

(RESERVED ON 11.09.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **24th** day of **OCTOBER, 2018**.

ORIGINAL APPLICATION NO. 452/2012

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR. MOHD. JAMSHED, MEMBER (A).

1. Surman Yadav, S/o Late Balesar, R/o Moharipur (Tarahwa), Post Jangal Benimadho No. 2. (Near Lal Bahadur Shastri School), District Gorakhpur.

.....Applicant

VERSUS

1. Union of India through its General Manager, N.E. Railway, Gorakhpur.
2. Divisional Electrical Engineer/Deputy Chief Electrical Engineer, Mechanical Workshop, N.E. Railway, Gorakhpur.
3. Chief Workshop Manager, Mechanical Workshop, N.E. Railway, Gorakhpur.

.....Respondents

Advocate for the Applicant : Shri R.K. Dubey

Advocate for the Respondents : Shri L.M. Singh

O R D E R

(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The Original Application (OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(i) Issue an order or direction in the nature of certiorari quashing the impugned order dated 27.06.2011 (Annexure No. A-1 to the OA) to the extent that it treats the period after 02.12.2008 to 03.08.2009 as unauthorized absence of the applicant from duty.
(ii) Issue an order or direction in the nature of mandamus directing the respondents to treat the period from 2.12.2008 upto 03.08.2009 spent on duty.
(iii) Issue an order or direction in the nature of mandamus directing the respondents to give consequential benefits i.e., salary and posting of leave in leave account etc.
(iv) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
(v) Award the cost of the original application."

2. The facts of the case are that the applicant is working as T.L. Fitter Grade-I, Train Lightning shop under the respondent no. 3 in N.E. Railway,

Gorakhpur. The applicant was placed under suspension w.e.f. 09.08.2008 vide suspension order dated 11.08.2008 (Annexure No. A-2 to the OA) for allegedly tampering with attendance record and misbehaving with his supervisor. As per the applicant, his suspension had neither been revoked nor he was paid any suspension allowance, therefore, he had filed OA No. 1027 of 2008 challenging the aforesaid suspension order dated 11.06.2008 before this Tribunal. This Tribunal vide order dated 20.07.2009 (Annexure No. A-4 to the OA) passed the following order:-

"5. The applicant is directed to personally report to the respondent no. 3 at the earlier as and when he does so the Respondent no. 3 is directed to implement the revocation order dated 02.12.2008 and take appropriate action as warranted to facilitate his joining of duty as per rules. After being allowed to rejoin, the applicant will also take action for payment of his dues for the period under suspension as per rules."

3. Learned counsel for the applicant reiterated the point that the applicant was never served with the suspension revocation order dated 2.12.2008 though he was regularly requesting for being taken back on duty and payment of suspension allowance through letters dated 26.12.2008, 17.03.2009, 11.05.2009, 22.06.2009, 14.08.2009 and 15.07.2009 (Annexure No. A-5 to the OA).

4. Learned counsel for the respondents in his counter mentioned that suspension order dated 11.8.2008 was pasted on notice board of Train Lightning Shop in presence of two witnesses on 13.08.2008 as the applicant was absent from duty on that day.

5. Learned counsel for the respondents has also mentioned that suspension of the applicant was revoked vide letter dated 02.12.2008. This revocation order along with major penalty charge sheet dated 02.12.2008 was sent to the applicant through his supervisor i.e., Senior Section Engineer, Train Lightning Shop and the same were also pasted at notice board of Train Lightning Shop on 05.12.2008, as the applicant was not

present on duty. In addition to this, the copy of revocation order dated 02.12.2008 had been sent to the applicant's home address through registered AD Post as furnished by the applicant in his service record. However, the revocation order and major penalty charge sheet had been returned back undelivered to the sender by postal department. Later on 03.08.2009, the applicant reported to respondent no. 2, who allowed him to resume his duties w.e.f., 03.08.2009.

6. In the present OA, the applicant has stated that he has been paid suspension allowance for the period 09.08.2008 to 02.12.2008, however, since he has joined the duty from 03.08.2009, he should be paid the suspension allowance for the period from 02.12.2008 to 03.08.2009 which the respondents have treated as unauthorized absence.

7. The applicant has sought limited relief from the Tribunal in terms of direction to the respondents to treat the period from 02.12.2008 to 03.08.2009 as spent on duty and not as unauthorized absence.

8. Heard the learned counsels for both the parties and perused the records and the directive given by this Tribunal vide order dated 20.07.2009.

9. This Tribunal vide order 20.07.2009 had directed as under:-

"5. The applicant is directed to personally report to the respondent no. 3 at the earlier as and when he does so the Respondent no. 3 is directed to implement the revocation order dated 02.12.2008 and take appropriate action as warranted to facilitate his joining of duty as per rules. After being allowed to rejoin, the applicant will also take action for payment of his dues for the period under suspension as per rules."

10. It is obvious that the respondents have permitted the applicant to rejoin his duties from 03.08.2009. As far as the period of suspension is concerned, it is obvious from the records that the representations of the applicant has been decided by competent authorities at different levels vide

orders dated 05.03.2010, 27.06.2011 and 04.05.2012 etc. The order dated 05.03.2010 issued by Senior Personnel Officer is in response to the directions given by the Tribunal in OA No. 1027 of 2008 vide order dated 20.07.2009 and finally the representation of the applicant has been decided on 04.05.2012 by Chief Workshop Manager indicating that the period of suspension from 09.08.2008 to 02.12.2008 of the applicant shall be treated as spent on duty and remaining period from 03.12.2008 to 03.08.2009 shall be treated as unauthorized absence on duty.

11. However, since treating a period as unauthorized absence will have serious implication for service of the applicant in view of the Rule 42 of Railway Services (Pension) Rules, 1993. It will lead to forfeiture of past services for pension. It would also be termed as misconduct as a period cannot be treated as unauthorized absence without framing charges for it and giving opportunity of hearing. At the same time, the applicant has not furnished any evidence of remaining in the head quarter as per the condition of the suspension order. Respondents are hereby directed to reconsider the matter to regularize the period of absence from 03.12.2008 till 03.08.2009, since, the notice was returned from home address and no efforts were made by the respondents in response to the letters written by the applicant within three months from the date of receipt of this order through a reasoned and speaking order.

12. From the above, it is concluded that directions given by this Tribunal in OA No. 1027 of 2008 have duly been complied with by the respondents. The respondents have already treated the suspension period as on duty.

13. In view of the above mentioned facts and circumstances, the OA is dismissed with the above direction. No order as to costs.

**(MOHD JAMSHED)
MEMBER-A**

Arun..

**(RAKESH SAGAR JAIN)
MEMBER-J**