

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14423 of 2015

Subodh Kumar Mandal, Son of late Banwari Mandal, Resident of Adarsh Patam
Police Station - Naya Ramnagar, District Munger.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railway, Raj Bhawan, New Delhi.
2. The Secretary, Ministry of Railway Raj Bhawan, New Delhi.
3. The Chief Personnel officer, Eastern Railway, Malda.
4. The Divisional Railway Manager, Eastern Railway ,Malda.
5. The Assistant Engineer (Line) Eastern Railway, Jamalpur.
6. The Senior Divisional Engineer (II) Eastern Railway,Jamalpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Amar Nath Jha, Advocate.

For the Respondent/s : Mr. Anil Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 14-07-2016

The challenge in the present writ petition is to an order dated 27.01.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 83 of 2011, whereby the claim for regularization of suspension period from 29.06.1992 to 06.12.2005 remained unsuccessful.

The petitioner was engaged as a Gangman in Indian Railways. He was arrested on 29.06.1992 in a criminal case for offence under Sections 147/148/302/149 of the Indian Penal Code read with Sections 4 and 5 of the Explosive Substance Act. On



account of custody, the petitioner was suspended, but no departmental proceeding was initiated against him. He was acquitted in the criminal trial on 07.10.2005 and stands reinstated in service on 06.12.2005. The petitioner claims that the period of suspension should be treated as duty period and he should be paid pay and allowance on account of acquittal in the criminal trial.

The Revisional Authority has passed an order holding that suspension cannot be treated as on duty, in terms of rules, circulars viz. CPO/KKK's Sl. No. 7558, 134/80, 61/85, Rule 1343 (F.R..54) of IREC Vol.-II, 2005 Edn., which authorizes the employer to pass an order how the period is to be treated.

Learned counsel for the petitioner vehemently argued that once he has been acquitted in the criminal case, he has to be given full pay and allowances. Reference is made to Circular dated 10th May, 1985, Annexure-6 to the writ petition. The relevant extract reads as under:

4. Cases of reinstatement following acquittal by a court of law, may be with under relevant sub-rules (2),(3),(6) and (8) of Rule 2044 (FR 54) Indian Railway Establishment Code Vol. II, keeping the above observation in view.

It has also been contended that the Tribunal has recorded that petitioner has been paid 75% of the pay as subsistence allowances, but factually only 50% of the salary was paid as

subsistence allowance. Hence, the petitioner is entitled to at least 75% of the salary as subsistence allowance.

We have heard learned counsel for the parties and find no merit in the present writ petition. The suspension of the petitioner was on account of his involvement in a murder case and not on account of any dereliction on duty or at the instance of the employer. For such act, which led the petitioner to judicial custody, the employer cannot be burdened with financial liabilities.

Circular dated 10th May, 1985 deals with right of reinstatement in service. The payment of pay and allowances of intervening period is dealt with in Rule 2044(FR 54B) even in the said Circular. The relevant extract from the said Rule reads as under:

(1) when a railway servant, who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order:

(a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation including premature retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

xxx

xxx

xxx

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the

provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

xxx

xxx

xxx

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Sub-rule (1) contemplates that when a railway servant, who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order: (a) regarding the pay and allowances to be paid to the railway servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation including premature retirement, as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty.

Further sub-rule (3) contemplates that where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended.

The order passed by the Divisional Railway Manager is in tune with sub- rule (3) of Rule 2044-B(F.R. 54-B) when it is found

that the suspension cannot be said to be wholly unjustified as the petitioner was involved in a criminal case of murder. Once the petitioner was involved in a criminal case, his involvement cannot be rewarded with full pay and allowances from a public exchequer.

The petitioner was suspended, being involved in a murder case. Therefore, there is nothing wrong in the impugned order not to pay full pay and allowance for the period of his suspension. The employer cannot be saddled with financial burden as it had no role in involvement of the petitioner in a criminal case.

The order passed by the Tribunal is fair and reasonable and we do not find any illegality in the same, which may warrant interference in the writ jurisdiction of this Court.

The argument that the petitioner has been paid 50% of the salary as subsistence allowance and not 75%, as recorded by the Tribunal, and, therefore, the petitioner should be entitled to at least 75% subsistence allowance, is misconceived. Sub-rule (3) of Rule 2044-B(F.R. 54-B) as reproduced above contemplates “where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the railway servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended”, that employer has to decide as to whether any thing over and above is

required to be paid as subsistence allowance. The question is as to whether anything over and above is payable to the petitioner. The petitioner cannot ask for 75% of the subsistence allowance when he has not asked for enhancement of subsistence allowance during the period of suspension. Therefore, after reinstatement in service, he cannot claim enhanced subsistence allowance. Thus, he is entitled nothing more than the subsistence allowance already paid to him.

We do not find any merit in the arguments raised. The writ petition is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
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