

*Government may consider recruiting persons not immediately meeting the minimum educational qualification standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules”.*

16. Master Circular No. 16 issued by the Railway Board contained a provision for relaxation of educational qualification which says that: -

*“The educational qualification prescribed for the post should not relaxed. However, if on the merits of the individual case, General Manger feels such a relaxation on the minimum qualification absolutely necessary, such cases may be referred to the Ministry of Railways. The Railway Board will consider these cases on merits subject to the stipulation that the candidates shall acquire the requisite qualification within the prescribed time limit. Such cases will carry the following stipulations, in the offer of appointment: -*

*(i) The period to be allowed for acquiring the qualification will be two years.*

*(ii) Such a person will not be confirmed in service till he acquired the qualification.*

*(iii) He will not be eligible for promotion till such time he acquired the qualification.*

*(iv) If any junior is promoted before the senior compassionate appointee acquires the qualification, such promotion of the junior will be treated as regular. In other words, the compassionate appointee will lose seniority in the higher grade to such of his juniors as may have been promoted to the next higher grade, before he acquires the prescribed qualification.*

(Emphasis added)

17. This provision contained in the Master Circular issued by the Railway

Board is applicable to all persons who were dependent on a deceased employee and that is not limited in its application to the widows of the deceased employees.

18. The respondent no. 1 was the only child of his parents. His father died on 17.04.2021 and his mother also died on 23.04.2021. The aforesaid facts prima facie make out exceptional circumstances in the case of the petitioner, which ought to have been taken into consideration while considering his claim for compassionate appointment by granting relaxation of education qualification in view of the aforesaid provisions contained in the Office Memorandum dated 11.12.2009 issued by the Department of Personal and Training and the Master Circular No. 16 issued by the Railway Board.

19. We are of the considered view that the Central Administrative Tribunal has rightly allowed the original application and has directed the petitioners to reconsider the case of the respondent no. 1 for compassionate appointment in light of the aforesaid Office Memorandum and the Master Circular.

20. Accordingly, the writ petition lacks merit and the same is **dismissed** at the admission stage.

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**(2025) 2 ILRA 445**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 19.02.2025**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ-A No. 2077 of 2025

**Gorakhnath Shukla**  
**Versus**  
**State of U.P. & Ors.**

**...Petitioner**  
**...Respondents**

**Counsel for the Petitioner:**

Pradeep Kumar Shukla, Manish Kumar Rai

**Counsel for the Respondents:**

C.S.C.

**A. Service Law – Financial Hand Book – Rules 53 & 54 – ReinSt.ment in service – Entitlement of back-wages – Relevant issue, which is required to be taken into consideration – No allegation of delaying the expeditious disposal of disciplinary proceeding was there – Effect – Respondent considered the gainful employment after dismissal – Permissibility – Held, only relevant consideration in reducing the back wages paid to a government servant, if any, on his reinSt.ment after dismissal, removal or compulsory retirement, would be the fact that he had not obstructed in expeditious disposal of the disciplinary proceedings – The ground considered by the respondents was wholly irrelevant for the purpose of grant of back-wages – The petitioner would be entitled to full back wages from the date of his suspension to the date of his reinSt.ment. (Para 14, 15 and 18)**

**Writ petition allowed. (E-1)**

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Manish Kumar Rai, learned counsel for the petitioners and the Standing counsel for the respondents.

2. The grievance raised in the present writ petition is with regard to the impugned order dated 28.2.2023 whereby Sub Divisional Magistrate, Mankapur has withheld 30 per cent of the salary of the petitioner towards back-wages to be paid to the petitioner consequent to his reinstatement after setting aside of the order of dismissal as well as order dated 27.11.2024 whereby the appeal of the petitioner against the order dated 28.2.2023 has been rejected.

3. The facts in brief are that the petitioner was working as Collection Amin when he was suspended by means of order dated 7.12.2000 in contemplation of a departmental proceedings. Subsequently on conclusion of the disciplinary proceedings the petitioner was removed from services vide order dated 12.2.2002, against which the petitioner had filed a writ petition before this Court bearing Writ Petition No.3592 of 2003 (S/S). The said writ petition was allowed by means of order dated 12.5.2008 and the order of removal as well as the appellate order was set aside and the matter was remitted back to the inquiry officer to proceed from the stage of submission of reply by the petitioner.

