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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

TRANSFERRED/ORIGINAL-APPLICATION NO. 377 of 1990

DATE OF ORDER: 19th July, 1990

BETWEEN:

Mr. P.S.Subramanian

APPLICANT(S)

and

1. The General Manager, S.C.Railway,
Secunderabad
 2. The Chief Security Commissioner,
Railway Protection Force, S.C.Railway,
Secunderabad.
 3. The Divisional Security Commissioner,
Railway Protection Force, SCR, Sec'bad
- FOR APPLICANT(S): Mr. V.Venkateswara Rao, Advocate
- FOR RESPONDENT(S): Mr. N.R.Devaraj, SC for Railways

RESPONDENT(S)

CORAM: Hon'ble Shri B.N.Jayasimha, Vice Chairman
Hon'ble Shri D.Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment? *no*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Bench of the Tribunal? *no*
5. Remarks of Vice-Chairman on columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench) *no*

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI B.N.JAYASIMHA, VICE CHAIRMAN

The applicant herein who is a Railway employees seeks a direction that he should be paid arrears of pay and allowances in accordance with the rules for the period from 16.11.1981 to 28.9.1988. The applicant was proceeded against under the Railway Servants (Discipline & Appeal) Rules by issue of a charge sheet. This was followed by an enquiry ~~and~~ the Enquiry Officer submitted his report dated 16.9.1981 that the charges against the applicant are proved. This was followed by an order of removal dated 16.11.1981. The applicant questioned the order of removal in W.P.No.3816/84 which was transferred to this Tribunal and numbered as T.A.No.682/86. This Tribunal in T.A.No.682 of 1986 set-aside the order of removal dated 16.11.1981 passed by the disciplinary authority following the decision of the Bombay Bench of the Tribunal in "Premnath K.Sharma Vs. Union of India and others (1988(6) ATC 904)". In doing so, the Tribunal observed that setting-aside the order will not preclude the respondents from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceed ~~to~~ to complete the disciplinary proceedings from that stage. The Tribunal further observed that if the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. The applicant contends that thereafter he was reinstated to duty on 29.9.1988 and ^{he} reported for duty on the same day. Thereafter, ~~an~~ the enquiry report dated 16.9.1981 along with

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the material papers was furnished to him on 24.11.1988. 12 days later, a show cause notice dated 7.12.1988 was issued to him proposing a penalty of removal from service. The applicant filed O.A.No.914 of 1988 questioning the show cause notice on the ground of want of jurisdiction apart from other grounds. It is contended now that the applicant has submitted a representation dated 9.12.1988 to the 2nd respondent with a copy to the 3rd respondent requesting for payment of arrears from 16.11.1981 to 28.9.1988. He states that despite reminders, the respondents did not take any action to arrange for payment of arrears. Reliance was placed upon Rule 2043 (F.R. 53) of the Railway Establishment Code Volume-II read with Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, 1968 and it is stated that the provisions therein relate to deemed suspension which have not been invoked. The applicant contends that he is entitled to arrears of pay and allowances for the period 16.11.1988 to 28.9.1988 as the said period is implied to be treated as on duty. Alternatively, it is contended that even if the period is treated as deemed suspension, the applicant is entitled to atleast for arrears of subsistence allowance during the above period. It is further stated that the Railway Board clarified in its letter No.E(D&A)/61-RG-6-43 dated 28.4.85 that the subsistence allowance is payable for the deemed period of suspension when further departmental action is proposed to be taken. For these reasons, the applicant prays that he should be paid pay and allowances and other attendant benefits from 16.11.1981 to 28.9.1988 in accordance with the rules.

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2. On behalf of the respondents, a counter has been filed stating ~~as above~~ that the Tribunal had by its order in T.A.No.682 of 1986 observed that the manner as to how the period spent in the proceedings should be treated would depend upon ultimate result of the enquiry. In view of this respondents consider that observation, the / the applicant is not entitled to claim arrears of pay and allowances or arrears of subsistence allowance unless the period from the date of removal from service till the date of reinstatement is decided by the disciplinary authority in the DAR action pending against the applicant. The respondents, therefore, state that there is no merit in the application and it is liable to be dismissed.

3. We have heard the learned counsel for the applicant, Shri V.Venkateswara Rao and the learned Additional Standing Counsel for the Railways, Shri N.R.Devaraj on behalf of the respondents. Consequent to the order in T.A.No.682 of 1986, it is open to the respondents either to continue the applicant in service after reinstatement or to keep him under suspension if they so desire. The natural consequence of this order would be that if the provision of deemed suspension is applied under Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, the applicant would be entitled to subsistence allowance for the deemed suspension period. Likewise, he will be entitled to subsistence allowance from the date he was kept under suspension after reinstatement. All that is to be understood from the Judgment in T.A.No.682 of 1986 following the decision in Premnath K.Sharma's case is that whether the applicant is entitled to full salary and allowances or not would depend upon the final orders

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to be passed pursuant to the disciplinary action as indicated therein. It does not imply that it is open to the respondents to deny subsistence allowance altogether.

4. In the result, the application is allowed to the extent of directing the respondents to pay the applicant subsistence allowance as payable to him under the rules from 16.11.1981 to 28.9.1988. There will be no order as to costs.

(Dictated in the open Court).

B.N. Jayasimha
(B.N. JAYA SIMHA)
Vice Chairman

D. Surya Rao
(D. SURYA RAO)
Member (Judl.)

Dated: 19th July, 1990.

D. Surya Rao
DY. REGISTRAR (JUDL)

To the

1. The General Manager, S.C. Railway, Secunderabad.
2. The Chief Security Commissioner, Railway Protection Force, S.C. Railway, Secunderabad.
3. The Divisional Security Commissioner, Railway Protection Force, S.C. Railway, Secunderabad.
4. One copy to Mr. V. Venkateswara Rao, Advocate.
1-1-287/27. Chikkadapally, Hyderabad - 20.
5. One copy to Mr. N.R. Devraj, SC for Rlys, CAT. Hyd. Bench
6. One spare copy.

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CHECKED BY

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA : V.C.

AND

THE HON'BLE MR. D. SURYA RAO : MEMBER (J)

AND

THE HON'BLE MR. J. NARASIMHA MURTY : M (J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M (A)

DATE: 19/7/90

ORDER/JUDGMENT:

M.A./ R.A./ C.A./ No.

in

T.A. No.

W.P. No.

O.A. No. 377/90

Admitted and Interim directions issued

Allowed.

Dismissed for Default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

