

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 1<sup>st</sup> day of <sup>oct.</sup> September, 2009  
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**ORIGINAL APPLICATION No. 359/2005**

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL).  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

R.P.Bhatnagar  
s/o Shri Kanti Prasad,  
r/o Flat No.11, Hathibabu Ka Bagh,  
Kanti Nagar, Jaipur

.. Applicant

(By Advocate: Shri R.N.Mathur)

Versus

1. Union of India through General Manager, North-Western Railway, Opposite Railway Hospital, Jaipur.
2. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur
3. Divisional Accounts Officer, North-Western Railway, Jaipur.

... Respondents

(By Advocate: Shri V.S.Gurjar)

**ORDER**

Per Hon'ble Shri M.L.Chauhan, M(J).

The applicant has filed this OA thereby praying for the following reliefs:-

- i) that respondents may be directed to pay full salary and bonus to the applicant during the period from which he remained under suspension i.e. from 28.7.1975, to 6.2.1976 and from 17.11.1978 to 25.3.1997.

- ii) that further the respondents may be directed to pay actual payment of salary from the date from which promotions have been given to the applicant on the post of TTE, HTTE, TTI and CTI;
- iii) any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant was removed from service w.e.f. 17.11.1978. The said order was challenged by the applicant before the competent court which case was subsequently transferred to this Tribunal and was registered as TA No.1554/86. This Tribunal vide order dated 15.9.1994 quashed and set-aside the order of removal from service. Operative portion of the judgment has been reproduced by the applicant in Para-4 of the OA, which is in the following terms:-

"5.... In the circumstances, the order removing the applicant from service is quashed with all consequential benefits. Consequently, the orders of the Appellate Authority and the Reviewing Authority are also quashed. We however make it clear that the appropriate Disciplinary Authority shall be free to pass such fresh order as it considers appropriate in the circumstances of the present case. Before passing any fresh order, the appropriate Disciplinary Authority shall grant an opportunity of personal hearing to the applicant."

The Review Application filed against the aforesaid judgment was also rejected vide order dated 30.1.1996. Pursuant to the judgment rendered by this Tribunal in the aforesaid TA, the Disciplinary Authority passed the order dated 24.2.1997 by which following penalty was imposed upon the applicant:-

"Reduction by one stage in the same time scale of pay Rs. 1200-2040 (RP) at pay Rs. 1230/- p.m. for a period of one year, with future effect on pay and seniority. On

expiry of the period of reduction, it will postpone his future increments."

The applicant submitted appeal before the Appellate Authority. The Appellate Authority vide order dated 5.11.1997 modified the order of the Disciplinary Authority and imposed the following penalty:-

"Reduction shall be without effect on future pay and seniority. " The penalty otherwise stands good.

The applicant has placed copy of these orders dated 24.2.1997 and 5.11.1997 as Ann.A/2 and A/3. It is the case of the applicant that he was reinstated in service on 27.2.1997. Since the applicant remained under suspension during the pendency of the inquiry i.e. w.e.f. 28.7.1975 till he was reinstated on 6.2.1976 and remained out of service w.e.f. 17.11.1978 to 25.2.1997, the said period of suspension was treated as period spent on duty for all purposes by the competent authority, as can be seen from order dated 27.5.2002 (Ann.A/4). The applicant has also placed order dated 5.8.2002 (Ann.A/5) on record, perusal of which shows that suspension period of the applicant was treated as duty for all purposes and pay of the applicant was also notionally fixed on the post of HTTE, TTI and CTI. It is further case of the applicant that after passing the order Ann.A/5, pay of the applicant was fixed in the manner as mentioned in Ann.A/6. It is case of the applicant that since the aforesaid period of suspension has been treated as period spent on duty, as such, the applicant is entitled to get full salary for the aforesaid period whereas the respondents has only paid

subsistence allowance at the rate of 50% of the pay for the aforesaid period. The grievance of the applicant is that despite the fact that vide order dated 27.5.2002 (Ann.A/4), the competent authority has taken a decision to treat the period of suspension as duty for all purposes but he has not been paid full salary despite his repeated requests. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. Regarding the order Ann.A/5 the respondents in para-4(6) of the reply have categorically stated that the applicant has been accorded the benefit of promotion w.e.f. the date his junior namely Kailash Narayan Mathur was accorded promotion and the period has also been specifically detailed out for which the applicant will be entitled for the relief. Thus, in view of this stand taken by the respondents in para 4(6) of the reply, the prayer No. 8(ii) of the applicant does not survive.

