

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.02.2013

OA No. 357/2011

None present for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

List it on 05.03.2013. IR to continue till the next date.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

05/03/2013

O.A. No. 357/2011

Mr. Amit Mathur, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a
separate order on the separate-
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 357/2011

Jaipur, the 05th day of March, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Kamal Meena son of Shri D.K. Meena, aged around 40 years, resident of Gangapur City, District Sawai Madhopur. Presently working as JE Special, Gangapur City (South), District Sawai Madhopur (Rajasthan).

... Applicant

(By Advocate : Mr. Amit Mathur)

Versus

1. The Union of India through General Manager (West), Central Railway, Jabalpur (M.P.).
2. The Divisional Railway Manager (West), Central Railway, Kota Division, Kota (Rajasthan).
3. The Senior Divisional Engineer (Construction) Kota, West Central Railway, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was removed from the service by the respondents vide order dated 19.08.2004. However, the Appellate Authority vide order dated 01.07.2005 considering the penalty of removal from service as disproportionately harsh, reduced it to reduction by three stages in the scale of pay with loss of seniority. Thus, the order of removal was modified and the order of reinstatement of the applicant was passed by the Appellate Authority. The applicant was allowed reinstatement on 24.09.2005.

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2. The learned counsel for the applicant submitted that the respondents imposed the penalty of damage rent on the official residence that the applicant was occupying with effect from the date of removal to the date of actual reinstatement. The learned counsel for the applicant referred to the order passed by this Tribunal in OA No. 417/2006 decided on 18.10.2010 [Kamal Ram Meena vs. Union of India & Others]. Para 9 of this order is quoted below:-

"9. The Revising Authority shall also look into the aspect regarding imposition of penal rent on the applicant for the aforesaid period as after modifying penalty of removal and reinstating the applicant, it cannot be said that the applicant has ceased to be a railway servant and as such his retention of the railway quarter for the aforesaid period was unauthorized. Be that as it may, it is a matter to be considered by the appropriate authority on its own merit and in accordance with rules. The above observations made by this Tribunal in the aforesaid terms have been noticed on the basis of the contention raised by the learned counsel for the applicant."

However, the respondents rejected the representation of the applicant vide order dated 24.05.2011 and further directed for recovery of the damage rent (Annexure A/1).

3. The learned counsel for the applicant argued that when the order of removal was held bad, there was no justification to treat the occupation of the applicant of the Railway quarter as unauthorized occupation and for that reason; this OA deserves to be allowed. That when the order of removal from service of the applicant passed by the Disciplinary Authority was set aside then that order of penalty becomes abinitio void. The learned counsel for the applicant further submitted that the order of

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the Appellate Authority was passed on 01.07.2005. However, the applicant was allowed reinstatement only on 24.09.2005 and for that period 01.07.2005 to 24.09.2005 also, damage rent has been imposed on the applicant. The imposition of such damage rent is illegal and hence this should be quashed. He further argued that as per Para 17 of Chapter 16 of Allotment of Quarters and Recovery of Rent of the Railways' Establishment Rules & Labour Laws, it is stated that if the appeal of the applicant succeeds he will be allowed refund as dues. He argued that since in the appeal, order of removal has been quashed, therefore, as per this provision, no damage rent should be charged from the applicant.

4. On the other hand, learned counsel for the respondents submitted that as per rules, an employee who is removed from service may be permitted to retain the Railway quarter for a period of one month on payment of normal rent/ flat rate of license fee. As the applicant was removed from service, he was entitled to retain the Railway quarter only for a period of one month. If the applicant stays in that quarter beyond the period of one month, it would amount to unauthorized occupation of the quarter. The conversion of penalty of removal from service to some other penalty would not change the fact that the applicant did retain the quarter unauthorisedly.

5. He further submitted that the Appellate Authority had only reduced the penalty of the applicant of removal from service to that reduction by three stages in the scale of pay

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with loss of seniority. The Appellate Authority has held that the intervening period from the date of removal to the date of reinstatement should be treated as 'Dies Non'. The applicant filed the OA No. 270/2011, which was decided by this Tribunal on 20.04.2012 against this order of 'Dies Non'. This Tribunal has upheld the order of the Appellate Authority of declaring the period in question as 'Dies Non' and, therefore, relief claimed by the applicant is not admissible.

6. The learned counsel for the respondents further submitted that the observations made by this Tribunal in Para No. 9 of the OA No. 417/2006 decided 18.10.2010 were noticed on the basis of the contention raised by the learned counsel for the applicant. The Tribunal also held that it is a matter to be considered by the appropriate authority on its own merit and in accordance with rules. The competent authority while passing the order dated 24.05.2011 (Annexure A/1) has considered the observations made by the Hon'ble Tribunal in OA No. 417/2006 decided on 18.10.2010 (supra).

