

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 31.07.02

OA No.258/1996

Joseph Dayal s/o Shri D.Dayal A.B.C. Western Railway, r/o
R.C.Church Campus, Parbatpura, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Bombay.
2. The Chief Commercial Manager, Western Railway,
Churchgate, Bombay.
3. The Divisional Rail Manager, Western Railway,
Ajmer Division, Ajmer.

.. Respondents

Mr. S.R.Chaurasia, counsel for the applicant

Mr. K.S.Sharma, counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA, Member (Administrative)

The applicant is aggrieved of the order dated 21.3.95 (Ann.A1) conveying the decision of the Chief Commercial Manager whereby the applicant is to be paid 50% of the wages for the period from 19.1.90 to 13.7.94. In relief, he has prayed for quashing the said order and also for making him entitle to full wages for the said period as also for the period from 4.4.86 to 12.4.89 with interest at the rate of 24% per annum alongwith cost of the application, on various grounds stated in the application.



2. Briefly stated, the case of the applicant is that:-

2.1 He was removed from service vide order dated 4.4.86. Since his appeal was not decided, he served a notice for demand of justice and also filed OA No.421/88 before the Tribunal. After receipt of the notice of the OA, the DRM vide letter dated 16.1.89 cancelled the order of removal without prejudice to conduct de-novo enquiry. The Tribunal in its order dated 21.2.89 directed the respondents to complete and finalise the de-novo departmental enquiry within 3 months. The applicant was taken on duty on 13.4.89 after about two months of the order. He remained out of service from 4.4.86 to 12.4.89.

2.2 Although the Enquiry Officer held the applicant as not guilty, but again he was removed from service. He preferred an appeal dated 3.3.90 to the Chief Commercial Manager but the appeal was not decided and, therefore, he filed OA No.274/92, which was disposed of by the Hon'ble Tribunal with the direction to the Appellate Authority to decide his appeal within a period of 3 months through a speaking order. Vide order dated 17.6.94, the Chief Commercial Manager accepted the appeal but to keep up face, altered the penalty of removal from service to reduction to lower pay scale for a period of 3 years with future effect. He joined the post on 14.7.94. No order under Rule 54 was passed till 21.3.95. Vide letter dated 20.12.94 (Ann.A2), the DRM advised him that the Chief Commercial Manager vide his letter dated 5.12.94 provisionally decided that the period of absence from the date of removal to the date of reinstatement and that 50%



of the wages shall be paid and called upon to show-cause against it. He submitted reply dated 6.1.95 (Ann.A4). He further submitted a petition dated 3.3.95 (Ann.A3) praying for payment of full pay and allowances. The Chief Commercial Manager decided that for the period from 19.1.90 to 13.7.94, the applicant will be paid 50% of the wages but with regard to the period from 4.4.86 to 12.4.89 the order is silent. Further that the payment of even 50% of the wages for the period from 19.1.90 to 13.7.94 has not been paid. He submitted petition in January, 96 that payment be expedited but in vain. Having aggrieved from the impugned order dated 21.3.95 (Ann.A1), he has approached this Tribunal through this application.

3. The respondents have filed reply. They have taken the plea of non-maintainability of this application for lack of jurisdiction of this Bench of the Tribunal. They have also taken the plea of limitation on the ground that the order was passed on 20.12.94 and his representation was decided on 21.3.95 but the OA has been filed after lapse of one year.

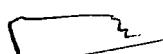
3.1 They have further submitted that as per the impugned order, the intervening period, when the applicant remained out of service, was decided as dies-non and half pay as per SR 54 (Rule-2044/1343 of R-II). Full pay and allowances are admissible only in cases where the officials are exonerated of all the charges but in this case the applicant was not exonerated from the charges levelled against him and a penalty was imposed. The office order dated 21.3.95 containing the order of the Chief Commercial Manager was received by the applicant on

4.4.95, as may be seen from Ann.R6 and R7. The payment for intervening period from 19.1.90 to 13.7.94, has been made in the regular salary bill for the month of March, 1996 under DD No.342 dated 21.12.95 for an amount of Rs. 45106/- . The applicant has not given any reason as to why the impugned order is illegal in nature and violative of principles of natural justice. The claim of the applicant is not genuine because the competent authority has decided the period as dies-non on half pay as per rules. Insofar as payment for the period from 4.4.86 to 12.4.89, it is under active consideration with the competent authority and as soon as the decision is taken it will be conveyed to the applicant accordingly without any delay.

4. No rejoinder has been filed by the applicant.

5. Heard the learned counsel for the parties and perused the record.

5.1 With regard to the jurisdiction, the learned counsel for the applicant submitted that the impugned order was passed by the DRM, Ajmer and further that the applicant is resident of Ajmer and, therefore, this Bench has jurisdiction to entertain this OA. With regard to the limitation, he submitted that he is challenging Ann.Al dated 21.3.95 which was received by the applicant on 4.4.95, as may be seen from the document at Ann.R7 annexed by the respondents themselves and he presented this OA on 25.3.96 i.e. within one year of receipt of the impugned order. Therefore, the contention of the respondents that the case is barred by limitation is totally incorrect. We agree with the contention of the learned counsel of the



applicant and hold that this Bench has the jurisdiction and further that the case is not barred by limitation.