Regarding prayer 8(i) i.e. payment of full salary and bonus for the period during which the applicant remained under suspension and also the period when the applicant was out of service on account of removal which period was subsequently regularized and the applicant was held entitled for 50% of pay and allowances, the respondents in para-4(7) of the reply affidavit have admitted that the competent authority vide Ann.A/4 has treated the aforesaid period as spent on duty. However, the matter was referred to the North-Western Railway Headquarters Office, Jaipur whereby the matter was examined by the Financial Adviser and the Chief

Accounts Officer and they have opined that the applicant is entitled to proforma pay fixation and is not entitled to actual monetary benefits. Thus, according to the respondents, the applicant is not entitled to any relief in terms of the opinion given by the Headquarters office as communicated vide letter dated 14.8.2006, even though the competent authority vide Ann.A/4 has treated the aforesaid period as spent on duty for all purposes.

4. The applicant has filed rejoinder. In the rejoinder the applicant has stated that benefit of payment of subsistence allowance which was paid to the applicant has been recovered by deducting the amount of Rs. 2,02,311/- from the terminal benefits of the applicant which became payable at the time of retirement. The applicant has placed on record due and drawn statement indicating arrears of salary for the period from 1.1.1978 to 31.12.1992 (Schedule-A) and also Ann.A/7 to show that certain amount was deducted from the retiral dues of the applicant.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the facts as noticed above, it is evident that the applicant was removed from service, which order was challenged by the applicant and this Tribunal has set-aside the impugned order of removal from service with liberty to the respondents to pass appropriate order after hearing the applicant. It appears that the order of removal was quashed and set-aside by this Tribunal on the ground that the same has been passed by the incompetent authority and not on merit. Be that as it may, facts remain that

pursuant to the order passed by this Tribunal the punishing authority has imposed penalty of reduction by one stage for one year with future effect on pay and seniority vide Ann.A/2. It was further recoded that on expiry of the period of reduction, it will postpone his future increments. In the same order the punishing authority has also ordered that the period from the date of dismissal to the date of reinstatement has already been decided as suspension and the applicant shall be entitled to the subsistence allowance for the period of suspension and no arrear of salary will be entitled to him. So far as this part of this order is concerned, we see no infirmity in the action of the respondents. In fact the applicant was not entitled to full pay and allowances for the period under dispute as admittedly, a major penalty was imposed upon him. As such, in terms of provisions contained in Rule 1344 of the Indian Railway Establishment Code, the applicant was not entitled to full pay and allowances for the period between the date of removal (including the period of suspension) to the date of reinstatement, but he will be allowed a proportion of pay and allowances that too subject to the provisions of sub-rule (4) and (5). However, the aforesaid situation has materially changed when order of punishing authority was modified to the effect that reduction shall be without effect on future pay and seniority (Ann.A/3) which is admittedly, a minor punishment as against major punishment awarded by the Disciplinary Authority.

7. The next question which requires our consideration is whether the person who has been imposed minor penalty is entitled to full

pay and allowances in terms of Rule 1345 (3) of the Indian Railway Establishment Code. At this stage, we wish to mention that Rule 1345 of the Establishment Code is para-materia to the provisions contained in FR-54-B. The Government of India has issued instructions dated 3<sup>rd</sup> December, 1985 whereby it has been provided that where departmental proceedings against the suspended employee for the imposition of major penalty finally end with imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of Rule 54-B and the employee concerned should, therefore, be paid pay and allowances for the period of suspension by passing suitable order under FR-54-B. However, no corresponding instructions has been brought to our notice in respect of Railway servants issued by the Railway Board. Thus, the instructions as issued by the Govt. of India, Department of Personnel and Training cannot be ipso-facto made applicable in the case of the applicant so as to grant relief of full pay and allowances to the applicant. The learned counsel for the applicant submits that once the competent authority has passed an order thereby treating the period of suspension as duty for all purposes and not only that, the respondents have also revised his pay and had made payment to the applicant as per cheque dated 31.7.2003, it was not permissible for the respondents to recover the said amount from the pensionary benefits of the applicant on the premise that such payment was objected by the Financial Advisor and Chief Accounts Officer and based on such objection, opinion was given by the Headquarters office as communicated vide order

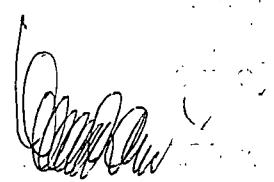
dated 14.8.2006. We see considerable force in the submissions made by the learned counsel for the applicant. Since the order Ann.A/4 passed by the competent authority still hold good and the same has not been superseded/withdrawn by the competent authority, as such, action of the respondents to withhold the amount of the applicant is contrary to the statutory provisions contained in Rule 1344 and 1345 of the Indian Railway Establishment Code.

8. Under these circumstances, we have no option but to allow this OA with direction to the respondents to make full payment of pay and allowances for the period 28.7.75 to 6.2.76 and 17.11.78 to 25.2.97 in the light of the provisions contained in Rule 1344 and 1345 of the Indian Railway Establishment Manual and in the light of the order passed Ann.A/4, which order has not been superseded till date. Ordered accordingly:

9. With these observations, the OA shall stands disposed of with no order as to costs.

  
(B.L.KHATRI)

Admv. Member

  
(M.L.CHAUHAN)

Judl. Member

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