

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 84 of 1999

Jabalpur, this the 4<sup>th</sup> day of September, 2003.

Hon<sup>ble</sup> Mr. D.C. Verma, Vice Chairman (Judicial)  
Hon<sup>ble</sup> Mr. Anand Kumar Bhatt, Administrative Member

Mohd. Sharif Khan, Ex Station Porter,  
Railway Station Majhiyari, Central  
Railway

APPLICANT

(By Advocate - Shri L.N. Nemdeo)

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 S.P. Sinha)

O R D E R

By Anand Kumar Bhatt, Administrative Member -

By this Original Application the applicant Mohd. Sharif Khan has challenged the order of his removal dated 01.05.98 (Annexure A-XI) from the post of Station Porter. He has also requested for declaring the ex-parte enquiry as illegal and direction for payment of the subsistence allowance from 08.06.1994 to 16.09.1997 and also the remaining amount of subsistence allowance from 16.09.1997 to 04.12.1997 and April, 1998.

as per applicant

2. The facts of the case in brief/are that the applicant was working as a Station Porter under the Station Master, Majhiyari

Railway Station under the Divisional Rail Manager, Central Railway, Jabalpur, where he was charge sheeted for the alleged offence of securing regular appointment in the Railways on the basis of bogus service card. Departmental enquiry was held and the applicant was removed from service vide order dated 08.06.1994 (Annexure A-II). The appeal was also rejected on 28.07.1994 (Annexure A-III). The applicant filed an application in the Tribunal, wherein vide order dated 16.09.1997<sup>passed</sup> in O.A. No. 209 of 1995, the orders of removal dated 08.06.1994 and that of the appellate authorities order dated 28.07.1994, were quashed and the respondents were directed to hold an enquiry against the applicant complete the same within a period of 3 months. It was also provided that during the pendency of the enquiry the applicant shall remain under suspension and regarding the period between the date of removal and date of final order after <sup>remand in</sup> ~~removed~~ shall be governed by a specific order to be passed by the competent authority. Fresh enquiry was started against the applicant. In two stages the time for deciding the case was extended by 2 months and 1 month respectively. In the ~~later~~ order of the Tribunal dated 16.09.1997 the respondents were directed to pay the subsistence allowance as is due to him within fifteen days from the date of the order i.e. 06.04.1998. The applicant was not paid the subsistence allowance as due to him. He reminded the respondents on several occasions in which he stated that due to non-payment of subsistence allowance he will not be able to appear in the enquiry. Ultimately, 'incorrectly calculated' subsistence allowance was paid to the applicant on 08.04.1998 after the enquiry was completed.

3. The applicant has stated that the enquiry report was not supplied to the applicant and he was not afforded any opportunity to make a representation against the proposed punishment. The ex-parte enquiry is illegal. The applicant could not attend the enquiry because of paucity of funds. The applicant

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has cited two judgment of the Apex Court. One is AIR 1973 SC1183 Ghanshyam Das Shrivastava Versus State of Madhya Pradesh, in which it was held that if the delinquent failed to attend the enquiry due to paucity of funds, resulting from non-payment of subsistence allowance, the enquiry is invalid. In the other judgment of Jagdamba Prasad Shukla Versus State of U.P. and others reported in AIR 2000 SC 2806, similar decision was given and it was held that, employee being in financial distress due to non-payment of subsistence allowance and unable to reach the place of enquiry and participate in departmental enquiry amounts to denial of opportunity to defend the enquiry. In both the cases the order against the appellants were quashed.

4. The respondents have on the other hand pleaded that the delay in payment of subsistence allowance was due to non-cooperation of the applicant, as the applicant did not submit the non-employment certificate. First time the non-employment certificate was given by the applicant on 16.03.1998 and on that basis subsistence allowance was paid to him on 08.04.1998. The applicant intentionally avoided the enquiry fixed on 17.03.1998, 24.03.1998, 27.03.1998 and 03.04.1998, taking the plea of non-payment of subsistence allowance, because he wanted the time limit given by the Tribunal to be over so that he could claim relief. It is not correct to say that the applicant was not given the enquiry report. A show cause notice was issued to the applicant on 16.04.1998 alongwith the enquiry report, but he refused to receive the same as has been reported by the official who had gone to give the applicant the enquiry report (Annexure R-II and Annexure R-III). The applicant had obtained the job by giving fake casual service card on the basis of which he was given the appointment and the punishment given to him has been passed after considering the evidence on record and due application of mind. It has also been mentioned in Para 5.E of the reply, wherein the respondents have denied that statements


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of various concerned people were not recorded.

5. We have heard the learned counsel for both the sides and perused the pleadings.

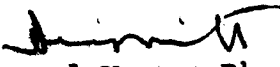
6. In Annexure R-II it has been reported that the enquiry report was served to the applicant, but he refused to accept the same stating that he would not take it until he <sup>had consulted</sup> ~~concerned~~ the lawyer in this regard. It is difficult to sustain the applicant's claim that the enquiry report was not given to him. It has also been pointed out by the respondents in Para 5.D that the order has been passed by the competent authority.

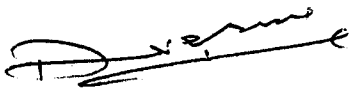
7. However, non-payment of subsistence allowance is something <sup>where</sup> ~~that~~ we are not satisfied with the action taken by the respondents. While deciding M.A. No. 211/1998, in which further time was sought by the respondents to complete the enquiry and passing of the final order, the respondents were directed to pay the subsistence allowance as due to him within 15 days from the date of the order. The statement by the respondents that the subsistence allowance could not be paid to the applicant because of his non-cooperation as he did not submit the non-employment certificate in time, does not hold. This order of the Tribunal in MA No. 211/1998 was passed on 06.04.1998 and after <sup>allowance</sup> that the subsistence ~~was~~ paid on 08.04.1998. However the enquiry was completed on 03.04.1998 i.e. before the payment of subsistence allowance on 08.04.1998. Therefore the claim of the applicant that he could not attend the enquiry, as he was not paid the subsistence allowance has some weight. The cases cited by the applicant of Ghanshyam Das Shrivastava and of Jagdamba Prasad Shukla (supra), go in favour of the applicant in the matter. Similar view has been taken by the Apex Court in the case of Capt. M. Paul Anthony Versus Bharat Gold Mines Ltd. and another reported in AIR 1999 SC 1416. In this judgment it



has been held that non-payment of subsistence allowance during suspension period is violative of fundamental right to life and if the employee is unable to undertake journey to attend disciplinary proceedings from his home town because of his penury occasioned by non-payment of subsistence allowance, the findings recorded by the Inquiry Officer at such proceedings, which were held exparte, stands vitiated.

8. Accordingly, we do not have any option but to quash the orders of the disciplinary authority dated 01.05.98 (Annexure A-XI) <sup>as</sup> well as the enquiry report dated 04.04.1998. The enquiry be started afresh under the D & A Rules. It is further provided 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 present order. The disciplinary proceedings shall be completed by the respondents within a period of 6 months from the date of communication of this order. The respondents are directed to pay the balance of subsistence allowance if any due upto 30.4.98, to the applicant within a period of one month from the date of receipt of copy of this order. The applicant is also directed to fully co-operate with the enquiry and in the disciplinary proceedings, failing which it will be open for the Enquiry Officer to proceed exparte. No costs.

  
(Anand Kumar Bhatt)  
Administrative Member

  
(D.C. Verma)  
Vice Chairman (Judicial)