

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 371 of 2004

Bilaspur this the 22nd day of November, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. M.K. Bhatnagar, Judicial Member

Mohd Sharif Khan S/o Sheikh Saukat Khan,
Ex-Station Porter, Railway Station
Majhiyari under the Divisional
Rail Manager, Central Railway, Jabalpur

APPLICANT

(By Advocate - Shri L.N. Namdeo)

VERSUS

1. The Union of India through the
General Manager Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.
2. The Senior Divisional Operating Manager,
Central Railway, Jabalpur.
3. The Divisional Operating Manager,
Central Railway, Jabalpur.
4. The Assistant Operating Superintendent
(Goods), Central Railway, Jabalpur.

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

ORDER

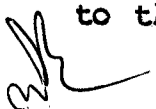
By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main reliefs :-

" (i) that looking to the facts and circumstances
of the case, the enquiry is liable to be closed and
dropped in view of the principles of law laid down
in 1994(26) ATC 694(N.D) F.B 1992(22) ATC 331(Mad.)
and the applicant is entitled to be re-instated in
service.

(ii) that since the removal order dated 1.5.1998
has been set aside by this Hon'ble Tribunal and also
~~may~~ by the respondents hence the applicant is
entitled to salary for the post period from 8.6.1994
to 30.4.1998 as he is deemed to be in service in
view of the principles laid down in AIR 1998 SC 469

(iii) that since the balance of subsistence
allowance as per order dated 4.9.2003 of this Hon'ble
Tribunal and even after the extended time upto
15.12.2003 granted by this Hon'ble Tribunal vide order
dated 10.11.2003 has not been paid to the applicant
hence the respondents may be ordered to pay the said
amount immediately. The respondents may also be
ordered to furnish the information regarding the
amount of subsistence allowance paid to the applicant
and the periods for which the allowance has been paid
to the applicant.



2. The brief facts of the case are that the applicant while working as a Station Porter under the respondents was charge-sheeted for the alleged offence of securing regular employment on the basis of bogus service card. A departmental enquiry was initiated against him. He did not attend the enquiry due to non-payment of subsistence allowance. He filed an Original Application No.209/1995 against the order of removal from service dated 8.6.1994. The Tribunal vide its order dated 16.9.1997 quashed and set aside the order of removal and directed the respondents to hold an enquiry, and complete the same within a period of three months. It was also directed by the Tribunal that during the period of enquiry the applicant shall remain under suspension, and further that the period ^{of} between the date of removal and date of final order after ^{remand} removal, shall be governed by a specific order to be passed by the competent authority. However, the subsistence allowance was not paid to the applicant even after his application to the authorities, but the ex parte enquiry was held and again the order of removal was passed on 1.5.1998. Against this order, the applicant filed O.A. No.84/1999. The Tribunal vide its order dated 4.9.2003 quashed and set aside the order dated 1.5.1998 and ordered a fresh enquiry. It was further directed that "during the pendency of the fresh enquiry and the disciplinary proceedings the applicant will not be reinstated nor he will be deemed to be under suspension. He will not be paid the backwages for the intervening period between the order of the removal dated 01.05.98 to the date of the present order". The aforesaid order/4.9.2003 of the Tribunal was challenged before the Hon'ble High Court in Writ Petition No.2309/2003. The Hon'ble High Court disposed of the said writ petition vide order dated 13.11.2003 holding that "the petitioner is deemed to be under suspension from 1-5-1998 (order of dismissal, which was set aside), till the de-novo enquiry is over. The petitioner would be entitled to subsistence allowance from 1-5-1998". Accordingly, the applicant submitted his joining report. However, the respondents

did not pay the subsistence allowance as per the orders passed by this Tribunal and the Hon'ble High Court. The respondents filed an MA No.1446/2003 before this Tribunal for extension of time for payment of subsistence allowance to the applicant, whereupon the Tribunal vide its order dated 10.11.2003 (Annexure-A-9) granted time up to 15th December, 2003 for payment of remaining subsistence allowance to the applicant. According to the applicant, the respondents have issued an order dated 10.3.2004 (Annexure-A-11) by which the order of removal from service dated 1.5.1998 has been cancelled and the applicant has been placed under suspension from 1.5.1998 and his headquarters has been fixed at CYM, Satna. On 29.3.2004 the applicant moved an application (Annexure-A-12) stating therein that he has no money to move to Satna and to live there without any money. The respondents vide their remittance note dated 16.4.2004 sent a cheque amounting to Rs.79,520/- to the applicant. According to the applicant this amount pertains to subsistence allowance from May 1998 to February 2004, although the applicant has been placed under suspension from 8.6.1994. Hence this OA.

