

(15)

08/08/2012

O.A No. 59/2011

Mr. Punit Singhi, Counsel for applicant.

Mr. V. S. Garg, 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)

K. S. Rathore  
[Justice K. S. Rathore]  
Member (J)

(Signature of Member A)  
Anil Kumar

(Signature of Member J)  
K. S. Rathore

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 08<sup>th</sup> day of August, 2012*

**ORIGINAL APPLICATION No. 59/2011**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

R.P. Bhatnagar son of Shri Kanti Prasadji, aged about 67 years,  
resident of Flat No. 11, Hathibabu Ka Bagh, Kanti Nagar, Jaipur.  
Retired C.T.I. (II) Jaipur, North Western Railway, Jaipur Division,  
Jaipur.

... Applicant

(By Advocate : Mr. Punit Singhvi)

Versus

1. Union of India represented through General Manager, North Western Railway, Opposite Railway Hospital, Jaipur.
2. Chief Commercial Manager (CCM), North Western Railway, Zonal Headquarter, North Western Railway, Jaipur.
3. Divisional Railway Manager, North Western Railway, Jaipur.

... Respondents

(By Advocate : Mr. V.S. Gurjar)

**ORDER (ORAL)**

The present OA has been filed by the applicant claiming for the following reliefs:-

- "(i) Set aside and quash the order dated 15.11.2010 (Annexure-1) and the respondents be directed to treat the period from 17.11.1978 to 25.02.1997 spent on duty and further be directed to release the benefit of salary with all consequential benefits.
- (ii) Any other order or direction which this Hon'ble Tribunal deems proper in the facts and circumstances of the case, may also be passed in favour of the applicant."

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2. Learned counsel for the applicant submitted that the memorandum of charge sheet was issued to the applicant in the year 1975 under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 for imposing major penalty. The applicant was awarded the punishment of removal from service, which was set aside the Central Administrative Tribunal, Jaipur Bench, Jaipur vide order date 15.09.1994 in TA No. 1554/86 (R.P. Bhatnagar vs. Union of India & Others). That in the order dated 15.09.1994, the Disciplinary Authority was left free to pass a fresh order as it considers appropriate in the circumstances of the case. The Disciplinary Authority passed the order dated 24.02.1997 (Annexure A/2) by which the 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 & seniority. On expiry of the period of reduction, it will postpone his future increments."

3. The applicant submitted an appeal against the above order of the Disciplinary Authority. The Appellate Authority vide order dated 05.11.1997 (Annexure A/3) modified the order of the Disciplinary Authority and imposed following penalty:-

"Reduction shall be without effect on future pay and seniority.

The penalty otherwise stands good."

4. The learned counsel for the applicant further argued that the applicant was reinstated in service on 27.02.1997. The order of removal from service was issued on 17.11.1978. The Disciplinary

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Authority passed an order that the period between 17.11.1978 and 26.02.1997 shall be treated as period under suspension. Vide order dated 27.05.2002 (Annexure A/4), the period of suspension of the applicant from 28.07.1975 to 06.02.1976 and thereafter from 17.11.1978 to 25.02.1997 was ordered to be treated as "period spent on duty for all purposes". This order was passed by the Divisional Railway Manager, Jaipur. The actual payment of salary for the period when the applicant remained under suspension was not paid; hence the applicant filed an OA No. 359/2005. This Tribunal decided this OA on 1/5.10.2009. Para No. 8 of the said order is quoted below:-

"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 Annexure A/4, which order has not been superseded till date. Ordered accordingly."

5. Learned counsel for the applicant argued that despite the above order of the Hon'ble Central Administrative Tribunal, Jaipur Bench, Jaipur, the respondents did not release the actual amount of pay to the applicant from the period from 28.07.1975 to 06.02.1976 and 17.11.1978 to 26.02.1997. Therefore, a notice of contempt was sent by counsel for the applicant to the respondents. After receipt of the notice of contempt sent by the counsel for the applicant, respondent no. 2 passed an order dated 15.11.2010 (Annexure A/1) by which the period of suspension from 17.11.1978 to 25.02.1997 has been treated as suspension and subsistence allowance already paid has been directed not to

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be recovered and direction has been issued that the applicant is not entitled to receive salary for the above period of suspension. The order issued by the respondents dated 15.11.2010 is contrary to the order passed by the Hon'ble Central Administrative Tribunal, Jaipur Bench, Jaipur dated 01/05.10.2009 passed in OA No. 359/2005, which has become final as it has not been challenged in any court of law.

