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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA 1492/2001

New Delhi, this the 8th day of January, 2002

Shri Govindan S. Tampi, Member(A)

Shri B.S.Kamar,
Retired Shop Superintendent,
Diesel Locomotive Works,
Varanasi
R/o E-108, East of Kailash
New Delhi-110065.Applicant.
(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The Secretary,
Railway Board,
Ministry of Railway,
Rail Bhawan,
New Delhi.
2. The General Manager,
Diesel Locomotive Works,
VaranasiRespondents
(By Advocate: Shri Rajinder Khattar)

O R D E R

By Hon'ble Govindan S. Tampi, Member(A)

Reliefs sought in this OA are as below:-

i) allow this application.

ii) direct the respondents to pay interest on the amount of Provident Fund of Rs.52,043/- from 1.9.1991 to June 2000 at the rate of 18% p.a.;

iii) direct the respondents to pay interest on the Provident Fund showing the recovery of Provident Fund yearwise from 1982 to 1991 wrongly shown as lumpsum as Rs.19942/-.

iv) other order deemed to fit;

v) direct the respondents to pay difference of pay for

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the period the applicant was promoted as Superintendent in grade Rs.2000-3200 to the grade of Rs.2375 - 3500 for the period from 1.1.84 to 31.8.91 and the balance amount of Rs.23000/- and

vi) grant the cost.

2. Heard S/Shri B.S.Mainee and Rajinder Khatter, learned counsel for the applicant and the respondents respectively.
3. The applicant, Asstt. Supdt.(Inspection) in Diesel Locomotive Workshop, Varanasi was removed from service on 20.5.1982 on the ground of unauthorised absence from 21.8.81 to 2.6.83. His OA No.802/1988 against the removal was allowed by the Tribunal on 29.5.1992 with direction to the respondents to consider the review application. The reviewing authority having rejected the review and revived the penalty of removal OA No.3005/1992 was filed by the applicant was allowed and the reviewing authority was quashed. As the respondents did not take any concrete action OA No.1814/94 was filed seeking the grant of pay and allowances during the period of removal till the date of superannuation and for the grant of retiral benefits thereon. This OA was allowed on 4.8.99, granting pay and allowances for the period between 20.5.82 to 31.8.91 and other retiral benefits after the CWP No.6476/99, filed by the respondents was dismissed by the Hon'ble Delhi High Court, the applicant was shown as entitled for Rs.3,74,349/- towards pay and allowances out of which Rs.87,765/- was shown as recoverable in inspection which was being adjusted from DCRG and leave increment. The applicant's representation dated 16.8.2000 and the reminder dated 20.9.2000 also mentioning the non-payment of actual of pay and allowances after promotion

did not evoke any reply. In the meantime, the respondents on 20.4.2001 released Rs.52,043/- towards GPF calculation of which showed that the interest was worked up to 1991-92, his date of superannuation but not for the period up to 1992-2000 when it was lying with them. Recovery of Rs.19942/- is also shown in lump sum from 1982-83 to 1991-92, instead of on year to year basis. This again was wrong. The applicant repeats request over the year release of the Provident Fund also had not been honoured. Interest thereon was payable. Hence this OA.

4. Grounds raised in this OA are that:-

i) inspite of the applicant's removal from service has been set aside by the Tribunal, the respondents had not paid the settlement dues.

ii) amount of GPF lying with the respondents had earned interest which belonged to him.

iii) he was entitled for differential wages as Superintendent in the grade of Rs.2375-3500 between January, 1984 and August, 1991.

iv) recovery of Provident Fund should have been from year to year and not in a lump sum of Rs.19942/-.

v) pay and allowances for the period May 1982 to August, 1991 came to Rs.3,97,350/- and not Rs.3,74,349/- and

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vi) the respondents' orders were illegal and arbitrary.

5. The above pleas were forcefully reiterated by Shri B.S.Mainee, learned counsel for the applicant who also submitted that he was correctly entitled to arrears of pay and allowances on his promotion on actual basis and not notionally as he was not permitted to make in the higher grade by the respondents for no fault of his and that the observation of the Hon'ble Supreme Court's case Union of India and Others Vs. K.V.Jankiraman JT 1991(3) SC 527 was squarely applicable to his case.