4. In compliance of the judgment and order dated 12.5.2008 an inquiry was conducted again and two charges out of six were partially proved but the disciplinary authority was of the view that the charges which are proved were not so grave and accordingly vide order dated 21.8.2008 the petitioner was reinstated in service without awarding any penalty and in light of the order dated 21.8.2008 he continued in service till his superannuation.

5. It has been submitted that while passing the order dated 21.8.2008 the disciplinary authority did not pass any orders pertaining to payment of back wages to the petitioner from the date of his suspension to the date of reinstatement and accordingly the petitioner had preferred a representation to the District Magistrate stating that back-wages has not been forfeited and consequently he would be entitled for payment of full back-wages. The District Magistrate vide order dated 17.3.2012 rejected the representation of the petitioner only on the ground that during the said period the petitioner had not worked.

6. The petitioner challenged the aforesaid rejection before this Court by filing Writ Petition No.3845 of 2012 (S/S) which was allowed on 18.7.2018 with a direction to the District Magistrate to decide the representation afresh in terms of the directions issued by this Court vide its order dated 18.7.2018. The representation of the petitioner was again rejected by Sub Divisional Magistrate vide order dated 21.8.2008 holding that the principle of no work no pay would apply for consideration of payment of wages from the period of suspension till his reinstatement. and consequently the petitioner would not be entitled to any back wages.

7. The said order dated 21.8.2008□ was again challenged by the petitioner before this Court by filing writ A No.6064 of 2019 wherein this Court was of the view that the respondents have not decided the matter in accordance with law nor was there any averments with regard to gainful employment of the petitioner during the said period of suspension and consequently remitted the matter back for consideration afresh in accordance with law. It is in compliance of the judgment and order of this Court dated 17.10.2022 that the present set of orders have been passed rejecting the representation again.

8. It is necessary to mention that in the fresh round of the orders which have been passed by the respondents, it has been held that it is actually the fault of the petitioner, who did not submit any affidavit to the effect that during the period when he was under suspension he was not gainfully employed and as the petitioner himself has not given any certificate to the effect that he was not gainfully employed no orders for payment of full back-wages can be passed and accordingly have rejected the said representation.

9. Learned counsel for the petitioner submits that the orders dated 28.2.2023 and 27.11.2024 are illegal and arbitrary and dehors the provisions of the Rules contained in Financial Handbook Volume II to IV. He submits that the actual facts as to whether a government servant on reinstatement would be entitled to full back wages or part of the back-wages has to be decided in terms of Rue 54 of the Financial Handbook Volume II to IV.

10. Once a government servant has been reinstated then the ordinary rule is that he would be entitled to payment of full back-wages and only reason which can persuade the authority concerned in not passing orders for payment of full back-wages would be the fact that the delinquent government servant was responsible for prolonging the disciplinary proceedings and in case it is so proved then he can pass appropriate orders deducting certain amount from the backwages to be paid. He submits that the respondents have misdirected themselves by considering the aspect of gainful employment of the petitioner during the period of suspension till the date of his reinstatement. He submits that this aspect of gainful employment would be relevant only when the respondents are considering payment of subsistence allowance to a delinquent government servant during the period of his suspension. He submits that this aspect of the matter is provided for in Rule 53, sub clause 2 where when a certificate is furnished by the government servant that he was not gainfully employed in business or profession or vocation then only the subsistence allowance can be paid. It has been submitted that there is no dispute in the present case that, in fact, the petitioner was paid subsistence allowance despite the fact that he furnished certificate to the

satisfaction of the concerned authority. The subsistence allowance could have been stopped but in absence of any such certificate furnished by the petitioner pertaining to the fact that he was not engaged in any other business, profession or vocation, the aforesaid hurdle was crossed when subsistence allowance was paid to the petitioner again and subsequently at the stage when the petitioner has been reinstated after being not inflicted upon the punishment of removal the only aspect of the matter which remains to be considered is pertaining to the delay caused by the petitioner during the disciplinary proceedings. It is in aforesaid fact that he submits that the impugned order suffers from non application of mind and is illegal, arbitrary and accordingly cannot be sustained.

