w.e.f. 22.9.89. Thus, there was no question of the applicant being entitled to pensionary benefits.

4. We have heard the learned counsel for the parties and have gone through the records. The applicant had filed a Misc. Application seeking a direction to the respondents to supply a copy of the order of removal dated 22.9.89. The Tribunal had directed on 25.2.94, that the respondents shall supply a copy thereof to the applicant within ^a fortnight. The learned counsel for the applicant has stated before us that he has received a copy of the said order today. This position is not disputed by the learned counsel for the respondents. The learned counsel for the applicant states that the applicant is entitled to file an appeal against the said order and the applicant would, therefore, like to prefer an appeal against the said order raising all the grounds therein on which he objects to the said order. In the circumstances of the present case and after hearing the counsel for both the parties, we direct that if the applicant prefers an appeal against the said order within a period of one month from today, the authority which is now to function as the Appellate Authority, with regard to this order, namely the Chief Personnel Officer, Western Railway, Bombay, shall dispose of the appeal of the applicant on merits with a speaking order, dealing with all the points raised therein, within a period of 3 months from the date of the receipt of the memo of appeal by the Appellate Authority. The O.A. stands disposed of accordingly with no order as to costs.


(O.P. Sharma)
Member (A).


(Gopal Krishna)
Member (J).