3. The respondents in their reply have stated that in compliance with the orders of the Court, the subsistence allowance for the past period has already been passed and further subsistence allowance is being paid regularly. They have further submitted that the enquiry as per the court's order is under process. During the course of enquiry, the applicant has requested to change the enquiry officer. Accordingly, on the request of the applicant the disciplinary authority has appointed a new enquiry officer to conduct the enquiry vide order dated 12.7.2004. According to the respondents, the Tribunal in O.A.84/1999 had directed the applicant to fully cooperate with the enquiry and in the disciplinary proceedings, failing which it will be open for the enquiry officer to proceed ex parte. For conducting the enquiry proceedings, the Tribunal has already granted further extension of time and the ^{enquiry} proceedings may be completed within the stipulated time subject to co-operation of the applicant. The respondents in para 4.11 of their reply have also given the details of the subsistence allowance paid to



the applicant from June, 1993 to June 2004.

4. Heard the learned counsel of both the parties, and we have given careful consideration to the rival contentions. The admitted facts of the case are that the applicant had earlier been charge-sheeted and removed from service, which he had challenged in O.A.209/1995. The Tribunal has quashed the order of removal and directed the respondents to again hold enquiry, vide order dated 16.9.1997 (Annexure-A-3). The respondents have again passed the order of removal on 1.5.1998 which was challenged by the applicant in O.A.84 of 1999. The Tribunal has disposed of the said OA vide order dated 4.9.2003 (Annexure-A-6) and has again quashed the order of removal from service and directed the respondents to complete the enquiry within a period of six months. The Tribunal had also directed the applicant to co-operate with the enquiry, failing which it would be open to the disciplinary authority to proceed the enquiry ex parte. This order of the Tribunal was challenged before the Hon'ble High Court in Civil Writ Petition No.2309/2003 and the Hon'ble High Court vide its order dated 13.11.2003 (Annexure-A-7) had modified the order of the Tribunal and directed that the petitioner would be entitled to subsistence allowance from 1.5.1998 till the de-novo enquiry is over. The applicant has requested the respondents to change the enquiry officer and the disciplinary authority vide its order dated 12.7.2004 have appointed a new enquiry officer. The respondents have also been granted extension of time to complete the enquiry. The Tribunal vide its order dated 14.7.2004 in MA 753/2004. As per the directions of the Hon'ble High Court, the respondents have also paid the subsistence allowance to the applicant. Since the respondents have been granted the extension of time to hold the enquiry which is being held by them as per the rules and procedure laid down under the disciplinary and appeal rules. We also find that on the request made by the applicant for change of enquiry officer, the respondents have even appointed a new enquiry officer. Hence there is a delay in completing the



enquiry. Since the respondents are holding the enquiry as per rules and law, we do not find any ground to interfere with the enquiry proceedings being held by the respondents at this stage. The O.A. is, therefore, without any merit and is liable to be rejected. We may also observe that since the applicant is already under suspension and enquiry has been ordered to be held against him by the Tribunal as well as by the Hon'ble High Court of M.P., there is no question of granting him full pay and allowances as requested for by the applicant.

5. In the result, the O.A. is dismissed, however, without any order as to costs.

(A.K.Bhatnagar)
Judicial Member

(M.P.Singh)
Vice Chairman.

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पत्रिकादि अद्यो पित:-

- (1) सचिव, राजा जयसिंह का अदालतखाना, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के पास
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के पास
- (4) बंधपाल, कंप 31, जबलपुर अदालत

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

L. N. Ram Das Div-02D

M. N. Benuja Div 02B

Issued
On 2-12-04
BS