

OA 104/97

Date of Order 21/11/2002

Madan Lal Verma, Junior Teacher (Retd.), 'Subham' Rangpur Road no.3, Dadwara, Kota (Rajasthan).

... APPLICANT.

v e r s u s

1. Union of India through its General Manager, Western Railway, Churchgate, Bombay.
2. The President, Railway Schools & Divisional Personnel Officer, Western Railway, Kota (Rajasthan).

...RESPONDENTS


Mr. Rajveer Sharma, Counsel for the applicant.
Mr. Manish Bhandari, counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)


The facts, germane to this case, are not in dispute. The major penalty proceedings had been contemplated against the applicant and he had been placed under suspension w.e.f. 4.10.77 to 21.11.79. A charge-sheet for major penalty was issued to him. On conclusion of departmental proceedings, finally a minor penalty was imposed. By order dated 5.7.80, the Disciplinary Authority ordered that the period of suspension from 14.10.77 to 21.11.79 be treated as period not spent on duty. Being aggrieved by this order, the applicant approached this Tribunal by filing OA No. 728/89. The same was disposed on 19.2.96 with the direction that the applicant shall represent the matter to the respondents who shall decide about the treatment of suspension period under FR 54-B, through a speaking order. In pursuance to these direction, the applicant submitted his representation on 4.4.96. This came to be decided by letter



dated 19.7.96 by respondent No. 2. By this order, the period of suspension has been allowed to be counted for all purposes like for earning leave, contribution to Provident Fund but not for earning increments. In other words, the period has still not been treated as period spent on duty. By filing this OA, the applicant has challenged this order (Annexure A/2) and has made a prayer that the same be declared illegal, invalid, unjustified and that the same be quashed.

2. We had heard the learned counsel for the parties on 24.09.2002. At the request of Mr. Rajveer Sharma, learned counsel for the applicant, the case was listed for further arguments on 1.10.2002. None of the counsel appeared on this date. The parties had been given five days time to file written submission. These have been filed by the applicant through his counsel. Nothing further has been heard from the respondents. We proceed to decide the case on merits based on arguments advanced, records in the OA, reply of the respondents, written submissions made by the applicant and the rule position.

3. The issue to be considered is whether the impugned order passed in pursuance of the directions of the Tribunal in the earlier OA filed by the applicant, is in conformity with rules & law. Mr. Rajveer Sharma learned counsel for the applicant had drawn our attention to Govt. of India's order under FR 54-b. He submitted that in terms of Govt. of India, Department of Personnel & Training O.M. No. 11012/15/85-Estt.(A) dated 3.12.1985, the period of suspension is required to be treated as period spent on duty as only a minor penalty had been awarded after conclusion of departmental proceedings. The learned




counsel vehemently emphasised that the case of the applicant is squarely covered by these orders, notwithstanding the fact that in his case, the period of suspension was from 14.10.77 to 21.11.79 i.e. much prior to the said order. Mr. Sharma contended that once this order had been issued, the same comes into effect from the earlier date of instructions relating to regulating the period of suspension. While referring to the impugned order dated 19.7.96, the learned counsel stated that earlier instructions were of 19.2.60 and thus these instructions of 1985 shall take effect from 1960.

4. We have perused the O.M. dated 3.12.1985 under which the relief has been claimed. We find that the answer lies in that O.M. itself.

The said letter in para 2 states as follows :-


" These orders will become effective from the date of issue. Past cases already decided need not be reopened."

It has categorically been directed that the past cases already decided need not be reopened. The contention of the learned counsel for the applicant that these orders shall relate back to 1960 has no basis. The date of the O.M. is 3.12.1985 and it can take effect only from that date. The period of suspension is 14.10.1977 to 21.11.1979. The Disciplinary Authority's decision to treat this period as 'not spent on duty' was taken on 5.7.1980. Obviously, the instructions issued in 1985 can have no applicability to the facts of this case, more



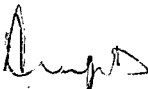
so when these specifically stipulate that these will become effective from the date of issue i.e. 3.12.1985.

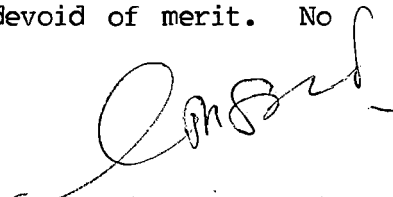
5. In the written submissions, the applicant has placed reliance on the judgement of Goa Bench of this Tribunal in the case of Valente Braganza vs. Supdt. of police 1989 ATC 256, decided on 12.12.1998 to stress that in that case the period of suspension was from 18.12.1981 to 14.05.1984 i.e. prior to the date of O.M. dated 3.12.1985. In that case the orders treating the period of suspension as 'not spent on duty' were quashed and set aside and the period of suspension was ordered to be treated as 'spent on duty' for all purposes. We have carefully gone through the judgement cited. In that case the applicant was given a written reprimand as a minor penalty. The Disciplinary Authority i.e. Superintendent of Police had decided that the period of suspension be treated as period 'not spent on duty'. The applicant had challenged the above order by filing a writ petition No. 184/84 in the High Court of judicature at Bombay, Goa Bench at Panaji. It was observed by the bench of this Tribunal that the learned advocate for the respondents (i.e. the department) had made a statement before the Hon'ble High Court when the applicant's writ petition came up for admission, that the penalty of written reprimand awarded to the applicant would not affect the consideration of the applicant in future promotion or any other service benefits. In view of this statement, the applicant's advocate withdrew that writ petition. In this background, the Hon'ble Members of the Tribunal quashed the order of the Disciplinary Authority by observing that the impugned order was contrary to the statement made on behalf of the government which induced the applicant to withdraw the



application. Thus it is apparent that directions of the Tribunal in that case are per inquirium and in the lights of the facts of that case only. They are not relevant to the facts of the case before us. As a matter of fact, the Tribunal in that case also had specifically observed that the memorandum dated 3.12.1985 will become effective only from that date and past cases already decided need not to be reopened. So, the case cited by the applicant to buttress his argument does not help him at all.

6. The applicant has failed to make out any case in his favour. The OA is dismissed as totally devoid of merit. No costs.


(A. P. NAGRATH)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN