

13/3/07

Counsel for applicant... Shri. Nand Kishore  
Counsel for respondents... N.A.P.  
Admission, Discontinuation, Hearing.  
Court Officer's Office  
Court House, Patna  
Date: 26.04.2007 for  
Admission, Discontinuation, Hearing.

By Order  
Court Officer

13/3/07

OA No. 67/2005 with MA No. 34/2007.

26.04.2007.

Mr. Nand Kishore counsel for the applicant.  
None is present for respondents.

This case has been listed before the Deputy Registrar due to non availability of Division Bench. Be listed before the Hon'ble Division Bench on 25.07.2007.

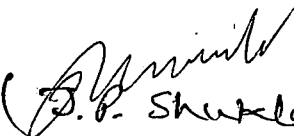
  
(GURMIT SINGH)  
DEPUTY REGISTRAR


P.C./

25.7.07

Mr. Nand Kishore Counsel for applicants  
Mr. Dikshad Khan proxy Counsel for  
Mr. S S Haman Counsel for respondents.

Heard. The OA has  
been disposed of by a separate  
order.

  
(P.P. Shukla)  
Administrative Member

  
(Kuldip Singh)  
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.67/2005.

Jaipur, this the 25<sup>th</sup> day of July, 2007.

**CORAM : Hon'ble Mr. Kuldip Singh, Vice Chairman.  
Hon'ble Mr. J. P. Shukla, Administrative Member.**

Kuldeep Kumar  
S/o Shri Shrichand (Lattiwal)  
Aged about 30 years,  
R/o Village and Post Lukhi,  
Tehsil Kosli,  
District Rewadi, Haryana.

... Applicant.

By Advocate : Mr. Nand Kishore.

Vs.

1. Union of India through  
General Manager,  
West Central Railway,  
Jabalpur (Madhya Pradesh).
2. Divisional Railway Manager,  
West Central Railway,  
Kota (Raj.)
3. Senior Divisional Electrical Engineer (TRD)  
West Central Railway,  
Kota.

... Respondents.

By Advocate : Shri S. S. Hassan.

: O R D E R (ORAL) :

The applicant has filed this OA thereby seeking quashing of order dated 31.5.2004 (Annexure A/1) vide which the applicant's service period from 2.2.1998 to 9.6.2004 has been declared as 'Not spent on duty'.



2. The facts in brief as alleged by the applicant are that he was earlier removed from service in pursuance of the disciplinary proceedings initiated against him. The applicant challenged the dismissal order before this Tribunal by filing OA No.296/2002. The said OA was allowed by this Tribunal vide order dated 17.02.2004, observing that the applicant shall be entitled to all consequential benefits. However, the Tribunal also clarified that in case the respondents wants to pass fresh order against the applicant, they may proceed in accordance with law. Thereafter, the applicant was allowed to join duty but as regards the intervening period is concerned, the impugned order was passed declaring that the period w.e.f. 2.2.1998 to 9.6.2004 shall be treated as 'Not spent on duty'. It is this order which is under challenge in this OA on the ground that the order passed by the authorities is illegal and the applicant was prevented to perform the duties by passing the orders for dismissal by incompetent authority which tantamount orders to null void-ab-initio. As such, the subsequent orders became nullity. On the other hand, the applicant was always willing and available for performing his duties and has never refused for any duty. As such, he is entitled for full payment of salary and allowances and it cannot be held that the period should be treated as period 'Not spent on duty'. The applicant has also referred to the provisions of FR/54(B)4 which prescribes about the regulation of pay on reinstatement

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on grounds of equity of or Court judgment etc. However, FR 54(2) says that in cases of reinstatement on the ground of dismissal/removal/discharge from or termination of service being held by a Court of Law or by an appellate/reviewing authority have been made without following the procedure required under Article 311 of the Constitution and payment of full pay and allowances for the intervening period is automatic and compulsory.

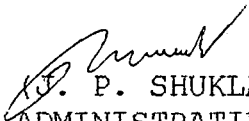
3. Learned Counsel for the applicant has also referred to the judgment decided by the Hon'ble Supreme Court in the case of Union of India vs. Madhusudan Prasad, Supreme Court Civil Appeal No.5909 of 2002 decided on 28.10.2003, wherein it was held that where an employee was dismissed from service without any enquiry or without issuing any show cause notice, on appeal the order of dismissal was set aside and ordered for reinstatement without any back wages. But the back wages were allowed by the High Court as there was fault on the part of the employer in not following the principles of natural justice.


4. In this case also, since the order of removal has been quashed by the Tribunal and the Tribunal had also observed that the order has been quashed and the applicant is entitled to all consequential benefits. So the applicant is also entitled to benefits under FR 54(B) and is entitled that his period should be treated as 'Spent on duty' and back wages for the said period.

FR/54(B)4 also speaks about the same wherein it is stated that in case of reinstatement on the ground of dismissal/removal/discharge or termination from service being held by a Court of Law or by an appellate/reviewing authority without following the procedure under Article 311 of the Constitution, payment of full pay and allowances for the intervening period is automatic and compulsory.

5. Accordingly the order dated 31.5.2004 (Annexure A/1), vide which the period from 2.2.98 to 9.6.2004 was treated as non spent on duty, is hereby quashed and set aside. Respondents are directed to treat the intervening period from 2.2.98 to 9.6.04 as period 'spent on duty' and give the applicant full pay and allowances for the said period.

6. OA stands allowed with no order as to costs.

  
(J. P. SHUKLA)  
ADMINISTRATIVE MEMBER

  
(KULDIP SINGH)  
VICE CHAIRMAN

P.C./