6. He further argued that after having taken a decision on 27.05.2002 treating the period of suspension as spent on duty, the above order could not have been revised by the Chief Commercial Manager on the ground that the Divisional Railway Manager, which is the Disciplinary Authority, could not have passed the above order. The order dated 15.11.2010 has been passed on the ground that decision regarding period of suspension could have been taken only by the Appellate Authority. He further argued that the applicant has been awarded minor penalty and, therefore, the applicant cannot be treated to have remained on suspension. The Appellate Authority does not have jurisdiction to pass an order to treat the period of suspension as such. Only the Disciplinary Authority has jurisdiction to pass an order regarding the period of suspension after the major penalty of dismissal/removal or compulsory retirement is set aside. Therefore, the action of the respondents in passing the order dated 15.11.2010 (Annexure A/1) is illegal and arbitrary and, therefore, it should be quashed and set aside.

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7. Learned counsel for the applicant has also submitted the written submissions on behalf of the applicant. He has submitted that the ratio decided by the Central Administrative Tribunal, Principal Bench, New Delhi in the case of **Rohtas vs. Government of NCT of Delhi [TA No. 1492/2009 decided on 30.08.2011]** is squarely applicable in the present case.

8. On the contrary, learned counsel for the respondents argued that a bare perusal of the order dated 15.11.2010 would reveal that there is no element of illegality in the action of the respondents rather the illegality committed earlier has been rectified. The respondents are within their right to rectify the illegality committed by them. He drew our attention to the observations made by the learned Central Administrative Tribunal, Jaipur Bench, Jaipur in Para No. 7 of the OA No. 359/2009, which is quoted below:-

"7. ....Since the order Annexure 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."

9. He further argued that the order dated 27.05.2002 (Annexure A/4) could not have been passed by the Disciplinary Authority in the face of Annexure A/2 wherein the Disciplinary Authority has specifically held "the period from date of dismissal to the date of his reinstatement has already been decided as suspension. Further period up to revocation of the suspension

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shall also be treated as suspension. Subsistence allowance already paid may not be recovered and no further payment of any salary will be entitled to him." The penalty imposed by the Disciplinary authority as aforesaid was upheld by the Appellate Authority vide order dated 05.11.1997 (Annexure A/3) modifying the punishment imposed by the Divisional Railway Manager as under:-

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

Thus it is apparent on the face of record that the Disciplinary Authority had no authority to pass subsequent order dated 27.05.2002 (Annexure A/4). This order could have been passed by the Appellate Authority. He further argued that it was under these peculiar facts and circumstances that this Hon'ble Tribunal observed while disposing of the OA No. 395/2005 that under these circumstances there was no option but to allow the OA specifically observing that the order Annexure A/4 had not been superseded till date while deciding the OA vide order dated 01/05.10.2009.

10. He further argued that the matter was considered at the headquarter alongwith the entire record and observations made by this Hon'ble Tribunal while disposing the OA No. 359/2005 vide order dated 01/05.10.2009. On scrutiny it surfaced that in the instant case at hand provision of Rule 1343 (FR 54) and 1344 (FR 54A) are applicable. It was further observed that authority competent to order reinstate shall consider and make a specific order regarding the pay and allowance to be paid to a railway servant for the period of absence from duty including the period of suspension preceding the removal from service. In the instant

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case at hand, Divisional Railway Manager, Jaipur as Disciplinary Authority, decided the period from the date of dismissal of the applicant to the date of reinstatement to be treated as suspension. On appeal, the Chief Commercial Manager in the capacity of Appellate Authority had reduced the penalty to minor penalty. In such circumstances, it was open only to the Appellate Authority to decide the intervening period as well, in the capacity of Appellate Authority. Since the Divisional Railway Manager, Jaipur as Disciplinary Authority, decided the period from the date of dismissal of the applicant to the date of reinstatement to be treated as suspension, therefore, he was not entitled to again decide the same issue taking a contrary view i.e. treating the period as spent on duty. The applicant was under suspension with effect from 28.07.1975 to 06.02.1976 before his removal from service. The period with effect from 17.11.1978 to 25.02.1997 i.e. from the date of removal to the date of reinstatement of the applicant cannot be treated as duty in terms of Para (4) and (5) of Rule 1343 of Indian Railway Establishment code Part-II (FR 54). The competent authority in the facts and circumstances taking a lenient view, since the applicant already retired from service and to avoid any hardship has decided the period with effect from 17.11.1978 to 25.02.1997 to be treated as suspension which will qualify for pensionary purposes. The subsistence allowance already paid to the applicant may not be recovered and that no further payment of any salary is to be made to him. Thus, a bare perusal of order dated 15.11.2010 (Annexure A/1) would reveal that the action of the respondents is perfectly legal, valid and in

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consonance with the service law jurisprudence. Therefore, he argued that the OA has no merit and it should be dismissed with costs.

