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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1085/91.

Dt. of Decision : 23.6.94.

Mr. D. Pulla Reddy

.. Applicant.

vs

1. Union of India, rep. by its
General Manager, SC Rly,
Rail Nilayam,
Secunderabad.
2. The Sr. Divisional Personnel Officer,
SC Rly, Guntakal.
3. The Secretary,
Railway Board,
New Delhi.

.. Respondents.

Counsel for the Applicant : Mr. T. Lakshminarayana

Counsel for the Respondents: Mr. K. Ramulu, SC for Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O.A.NO.1085/91.

JUDGMENT

Dt: 23.6.1994.

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri T.Lakshminarayana, learned counsel for the applicant and Shri K.Ramulu, learned standing counsel for the respondents.

2. The applicant was removed from service by way of punishment by the order dated 19.12.1986, after the inquiry. The said order was set-aside by this Bench as per the judgment dated 18.7.1988 in OA 288/87 by holding that the order is vitiated as a copy of the inquiry report was not furnished to the applicant before the order of removal was passed. But as per the said judgment, an opportunity was given to the disciplinary authority to continue the inquiry after a copy of the report of the Inquiry Officer was furnished to the applicant.

3. The applicant was not reinstated after the OA 288/87 was disposed of, but the disciplinary authority proceeded with the inquiry.

4. This OA was filed on 12.11.1991 praying for a declaration that the action of the 2nd respondent in treating the applicant as deemed to be under suspension from 23.12.1986 ie., the date of removal, under Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules, is illegal arbitrary and violative of Articles 14, 16, 19(1)(f), 21, 31(a) and 311 of the Constitution and for ~~an~~ consequential declaration that the impugned

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orders dated 12.6.1991 and 8.8.1991 are illegal and for a direction to the respondents to reinstate the applicant into service.

5. The Short point which arises for consideration in this OA is, as to whether the action of the 2nd respondent in treating the period from the date of removal ~~as~~ as deemed suspension is illegal.

6. Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules is as under:-

"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant, is set-aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement 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, removal or compulsory retirement and shall continue to remain under suspension until further orders.

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To

1. The General Manager, S.C.Rly, Union of India,
Railnilayam, Secunderabad.
2. The sr.Divisional Personnel Officer, S.C.Rly, Guntakal.
3. The Secretary, Railway Board, New Delhi.
4. One copy to Mr.T.Lakshminarayana, Advocate, CAT.Hyd.
5. One copy to Mr.K.Ramulu, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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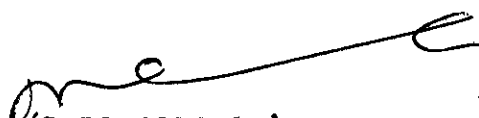
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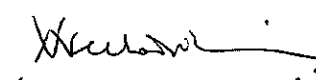
Provided no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case."

7. In this case, the order of removal of the applicant from service was set-aside by the Bench only on technical grounds, but not on merits, and R-2 was given an ^{liberty} opportunity to continue the inquiry, and after the inquiry, the applicant was again removed from service with effect from 29.10.1991. Hence, this is a case where the period from the date of removal had to be treated as deemed suspension in accordance with Rule 5(4) of the RSDA Rules, urged the learned counsel for the respondents.

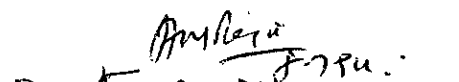
8. But the learned counsel for the applicant submitted that Rule 5(4) of RSDA rules is attracted only in a case where the delinquent employee was under suspension by the date of removal. But the said contention was negatived by the Supreme Court in 1993 SCC(L&S) 13 (Nelson Motis Vs. Union of India).

9. Accordingly, this OA does not merit consideration and hence dismissed. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 23rd June, 1994.
Open court dictation.


Deputy Registrar (JCC)