7. With regard to the averments made by the learned counsel for the applicant that as per Rule 17 of Chapter 16 of Allotment of Quarters and Recovery of Rent of the Railways' Establishment Rules & Labour Laws that if the appeal of the applicant succeeds he will be allowed refund as due, the learned counsel for the respondents submitted that this provision will not be applicable in the present case as the appeal of the employees is not succeeded fully because the

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Appellate Authority has only modified the order of removal to that of reduction by three stages in the scale of pay with loss of seniority. The intervening period from the date of removal to that of reinstatement has been treated as 'Dies Non'. The effect of 'Dies Non' is that it amounts to break in service of the applicant. He further submitted that as stated earlier, this period of 'Dies Non' has not been quashed by the Tribunal in OA No. 270/2011 decided on 20.04.2012.

8. The learned counsel for the respondents further submitted that in compliance of the directions issued by this Tribunal in OA No. 270/2011 filed by the applicant decided vide order dated 20.04.2012, the respondents would not charge damage rent from the applicant for the period from 01.07.2005 to 24.09.2005. The learned counsel for the respondents argued that this OA has no force; therefore, it should be dismissed with costs.

9. Heard the learned counsel for the parties, perused the documents on records and the case law referred to by the learned counsel for the applicant. It is not disputed that the applicant was awarded the penalty of removal from service by the Disciplinary Authority. This penalty was modified by the Appellate Authority vide order dated 01.07.2005 (Annexure A/4) to reduction by three stages in the scale of pay with loss of seniority. He further held that the period from removal from service to that of reinstatement in service should be treated as 'Dies Non'. This part of the penalty that the intervening period

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from the date of removal to the date of reinstatement should be treated as 'Dies Non' was challenged by the applicant in OA No. 270/2011 before this Tribunal. The Tribunal in Para No. 5 vide order dated 20.04.2012 has held that:-

"5. We have heard the rival submissions of the respective parties and carefully perused the material available on record. So far as treating the intervening period as dies non before 1.7.2005, we do not want to interfere with the impugned order dated 7.4.2011 but we do not agree with the submissions made on behalf of the respondents that the order of the Appellate Authority was passed on 1.7.2005 and applicant resumed duty on 24.9.2005. Therefore, in our considered view, the applicant should be treated in duty w.e.f. 1.7.2005, the date of the order passed by the Appellate Authority."

10. Learned counsel for the respondents argued that since the Appellate Authority has treated the intervening period between the order of removal and the date of reinstatement as 'Dies Non', therefore, it amounts to break in service. I have carefully perused the provisions of 'Dies Non' as provided in FR 17-A (iii), which is quoted below:-

"(iii) in the case of an individual employee, remaining absent unauthorisedly or deserting the post,

shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required."

Thus according to this provision, the period of 'Dies Non' would be interruption/break in service. Under the CCS (CCA) Rules also, this intervening period cannot be treated as period spent on duty. Since the Disciplinary Authority has not regularized this period as period spent on duty or the period be

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adjusted against leave due, therefore, the intervening period of the applicant cannot be treated as spent on duty.

11. Rule 25 of CCS (Pension) Rules, 1972 reads as under:-

"25. Counting of past service on reinstatement

(1)

(2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularized as duty or leave by a specific order of the authority which passed the order of reinstatement."

According to Rule 25 (2), the period of interruption in service between the period of dismissal/removal/compulsory retirement, as the case may be may, and the date of reinstatement shall not count as qualifying service unless regularized as duty or leave by a specific order of the authority who pass the order of reinstatement. In this case, the Appellate Authority has not regularized this period as duty or leave instead it is held that the intervening period from the date of removal to the date of reinstatement should be treated as 'Dies Non'. Therefore, in my opinion, the applicant is not entitled for any relief on this count.


12. With regard to the submissions made by the learned counsel for the applicant that Rule 17 of Chapter 16 of 'Allotment of Quarters and Recovery of Rent of Railways' Establishment Rules & Labour Laws is applicable in this case, I am of the considered view that since the penalty of removal

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has only been modified by the Appellate Authority. Therefore, it cannot be said that the appeal of the applicant succeeded fully. Moreover the intervening period from the date of removal from service to the date of reinstatement has been treated as 'Dies-Non'. Hence in my opinion, the applicant is not entitled for any relief under this clause.

13. The learned counsel for the respondents has admitted during the arguments that the applicant would not be charged damage rent for the period with effect from 01.07.2005 to 24.09.2005 in view of the order passed in OA No. 270/2011 decided on 20.04.2012, to this extent the relief claimed by the applicant is allowed but the period with effect from 19.08.2004 (excluding one month after the date of removal from service) to 01.07.2005, the applicant is not entitled for any relief.

14. With these observations, the OA is disposed of with no order as to costs.


(Anil Kumar)
Member (A)

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