11. Heard the rival submissions of the parties and perused the relevant documents on record. We have seen the original record in which DRM has approved the proposal on 14.05.2002 treating the period of suspension as duty for all purposes, allowing full payment to the applicant. This approval was communicated to the applicant vide letter dated 27.05.2002 (Annexure A/4). We have also perused the order passed by this Tribunal in OA No. 359/2005 vide order dated 01/05.10.2009 wherein this Tribunal had observed as under:-

"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 Annexure A/4, which order has not been superseded till date. Ordered accordingly."

In view of the fact that the order dated 27.05.2002 (Annexure A/4) was not superseded/withdrawn by the competent authority, therefore, the OA was allowed. After passing of this order, the matter was considered by the respondents and it was decided that the competent authority should make specific order regarding pay & allowances to be paid to the applicant. In the present case, the Divisional Railway Manager as Disciplinary Authority decided the period from the date of removal from service of the applicant to the date of reinstatement of the applicant to be treated as suspension. On appeal, the Chief

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Commercial Manager as Appellate Authority reduced the penalty to a minor penalty. Therefore, under these circumstances, it was open only to the Appellate Authority to decide the intervening period in the capacity of Appellate Authority. We are inclined to agree with the averments made by the learned counsel for the respondents that once the Divisional Railway Manager, Jaipur as a Disciplinary Authority, decided the period from the date of dismissal of the applicant to the date of reinstatement to be treated as suspension then again the same authority could not take a contrary view i.e. treating the period as spent on duty. We have carefully gone through the order passed by the Chief Commercial Manager, which has been communicated vide order dated 15.11.2010 (Annexure A/1). The Chief Commercial Manager in his order as mentioned as under:-

"Shri Bhatnagar has since retired from service on superannuation and a lenient view is being taken so as not to cause undue hardship to him. Considering all aspects of the case, the period from 17.11.1978 to 25.02.1997 is decided to be treated as suspension and will qualify for pensionary benefits. The subsistence allowance already paid to Shri Bhatnagar may not be recovered and no further payment of any salary will be entitled to him."

12. Thus Chief Commercial Manager has already taken a lenient view in this case. The period from 17.11.1978 to 25.02.1997 has been decided as period of suspension and qualifying for pensionary benefits. He has also considered the decision taken by the Divisional Railway Manager dated 14.05.2002, which was communicated to the applicant vide letter dated 27.05.2002 (Annexure A/4) where he approved treating this period as spent

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on duty and he has come to the conclusion that this decision of the Divisional Railway Manager, Jaipur was not in his competence as this period should have been decided by the Chief Commercial Manager as Appellate Authority who had modified the punishment and reduced it to minor penalty. He has also come to the conclusion that the order passed by the Divisional Railway Manager 24.02.1997 (Annexure A/2) treating this period as spent on duty was also not in infirmity with the provisions of Rule 1343 of Indian Railway Establishment Code Vol. II. Thus, Chief Commercial Manager as an Appellate Authority vide its order dated 15.11.2010 (Annexure A/1) has superseded the order passed by the Divisional Railway Manager vide order dated 27.05.2002 (Annexure A/4).

13. We have carefully gone through the case of **Rohtas vs. Government of NCT of Delhi [TA No. 1492/2009 decided on 30.08.2011]** and we are of the view that the ratio decided in that is not applicable in the facts & circumstances of the present case. In that case, the applicant's case was badly delayed by both the Disciplinary Authority and the Appellate Authority but in this case, the delay is not account of the Disciplinary Authority or the Appellate Authority. In fact, the order was revised in compliance of the order passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur in TA No. 1554/86 decided on 15.09.1994. Thus the facts of the case of Rohtas vs. Government of NCT of Delhi are different from facts of the present case.

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14. In our opinion, the order passed by the Chief Commercial Manager dated 15.11.2010 (Annexure A/1) is a reasoned & speaking order and we find no infirmity/illegality in the said order. Therefore, we find no merit in the OA.

15. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*