

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~ HYDERABAD

O.A. No. 452 of 1987 198

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DATE OF DECISION \_\_\_\_\_

Shankar Gandaiah PetitionerN.Ramamohan Rao Advocate for the Petitioner(s)

Versus

General Manager, S.C.Rly., Sec'bad Respondent  
and 2 othersP.Venkatarama Reddy, SC for Rlys. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.Surya Rao, Member (Judl.)

The Hon'ble Mr. D.K.Chakravorty, Member (Admn.)

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?
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MGIPRRND—12 CAT/86—3-12-86—15,000

B  
DKC  
M(A)

B  
DSR  
M(J)

ORIGINAL APPLICATION NO.452 of 1987

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JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,  
MEMBER (JUDL.)

The applicant herein was formerly a Driver 'C' in the Loco Shed, South Central Railway, Moulali, Secunderabad. The applicant states that while he was working as Driver 'C', there was strike of loco running staff which commenced on 28/29.1.1981. The applicant was absent <sup>from duty</sup> during the period of this strike. ~~from duty~~. Consequently, his services were terminated under Rule 14(2) of the Railway Servants (Discipline & Appeal) Rules for his unauthorised absence from duty from 31.1.1981 onwards. His services were terminated by an order dated 13.2.1981 which was confirmed by the appellate authority. The applicant filed a Writ Petition No.906 of 1982 questioning the order of the disciplinary authority as well as the appellate authority. The High Court of Andhra Pradesh finally disposed of the Writ Petition on 17.9.1985 and set aside the order of the appellate authority with a direction to restore the appeals to file and dispose of them in accordance with the law. The applicant states that consequent on the issue of the Writ absolute by the High Court, he submitted another appeal dated 13.11.1985 bringing to the notice of the appellate authority various other points as to why the order of removal should not be set-aside. The applicant states that at the

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time of the filing of this application viz., on 10.7.1987, an appeal was still pending and there is no possibility of disposing of the appeal in the near future. The applicant filed this application stating that he is entitled to the payment of salary and allowances from 17.9.1985, the date of disposal of the Writ Petition No.906 of 1982 till the disposal of his appeal which was pending before the Railway authorities. The applicant states that prior to the disposal of the Writ Petition No.906 of 1982, by virtue of the interim orders issued by the High Court, he was being paid salary and allowances. After the disposal of the Writ Petition, the respondents stopped making payment of salary<sup>and</sup>/allowances. It is contended that<sup>in</sup> another case viz., W.P.No.914 of 1982 which has been transferred to this Tribunal, the Tribunal while remitting the case to the appellate authority had directed that the respondents shall continue to pay the salary and allowances and extend other benefits to the petitioner in that case during the pendency of the appeal before the appellate authority. On the same analogy, the applicant contends that he is entitled to salary and allowances from 17.9.1985 onwards.

2. On behalf of the respondents, a counter has been filed stating that in this case the appellate authority has reconsidered the matter and passed afresh <sup>the</sup> speaking order

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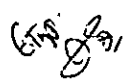
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Rt. Hon. J. S. /

confirming the penalty of dismissal from service of the applicant. This order was communicated by the Chief Personnel Officer, South Central Railway to the applicant on 16.10.1987. Without prejudice to the above contention, it is stated that the applicant is not entitled to salary and allowances from 17.9.1985 onwards as the High Court had by its order dated 17.9.1985 in Writ Petition No.906 of 1982 merely set aside the order of the appellate authority on the ground that it was not a speaking order. While disposing of the Writ Petition, the High Court did not set-aside the dismissal order passed by the disciplinary authority. It is stated that the disposal of the writ petition by the High Court would <sup>also</sup> amount to disposal of the W.P.M.P.No.1390 of 1982, by virtue of which the applicant continued to receive the salary and allowances during the pendency of the Writ Petition. Since the main Writ Petition was itself disposed of and since the High Court did not direct specifically continuance of the interim order or maintenance of the status-quo, the Railway administration had rightly stopped paying the salary and allowances to the applicant by virtue of the Judgment of the High Court and the applicant has no right to claim such payment. It is stated that nearly two years later, the applicant cannot ask the relief that his salary and allowances should be restored. <sup>For</sup> ~~With~~ these reasons, it is stated that there are no merits in this application and it is liable to be dismissed.



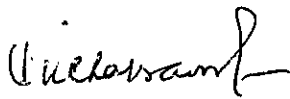
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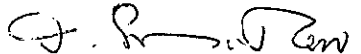
3. We have heard the learned counsel for the applicant Shri N. Ramamohan Rao and the learned Standing Counsel for the Respondents/Railways Shri P. Venkatarama Reddy. The short question is whether the applicant has a legal right or claim to salary during the pendency of the appeal consequent on the order of the High Court in Writ Petition No. 906 of 1982. Admittedly, the High Court while directing the appellate authority to dispose of the appeal afresh by way of a speaking order, has not directed payment of salary and allowances i.e., the High Court had not directed continuation of the status-quo as on that date. The only ground on which the learned counsel for the applicant relied upon is that the applicant is entitled to be paid salary and allowances as <sup>in the cases of several other employees in regard to whom</sup> ~~that in several cases wherein~~ the Courts have <sup>while</sup> directed the appellate authority to reconsider the appeal, ~~they~~ have directed the payment of salary and allowances, and that <sup>8</sup> since the applicant's case was also remanded for disposal, he also ought to be paid the salary and allowances. While he would not put it on the ground of a legal right, the <sup>learned counsel for the applicant</sup> ~~he~~ contended that it is a social obligation on the part of the Department to make such payment of salary and allowances particularly so in the case of the low paid employees. It is clear that the applicant is not able to sustain his claim on the basis of any legal right. The right of the employee who are drawing salary and allowances pursuant to the orders of the Court,


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cannot ensure to the benefit of the applicant. It is for him to be vigilant at the point of time when his appeal was remanded and put in his claim for payment of salary and allowances. It is not open to the applicant to reagitate these points after a lapse of two years. It is to be noted that the applicant's appeal has been disposed of and he has also preferred an application questioning the order of the appellate authority rejecting his appeal <sup>and</sup> confirming the order of the removal. In the event <sup>in this case</sup> of the applicant succeeds, it will be open to him to claim reinstatement with back wages if the order of removal found to be illegal. We find no merits in this application. The application is accordingly dismissed. There will be no order as to costs.

  
(D.K. CHAKRAVORTY)  
Member (Admn.)

  
(D. SURYA RAO)  
Member (Judl.)

Dated: 16<sup>th</sup> January, 1989.

  
Deputy Registrar  
17/1/89