

Court No. - 1**Case :- WRIT - A No. - 9413 of 2023****Petitioner :- Ashok Kumar Verma****Respondent :- Learned Central Administrative Tribunal, Lucknow Bench, Lucknow And Others****Counsel for Petitioner :- Subodh Kumar Verma, Anuj Kudesia****Counsel for Respondent :- A.S.G.I.****Hon'ble Attau Rahman Masoodi, J.****Hon'ble Om Prakash Shukla, J.**

1. Heard learned counsel for the petitioner and Sri Sudhanshu Chauhan learned counsel for the opposite party nos. 2 to 6.

2. The claim of the petitioner for payment of salary for the period of absence from duty, i.e. from the date of order of removal from service passed on 3.10.2006 up to the date of his reinstatement i.e. 11.01.2013 was rejected vide order dated 2.11.2018 passed by the Senior Divisional Personnel Officer/opposite party No.5 and also by the Divisional Railway Manager (DRM)/opposite party No.3 vide order dated 15.04.2019 on the ground that the Tribunal while allowing the Original Application No. 114 of 2007 filed by the petitioner vide order dated 16.4.2012 quashed the punishment order dated 3.10.2006 and the appellate order dated 8.2.2007 and no such direction for payment of salary was issued. The petitioner feeling aggrieved against the orders dated 15.4.2019 and 2.11.2018 approached the Central Administrative Tribunal by filing an Original Application No. 332/00308/2019, which was dismissed vide judgment and order dated 4.10.2023. Challenging the order passed by the Tribunal dated 04.10.2023 as also the orders passed by the

authorities dated 02.11.2018 and 15.04.2019, the instant writ petition has been filed.

3. Prior to institution of the aforesaid Original Application, the petitioner had previously assailed the charge-sheet at the initial stage by filing Original Application No. 402 of 1998 before the Central Administrative Tribunal, Allahabad Bench which was dismissed vide order dated 16.05.2001 and the order passed by the tribunal dated 16.05.2001 was assailed before this Court in Writ Petition No. 28346 of 2001 (SB) which too was dismissed vide judgment and order dated 01.03.2005 upholding the order passed by the tribunal.

4. In the second round of litigation, the petitioner appears to have assailed the order of removal from service passed against him on 3.10.2006 in appeal which was also rejected vide order dated 31.01.2007. The petitioner assailing the said orders preferred Original Application No. 114 of 2007, which was partly allowed vide order dated 16.4.2012. The order dated 16.4.2012 assailed by the railway respondents was upheld by this Court vide order dated 24.8.2017 in Writ Petition No. 1474(S/B) of 2012. The operative portion of the order dated 16.4.2012 reads as under:-

"33. In the above back drop, we thoroughly perused both the impugned orders which suffer from the above embellishments. We find that these orders were passed without proper application of mind and in gross violation of

statutory provisions of the Railway Servants (Disciplinary and Appeal) Rules, 1968 and also the Principle of Natural Justice and fair play. Therefore, O.A. is allowed and both the impugned orders dated 3.10.2006 and 31.1.2007 (Annexure 2 and Annexure A-1) deserve to be and are accordingly quashed. However, it would be open for the respondents to proceed with the chargesheet afresh in accordance with law. But as has been held on 6.8.2010 by Delhi High Court in almost similar matters in the above Writ Petitions No.307/2009, 11275/2009, 11637/2009 and 11653/2009, enquiry may be recommended on the condition that till the relevant documents as discussed hereinabove are made available, failing which the competent authority should consider the desirability of closing the matter as it is, as has been further held in the above judgment of Delhi High Court in this matter which pertains to 1991."

5. It is an admitted position of fact that the opposite parties did not choose to proceed with the inquiry afresh in terms of the above order and the petitioner was reinstated in service on 11.1.2013. In this manner, it is a case where the department itself has diluted the rider of fresh enquiry as was provided in the judgment/order dated 16.4.2012.

6. The entitlement of salary from the date of removal up to the date of reinstatement flows from Fundamental Rule No. 54-A (1) which is *para materia* to Rule No. 1344 of the Indian Railway Establishment Code, which for ready reference is extracted below:-

"2044 (F.R. 54-A)- (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such railway servant is re-instated

without holding any further inquiry, the period of absence from duty shall be regularized and the railway servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

2. Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the pay and allowances to be paid to the railway servant for the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal removal or compulsory retirement, as the case may be, and the date of reinstatement shall be determined by the competent authority and the said period shall be regularized, in accordance with the provisions contained in sub-rules(4) (5) and (7) of Rule 2044(F.R.-54).

3. If the dismissal, removal or compulsory retirement of a railway servant is set aside by the court on the merits of the case the period of intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and date of re-reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period., which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

4. The payment of allowance under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

7. On a close scrutiny of the matter at hand, we are unable to distinguish the case at hand not to be treated at par with those cases where a delinquent official on the order of removal being set aside is reinstated without holding any further inquiry. That being so, there is no reason as to why the benefit of salary, even if not granted to the petitioner, while setting aside the order of removal in the previous proceeding, may be forfeited on any ground whatsoever.

8. The rule in a situation where the department does not proceed with the inquiry afresh is unambiguous and clear. The period of absence is resultantly to be treated in service with all the consequential benefits. The Tribunal while adjudicating upon the claim of the petitioner fell in error not to appreciate the import of the Rules applicable in this behalf.

9. The rejection of the Original Application merely on the ground that the previous proceeding of Original Application No. 114 of 2007 had not culminated with any direction as regards

the payment of salary for the period of absence from duty, in our considered opinion, is erroneous and deserves interference.

10. The reason recorded by the Tribunal, in our considered view, is contrary to the mandate of law, hence cannot be approved. We are satisfied that the impugned judgment rendered by the Tribunal deserves to be set aside.

11. The writ petition is accordingly **allowed** and the impugned judgment and order dated 04.10.2023 passed in Original Application No.332/00308/2019 is set aside and the impugned orders dated 2.11.2018 and 15.4.2019 are quashed. The respondents are directed to treat the petitioner in service for the period of absence from duty, i.e. from the date of order of removal from service passed on 3.10.2006 up to the date of reinstatement i.e. 11.01.2013 and pay salary and other allowances, as may be admissible under law.

[Om Prakash Shukla, J.] [Attau Rahman Masoodi, J.]

Order Date :- 13.12.2023

kanhaiya