

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 05 of 2013

Reserved on 23.7.2019
Pronounced on 8th August, 2019

Hon'ble Ms. Jasmine Ahmed, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Mohd. Sayeed Khan, aged about 60 years, S/o late Mohd. Afzal Khan, R/o 165/84 Kachcha Hata, Aminabad, Lucknow.

..... Applicant

By Advocate : Sri M.A. Siddiqui

Versus.

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The S.D.G.M., N.E.R., Gorakhpur.
3. The C.P.O., NER, Gorakhpur.
4. The FA & CAO, NER, Gorakhpur.
5. The DRM (P), NER, Ashok Marg, Lucknow.

..... Respondents

By Advocate : Sri Rajendra Singh

O R D E R

By Ms. Jasmine Ahmed, Member-J

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking following main relief(s):-

- (i) *The intervening period from the date of removal 12.12.2008 to the date of reinstatement in service 22.5.2012 be treated as spent on duty after quashing Annexure A-1 and A-2 to the extent of Dies non only.*
- (ii) *Consequent on treating the period as spent on duty all consequential benefits be granted to the applicant including payment of salary for the said period with 12% P.A. interest thereon.*
- (iii)
- (iv)"

2. The facts of the case, in brief, are that the applicant, while he was working as Chief Pharmacist at NER Polyclinic, Aishbagh, Lucknow, was

falsely implicated in a trap case as a consequence thereof the applicant was placed under suspension w.e.f. 1.8.2006. However, the suspension order of the applicant was revoked w.e.f. 26.10.2006. Thereafter, a major penalty charge-sheet dated 7.3.2007 was served upon the applicant. The charge leveled against the applicant was that he had demanded and accepted illegal gratification of Rs. 100/- from one Sri Hari Har Prasad (Decoy) for preparation of Railway Medical Certificate for a period of 05 days in favour of Hari Har Prasad with the result the applicant has failed to maintain the integrity, lack of devotion to duty and has acted in a manner unbecoming of a Railway servant in contravention of Rule 3(1) (i), (ii) and (iii) of Railway Servants Conduct Rules, 1966. After holding of full-fledged enquiry, the applicant was removed from service vide order dated 12.12.2007. Against the removal order dated 12.12.2007, the applicant preferred an appeal to the appellate authority, which too was dismissed. Thereafter, the applicant filed Revision petition before the Revisionary authority, who taking a lenient view and also after considering the gravity of the charges leveled against the applicant, modified the punishment order by reinstating the applicant in service, but the intervening period shall be treated as 'Dies-non' vide order dated 22.5.2012. Pursuant to the aforesaid order, the applicant joined his duties w.e.f. 23.5.2012. The applicant, therefore, represented to the Secretary, Railway Board, New Delhi with a copy to respondent nos. 1 & 2 and prayed that the period from 12.12.2008 to 22.5.2012 be treated as spent on duty and also to make payment of salary and allowances during the said intervening period. Hence this O.A.

3. The respondents have resisted the claim of the applicant by filing a detailed Counter Reply wherein they have stated that in a trap case, the applicant was given SF-5 (major penalty charge-sheet) by the disciplinary authority and after giving reasonable opportunity by the Enquiry Officer, he proved the charges leveled against him. On receipt of enquiry report, the disciplinary authority issued a show cause notice alongwith the copy of enquiry report to the applicant requiring him to file representation/ reply, if any, to which the reply/representation has been filed. After considering the reply of the applicant as well as the enquiry report submitted by the Enquiry Officer, the disciplinary authority has passed an order of removal from service vide order dated 12.12.2007. Against the said order, the appeal preferred by the applicant was also rejected by

the appellate authority vide order dated 24.6.2009. Thereafter, the applicant filed Revision Petition before the Reversionary authority which by means of the order dated 15.5.2012 has set-aside the removal order dated 15.5.2012 and after reinstatement of the applicant, the intervening period from the date of removal till the date of joining shall be treated as 'Dies-non'. They have also stated that the suspension period from 1.8.2006 to 26.10.2006 shall be treated as Duty and salary for the said period has been released and the period from 12.12.2008 to 22.5.2012 has been treated as 'Dies-non' according to rules on the subject. They have further pleaded that the action so taken by the respondents does not suffer from any illegality and have prayed that the O.A. is liable to be dismissed with costs.

4. The applicant has filed Rejoinder Reply by negating the contentions so made by the respondents in their Counter Reply while reiterating the averments as already advanced in the O.A. and no new facts have been incorporated in the Rejoinder Reply.

5. During the course of hearing, learned counsel for the applicant has placed reliance on the judgment rendered by this Tribunal in O.A. No. 345 of 2008 (Dr. {Mrs} Anjana Pankaj Vs. Union of India & Others) decided by Lucknow Bench on 21.4.2014 and the judgment rendered by Railway Rates Tribunal of India in RRT/DAR/577 dated 27.2.2012 in the case of the applicant (Mohd. Sayeed Khan).

6. We have heard the learned counsel for the parties at length and perused the material available on record.

7. The moot question involved in this O.A. is whether before passing the order of 'Dies-non' the competent authority/Revisionary authority is bound to issue a show cause notice or not? Admittedly, the facts of the case are not in dispute, hence there is no occasion for narrating the facts of the case. Learned counsel for the applicant strenuously argued that the revisionary authority before passing the order of 'Dies-non', should have given a notice or an opportunity of being heard, but without taking any recourse, the order of 'Dies-non' has been passed, which is illegal as Hon'ble Supreme Court has repeatedly held that if any order entails civil consequences, then the opportunity of hearing/show cause notice is mandatory, which in the instant case is lacking and, therefore, he

submits that the order passed by the revisionary authority to the extent of 'Dies'-non' is bad in the eyes of law and is liable to be quashed. We find force in the arguments of the applicant's counsel that no opportunity of any kind including show cause notice has been afforded to the applicant before passing the impugned order. We have also gone through the judgment cited by the counsel for the applicant in the case of Mrs. (Dr.) Anjana Pankaj (supra) and we are of the view that the ratio laid down in the cited case is squarely applicable in this case too. In view of this matter, there is no occasion to deviate the ratio laid down by a coordinate Bench of this Tribunal unless and until the facts and law are otherwise.

8. In view of the conspectus of the case, O.A. succeeds. Order contained in Annexure no. A-1 and A-2 are quashed in so far as they relate to 'Dies-non'. However, the respondents are at liberty to proceed fresh as per due process of law after giving opportunity to the applicant. The aforesaid exercise shall be carried out within a period of three months from the date of receipt of copy of this order. No costs.

(Devendra Chaudhry)

Member-A

Girish/-

(Ms. Jasmine Ahmed)

Member-J