5.2 The learned counsel for the applicant further submitted that the impugned order is illegal inasmuch as the period, from 19.1.90 to 13.7.94, has been treated as dies-non and simultaneously the order for payment of 50% of the wages has been passed. His contention is that if the period is treated as dies-non, which cannot be done under FR 54, simultaneously order for 50% of payment of wages could not be issued. He also contended that the applicant is entitled for full pay and allowances on the ground that nothing was proved in the enquiry and that the case is prolonged by the respondents for no fault of the applicant.

5.3 The case of the applicant is covered under FR 54. It is not a case where the applicant was exonerated of the charge. It is a case where because of procedural lacuna/violation of principles of natural justice, reinstatement was ordered and thereafter on appeal, the penalty was modified from removal to that of reduction in rank. Therefore, under the provisions of FR-54, the applicant will be entitled for such pay and allowances for the said period which the authorities may determine after due notice to the applicant which shall not be less than the subsistence allowance and other allowances admissible under FR-35. The applicant is not entitled for full pay and allowances as claimed for the reason that the applicant is not fully exonerated. The case of the applicant is covered under FR 54(4) read with FR 54(5), 54(6), 54(7) and FR 54 (8). Therefore, the decision of the authorities restricting the amount payable to the normal



subsistence allowance i.e. 50% of the wages i.e. what is payable had he been on half pay leave plus dearness allowance on this half pay as admissible under FR-53, would be according to rules.

5.4 However, the order for treating the said period as dies-non is not in accordance with the provisions of FR. Under these provisions as applicable to the instant case, the period of absence from duty from removal to reinstatement shall not be treated as spent on duty unless the competent authority specifically directs that it shall be treated so for any specified purpose. It is further provided that the period of absence from duty in such circumstances ^{if desired by the Government servant B} shall be converted into leave of any kind due and admissible to the Government servant. Although the respondents have given memorandum dated 5.12.94 (Ann.A2) in accordance with these provisions of FR but the final order as passed where this period is treated as dies-non is not in accordance with the rules and, therefore, illegal. The contention of the respondents that the impugned order has been passed as per FR-54 (incorrectly stated as SR 54) by deciding the intervening period as dies-non and half pay is also incorrect. Therefore, not only in the impugned order but also in the reply, there appears to be no application of mind by the respondents while treating the said period as dies-non. We agree with the contention of the learned counsel for the applicant that the respondents cannot pass an order for payment of 50% of the salary for a period and simultaneously treating the said period as dies-non.

5.5 It has also been submitted by the respondents that payment for the period from 4.4.86 to 12.4.89 is

under active consideration by the competent authority and as soon as the decision is taken, it will be conveyed to the applicant. We are surprised by such averment. No reason has been given as to why the payment is delayed. There is nothing on record to establish whether till the date of hearing, the said period was decided. It is unfortunate that the concerned authorities have not been able to decide the issue as per the provisions of FR-54 for such a long period. It is also seen that even after the issue of the impugned order dated 21.3.95 ordering that for the period from 19.1.90 to 13.7.94, 50% of the pay and allowances shall be paid to the applicant, the actual payment was made only after about one year.

6. In view of above discussions, the part of impugned order dated 21.3.92 (Ann.A1), so far as treating the period from 19.1.90 to 13.7.94 as dies-non, is quashed. The respondents are directed to pass a fresh order in this regard after giving another opportunity giving two weeks' time to the applicant for converting the said period or portion of the period into leave of any kind due and admissible and also specifically ordering whether the said period shall be taken as spent on duty for any specified purpose as per the provisions of FR 54 (5). It is also directed that the period of absence from 4.4.86 to 12.4.89 be decided under the provisions of FR-54 within two months from the date of receipt of copy of this order giving two weeks time to the applicant to submit his representation against the pay and allowances so determined and also for conversion of the period into any kind of leave due and admissible. The respondents shall

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disburse all the amount as lawfully due to the applicant within 3 months from the date of receipt of this order. In the circumstances of this case, a cost of Rs. 4000/- shall be paid to the applicant as the cost of the application within 3 months from the date of receipt of this order.

If the payment as due to the applicant is not made within the stipulated period, the applicant shall also be entitled to the interest @ 10% per year for the delayed period provided the applicant adheres to the time schedule. Let the Deputy Registrar send a copy of this order to the Chairman, Railway Board, Rail Bhawan, New Delhi- 110011, for appropriate corrective action as he may deem fit.



(M.L.CHAUHAN)

Member (Judicial)



(H.O.GUPTA)

Member (Administrative)