11. Learned State counsel, on the other hand, has opposed the writ petition but does not dispute the aforesaid facts.

12. Having heard the rival contentions, the only issue which falls for consideration by this Court is as to whether when a government servant is reinstated in service after being inflicted with the punishment of dismissal or removal, the two provision which are necessary for consideration are 53 and 54 of the Financial Hand Book which are quoted herein as under for the sake of ready reference:-

*"53. (1) A government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:?*

*(a) a subsistence allowance at an amount equal to the leave salary which the government servant would have drawn if he had been on leave on half average pay or*

*on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:*

*Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:?*

*(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the government servant;*

*(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;*

*(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.*

*(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension:*

*Provided that the government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the government*

*servant continues to meet the expenditure for which they are granted.*

*(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:*

*Provided that in the case of a Government servant dismissed or removed from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.*

*(This amendment shall be deemed to have come into force with effect from December 26, 1981).*

*Orders of the Governor regarding rule 53*

*1. The suspending authority may appoint a substitute in place of a government servant under suspension, provided that the period of suspension does not exceed six months. The word ?substitute? here means the substitute appointed in the resultant vacancy or at the bottom in the chain of arrangements.*

*2. Departments of the government are authorized to appoint a substitute in place of a government servant under suspension for more than six months.*

*3. The Board of Revenue is authorized to appoint a substitute in place of a government servant under suspension for more than six months under intimation to Government every three months.*

*4. Commissioners of Divisions are authorised to appoint a substitute in place of government servant under suspension for more than six months under intimation to the Board of Revenue every three months.*

*NOTE?The authority sanctioning such employment shall draw the special attention of the Accountant General to the sanction.*

*(Effective with effect from July 13, 1974)*

*\*54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order?*

*(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and*

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

*(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to 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:*

*Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in*

*\*This amended rule is effective from May 3, 1980.*

*writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.*

*(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.*

*(4) \*In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of noncompliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to 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, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.*

*(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, 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:*

*Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.*

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

*(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowances admissible under rule 53.*

*(8) Any payment made under this rule to a Government 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 his removal, dismissal*

*or compulsory retirement, as the case may be,*

*\*This amended rule is effective from February 19, 1986.*

*and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.*

*NOTE?Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge.*

13. Rule 53 provides for payment of subsistence allowance during the period the government servant has been placed under suspension whereas Rule 52 provides that no payment shall be made unless a government servant furnishes certificate that he was no gainfully employed while Rule 54 provided for payment of back-wages when a government servant who has been dismissed, removed or compulsorily retired is reinstated□ as a result of intervention in appeal or review and clause 2 provides that when the said government servants is reinstated having been fully exonerated then he is liable to be paid full allowance to which he was entitled had he not been dismissed, removed or compulsorily retired. subject to the limitation of such clause 6 which provides that payment of allowance shall be subject to other conditions under which such allowances are admissible. Proviso to sub clause 2 provides that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the

Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

14. Accordingly the only relevant consideration in reducing the back wages paid to a government servant, if any, on his reinstatement after dismissal, removal or compulsory retirement, would be the fact that he had not obstructed in expeditious disposal of the disciplinary proceedings.

15. In the present case, a perusal of the orders passed by the respondents did not disclose that this issue was even raised or considered at any point by the authority but the only issue which was considered by them was pertaining to gainful employment by the petitioner from the date of his suspension to the date of his reinstatement. This Court is of the considered opinion that the ground considered by the respondents was wholly irrelevant for the purpose of grant of back-wages.

16. Considering the fact as we have already discussed the only issue pertaining to delay in disciplinary proceedings attributable to the government servant is the only relevant issue. The said issue of back wages is liable to be dealt with again considering the fact that no such allegations are attributed against the petitioner in either of the orders. We find no reason for withholding of the back-wages of the petitioner from the date of his suspension to

3. The petitioner has approached this court being aggrieved by the order dated 23.9.2024 passed by Principal Secretary, Sugar Cane Department thereby inflicting punishment of stoppage of two increments

**(2025) 2 ILRA 452**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 24.02.2025**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ-A No. 2211 of 2025

**Dineshwar Mishra** **...Petitioner**  
**Versus**  
**State of U.P. & Ors.** **...Respondents**