

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
J A I P U R

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Date of Order : 09.05.2001.

ORIGINAL APPLICATION NO. 178/1998

Suresh Kumar Jha S/o Shri Ajmeri Pal Jha, aged 54 years, R/o Railway Quarter No. 1819/B Hajari Bagh, Ajmer at present working as Jr. Engineer (Electrical) Diesel Ticket No. 69280/2 Loco, Ajmer.

.....Applicant.

VS.

1. Union of India through the General Manager, Western Railway, Church Gate, Mumbai.
2. Chief Works Manager (Establishment), Western Railway, Ajmer.
3. Dy.Chief Mechanical Engineer (Loco), Western Railway, Ajmer.

.....Respondents.

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Mr. R.S.Rathore, Counsel for the applicant.
Mr. Hemant Gupta, Advocate Brief holder for
Mr. M.Rafiq, Counsel for the respondents.

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C O R A M :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. N.P.NAWANI, ADMINISTRATIVE MEMBER

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ORDER

(PER Mr. A.K.Misra, J.M.)

The applicant had filed this O.A. in which he has prayed that the order dated 2.11.1996, Annex.A/1 and order dated 6.1.1997, Annex.A/5, issued by the respondent No.2, be quashed and the respondents be directed to treat the intervening period ~~as from~~ the date of removal to the date of joining i.e. 23.3.1987 to 21.3.1995 of the applicant, as

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spent on duty. The respondents be further directed to pay the arrears and allowances of the said intervening ^{period} along with consequential benefits and promotions w.e.f. the said date.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The respondent No. 2 passed an order on 2.11.1996, Annex.A/1, the operative part of which reads as under :-

"In view of the above direction and being the case of indiscipline and serious misconduct his period is being decided in terms of Rule No. 1344 (FR 54-A) R-II i.e. intervening period between the date of removal to the date of joining should be treated as 'not spent on duty'. The period from removal to his date of joining is treated as 'Leave due'."

5. The aforesaid order was passed by the respondent No. 2 on the representation of the delinquent which was filed after the termination of the applicant was quashed by the Tribunal on 4.8.1994 in O.A.No. 337 of 1992.

6. It may be noted that the Tribunal had given directions to the respondents that they could take further action according to law in the disciplinary matter if they so chose. But the respondents probably did not proceed with the inquiry matter in terms of the directions given by the Tribunal.

7. It was argued by the learned counsel for the applicant that when the respondents have chosen not to

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proceed against the applicant any further in the disciplinary matter after the applicant's reinstatement, then the period spent during the penalty of removal from service, was required to be treated as spent on duty with full payment of pay and allowances to him. But the respondents in order to deprive the applicant of his dues have passed the impugned order by treating him "not on duty and leave due" which is not permissible under the rules.

8. On the other hand, the learned counsel for the respondents submitted that the applicant was not fully exonerated in the departmental inquiry and, therefore, he is not entitled to any pay and allowances. Since the applicant had not rendered any service to the department during the period of his removal, therefore, he cannot be treated as on duty with full pay and allowances for that period. The order is perfectly legal.

9. We have considered the rival contentions and the arguments. The Para 1344 of the Indian Railway Establishment Code, Vol. II is the rule which would govern the controversy in hand. This Rule is almost similar to Rule 54-A of the Fundamental and Supplementary Rules (for short 'the Rules'), with one exception i.e. the proviso added under sub rule 2 (i) of the said Rules. In the case in hand the applicant was not completely exonerated. Therefore, as per the provisions of sub rule 2 (i) of the Rule 1344 of the Code, the amount of pay and allowances ~~on~~ the quantum proposed to be paid to the applicant ^{was} ~~is~~ required to be determined after notice to the applicant and consideration of his representation in this regard... In the instant case, no such notice prior to passing the order Annex.A/1 was given to the applicant and

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consequently the decision taken by the respondents and communicated to the applicant vide Annex.A/1 cannot be said to be as per rules. A bare reading of sub rule 2 (i) of Rule 1344 of the Code, would lead us to the conclusion that even in cases where exoneration of the delinquent is not on merits yet he has to be paid some amount for the period of removal in terms of Rule 7 of Rule 1343 of the Code keeping in view the other provisions of sub para (2) of the Rule 1344 of the Code, after giving a notice to the applicant. In view of this, the impugned order Annex.A/1 cannot be termed as per law and is difficult to sustain.

10. It may also be noted that in Para 1344 of the Indian Railway Establishment Code, Vol. II which is similar to Rule 54-A of the Rules following Proviso under Rule 2(i) (a) has been added which reads as under :-

"Provided that any payment under this rule to a Railway servant (other than a Railway servant who is covered by the provisions of Payment of Wages Act, 1936), shall be restricted to a period of three years immediately preceeding the date on which the judgement of the Court was passed or the date of retirement or superannuation of the Railway servant as the case may be."

In view of this, while deciding the amount of pay and allowances, the period for which it can be granted in maximum as per the proviso, is to be kept in view by the concerned authority.

11. From the above discussions, we come to the conclusion that the impugned order Annex.A/1 dated 2.11.1996, deserves to be quashed and the O.A. deserves to be accepted.

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12. The O.A. is, therefore, accepted. The impugned order dated 2.11.1996 (Annex.A/1), is hereby quashed. The respondents are directed to pass an appropriate order, after due notice to the applicant, relating to the period of removal of the applicant i.e. from 23.3.1987 to 21.3.1995 keeping in view the observations made in the preceeding paragraphs and the concerned provisions of the Indian Railway Establishment Code regulating such matters, within a period of four months from the date of communication of this order.

13. The parties are left to bear their own cost.



(N.P.NAWANI)

Adm.Member



(A.K.MISRA)

Judl.Member

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