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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 763/92.

Dt. of Decision : 11-8-94.

G.V. Elisha

.. Applicant.

vs

1. Union of India, rep. by
its General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. Divisional Railway Manager,
SC Rly, Vijayawada Division,
Vijayawada.
3. Sr. Divl. Commercial Superintendent,
SC Rly, Vijayawada.
4. Sr. Divl. Personal Officer,
SC Rly, Vijayawada. .. Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Rao

Counsel for the Respondents: Mr. N.R. Devaraj, SR. CGSC

CORAM:

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

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

(b4)

OA.763/92

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri G. Ramachandra Rao, learned counsel for the applicant and Sri N.R. Devaraj, learned counsel for the respondents.

2. Charge memo dated 10-5-1986 was issued to the applicant alleging that while he was working as Traveling Ticket Examiner (TTE) during the period from 20-1-84 to 16-1-1985, he committed serious offence in not remitting the extra fare ticket amount collected during the said period and failed to enclose the money receipts or produced the forged photostat copies of the money receipts. The Disciplinary authority after enquiry, ~~by~~ order dated 8-9-1989 removed the applicant from the service and the appeal thereon was dismissed by order dated 21-3-1990. The same was assailed in OA.332/90 on the file of this Bench. The order of removal was set aside by judgement dated 19-4-1991. It was further ordered as under :

" The respondents are directed to provide all the consequential benefits to the applicant in the light of this order. The order in this application may be implemented within a period of two months of its receipt". vide para-9 of the order dated 19-4-1991 in OA.332/90.

3. The applicant submitted representation dated 9-5-91 praying for reinstatement in pursuance of the order in the OA. On 4-7-1991, the applicant reported for duty in pursuance of the order dated 25-6-1991. The disciplinary

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authority had not chosen to continue the inquiry even though it is a case of setting aside the order of removal by the Tribunal on technical grounds. The applicant was promoted as Head Travelling Ticket Examiner on 5-6-1992. By order dated 23-4-1992, the applicant was informed that the period from the date of removal till the date of reinstatement is treated as suspension and hence he is not entitled to any of the amounts for that period. He retired from service on 30-6-1992.

4. This OA was filed praying for declaration that the applicant is deemed to have been promoted to the post of Head TTE in the grade of Rs.1400-2300 with effect from 15-6-1992. His immediate junior, Sri Appa Rao, is promoted to the said post with all consequential benefits including arrears of pay, gratuity, pension, on the basis of the same after quashing the order dated 23-4-1992 in so far as it is against the applicant in denying full wages for the period of absence.

5. Thus, the points for consideration are :

- i) Whether the applicant is entitled to deemed promotion from the date his immediate junior Sri Appa Rao, was promoted to the post of Head Travelling Ticket Examiner; &
- ii) Whether the applicant is entitled to full wages for the period of his absence.

Point-i) : The promotion to the post of Head TTE is by way of selection. The applicant appeared for written test conducted in 1987 for consideration for promotion to the post of Head TTE. He was also called for viva-voce then. During the said examination his immediate junior Sri Appa Rao, was selected for the promotion to the post of Head TTE. When it was pleaded for the respondents that



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as the applicant herein was not selected in 1987 for promotion to the said post and he was promoted to the said post in 1992, ^{when} when he was selected for the same in 1992, it was asserted for the applicant that he was selected for the promotion to the post of Head TTE even in 1987. As such, a direction was given for production of the concerned record. The same was produced today (returned to the learned Standing Counsel after perusal). The same discloses that the applicant was not selected for promotion to the post of Head TTE in 1987. Hence, even though the order of removal of the applicant was set aside by order in OA.332/90, the applicant is not entitled for promotion from the date his immediate junior was promoted as Head TTE, as at the time of the said selection, the applicant was not selected while his junior was selected. As such the claim of the applicant for deemed promotion from the date his junior Sri Appa Rao, was promoted as Head TTE is negated.

6. Rule 1344, IREC lays down as to how the period of absence from duty shall be regularised and, the Government servant shall be paid pay and allowances in a case where the dismissal, removal or compulsory retirement of a Railway servant is set aside by a Court of Law. When the order of dismissal, removal or compulsory retirement of Railway servant is set aside on the ground of non-compliance with the requirement of Clause-1 and 2 of Article 311 of the Constitution, Rule 1344(2) is applicable. The order dated 19-4-1991 in OA.332/90 discloses that the order of removal of the applicant from service was set aside on the ground "that the inquiry" is totally vitiated for non furnishing of the essential documents

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to defend his case. Thus, it is a case of non-compliance of the requirements of Clause-2 of Article 311 of the Constitution. Thus, the respondents are right in dealing with the case of the applicant under Rule 1344(2) IREC. Rule 1344(2)(i & ii) which are relevant read as under :

"(2)(i) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause(1) or clause(2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 1343 (FR 54), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

Provided that any payment under this sub-rule to a railway servant (other than a railway servant who is governed by the provisions of payment of Wages Act, 1936) shall be restricted to a period of three years immediately preceding the date on which the judgement of the court was passed, or the date of retirement on superannuation of such railway servant as the case may be.

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(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgement of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 1343."

7. It is manifest from rule 1344(2)(i) that the competent authority was empowered to determine the quantum proposed for the period of absence i.e. from the date of dismissal, removal or compulsory retirement, after giving notice to the concerned railway employee. In this case, notice was given to the applicant before the order dated 23-4-1992 was issued by treating it as period of suspension and hence the applicant is not entitled to any amount over and above 75% which was paid as subsistence allowance.

8. But the learned counsel for the applicant contended that the order dated 25-4-1991 in OA.332/90 discloses that the applicant should be paid all consequential benefits and hence he is entitled to the full wages when the order of removal was set aside. It may be noted that it is ^{not} ~~newly~~ ^{mentioned in} ~~settled~~ ^{dated 25-4-91} order that the applicant should be paid full wages from the date of removal. When it is merely stated therein that the applicant should be given consequential benefits, it means that he has to be given the consequential benefits in accordance with rules. Rule 1344 IREC as already observed discloses that the competent authority is given power to determine the amount proposed for

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the period of absence from the date of removal in the case where the order of removal was set aside by the ^{Subj} Court of Law, for non-compliance of Article 311(1) or (2) of the Constitution. Hence, we cannot accede to the contention for the applicant that he is entitled to full wages from the date of removal in view of the judgement in OA.332/90.

9. Rule 1344(2)(ii) states that the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding the same as the case may be and the date of judgement of the Court shall be regularised in accordance with the Rule 1343 (1). Thus, the period to be regularised is the period up to the date of judgement and not the period ^{upto} by the date of reinstatement if such reinstatement is made when no further inquiry was conducted after the order of removal ^{was} set aside by the Court. Thus, it indicates that the period from the date of judgement should be treated as service in case further inquiry is not conducted. Ofcourse if further inquiry is conducted, the period from the date of judgement will continue to be suspension till it is revoked. But in case of reinstatement without further inquiry, the period from the date of removal cannot be held as deemed suspension.

10. Even Rule 1344(1) which is as under :

1344(FR 54A)-(1) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of

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absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule(2) or (3) subject to the directions, if any, of the court." does not specifically indicate that the period of absence referred to therein is the period of absence upto the date on which railway employee was reinstated when further inquiry was not conducted after the removal was set aside by the Court. ^{As} ~~By~~ Reading Rule 1344(1) with Rule 1344(2)(ii) suggests that the period of absence referred to in Rule 1344(1) is only the period of absence upto the date of judgement of the Court. It also stands to reason. There can be suspension pending inquiry. Hence, when further inquiry is not contemplated after the order of removal was set aside by the Court, there can be neither suspension nor deemed suspension from the date of judgement till the date of reinstatement. When once order of removal is set aside relationship of employer-employee revives. Hence, when there is no suspension or deemed suspension after the order of removal is set aside, the employee should be deemed to have been in service and hence even in Rule 1344(2)(ii) it is specifically stated that regularisation has to be made only in regard to the absence ~~up to~~ ^{and} the date of judgement.

11. Hence, we find that the applicant is entitled to full pay from ~~the date~~ from 19-4-1991 the date of judgement in OA.332/90 and the same has to be determined after fixation of his pay as on 19-4-1991. If thereby ~~upon~~ the applicant's ^{and} gratuity, pension have to be

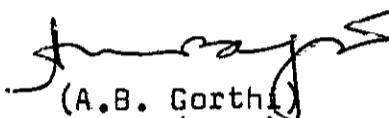
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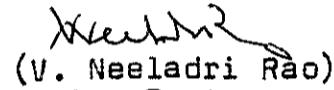
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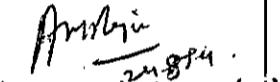
revised they have to be accordingly revised and the difference has to be paid to the applicant. It is needless to say that the amount paid by way of subsistence allowance ~~from~~ ^{from} the date of judgement till the date of reinstatement has to be adjusted ~~from~~ ^{towards} ~~payable~~ amount of the full pay and allowance ^{to} the applicant from the date of judgement i.e. from 14-4-1991 (date of judgement in OA.332/90).

12. The OA in regard to deemed promotion is dismissed and is ordered accordingly, in regard to other reliefs.


(A.B. Gorthi)
Member (Admn)


(V. Neeladri Rao)
Vice Chairman

Dated : August, 11, 94
Dictated in Open Court


Deputy Registrar (J)

To

1. The General Manager, S.C.Rly. Railnilayam, Union of India, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly. ^{sk} Vijayawada Division, Vijayawada.
3. The Sr. Divisional Commercial Superintendent, S.C.Rly, Vijayawada.
4. The Sr. Divisional Personal Officer, S.C.Rly, Vijayawada.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.OGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

A. B. Goethi

THE HON'BLE MR. R. RANGARAJAN : M.A.D.N.

DATED: 11-8-1994

~~ORDER~~ JUDGMENT

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

in

O.A. No. 763 | 92.

(T.A.No. (W.P.No.)

Admitte
Issued -

Allowed.

Diagramma 3 - Sfumato della linea

DISPOSED

Dismissed

Dismissed as w^t

Ordered/Rejected

pvm

Central Administrative Tribunal
DESPATCH
31 AUG 1994
HYDERABAD BENCH.