6. Shri Rajinder Khatter, appearing for the respondents strongly rebuts the pleas made by the applicant and argues that the applicant had filed a review application against the decision of the Tribunal in OA 1814/94 which was dismissed on 26.11.1999. Same was the fate of the contempt petition disposed of 25.4.2000 and of the writ petition filed before the Hon'ble Delhi High Court that being the case, the claim for interest as the due has become barred by res judicata. It was also pertinent to point out that the respondents had sent the settlement statement forms in regard to payment of our contribution to Provident Fund to the applicants orders available with the Department as 16.12.82, but the same was returned by the postal authority with the remarks "Locked since 2 years". Even after the appearance in 1983, he did not fill up the forms but only sought and obtained as permanent withdrawal of Rs.20000/- in 1989. He filled up the form only on 14.4.2000. There has thus been no delay by the respondents. The plea of the applicant was improper in this regard. The applicant's demand for grant of difference in pay

for the period 1.1.84 to 31.8.91, making out on the pay scale of Rs.2375-3500/- was misconceived and unacceptable as he has been only granted proforma promotion with pensionary benefits because during the relevant period he had not shouldered the higher responsibility. Moreover, the order of the Tribunal in OA 802/1988 setting aside the removal order was only on technical ground and not on merits and the respondents had only been directed to consider the review petition he has not disclosed his whereabouts during the period of unauthorised absence while it was learnt that he was away in South Australia during 1975-1977. The Tribunal's order dated 4.8.99 had granted him the benefit of pay and allowances from 20.5.82 to 31.8.91 but no interest thereon. The said order has been upheld by the Hon'ble Delhi High Court also. Respondents had issued the orders on 25.3.2000, granting him the consequential benefits. The applicant cannot ~~deserve~~ anything beyond that the GPF amount has been paid with interest for 1991-92 on 17.6.2000. There has been no delay on the part of the respondents and the applicant was only raising non-issues to cloud the truth and misleading the Tribunal. OA therefore deserves to be dismissed outright urges Shri Khatter.

7. I have carefully deliberated on the rival contentions and perused the relevant records. The applicant has, through this OA demanded the payment of interest on the delayed return of GPF amount, with recovery between 1982 to 1991 yearwise instead of with lump sum of Rs.19942/- arrears of actual pay and allowances following his promotion as Superintendent from 1.1.84 to 31.8.91 and costs. The respondents on the other hand points out all the due amounts had been paid, plea for interest was barred by res judicata recovery in GPF has been

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correctly made and that the applicant was entitled only for proforma promotion and not actual promotion as he did not perform higher duties and respondents.

8. It is seen that the respondents have released the amount of Rs.52043/- being the GPF balance only on 25.4.2001 namely, 10 years after the date of the applicants superannuation. GPF amount is the applicant's own money which was held back by the respondents and interest would have accrued ~~been~~ ^{on} ~~accrued~~ ^{on} them. The same has to be paid to the applicant.

This claim is not hit by res judicata, as the Tribunal's order dated 4.8.1999 in OA 1814/99 does not at all refer to the applicant's GPF. However, the applicant's request that the recovery of the lump sum of Rs.19942/- towards GPF should have been done separately and yearwise is not acceptable as the applicant had not filed the recovery statement on time and he cannot be permitted to take the advantage of his ~~inaction~~ ^{own inaction}.

9. Applicant's plea for grant of arrears of pay and allowances keeping in mind his enhanced pay of Rs.2375-3500/- as Supdt is justified. When the Tribunal's order is for the grant of arrears of pay and allowances, it means the correct and full pay and allowances as due to him. No restriction has been placed by the Tribunal that the promotional benefits have to be only notional and only pensionary benefits as granted at the higher rates. It is undisputed that the applicant was denied promotion, as by his removal from service, which was set aside by the Tribunal as illegal, he was prevented from working on the promoted post and therefore denial of the actual pay and allowances on the ground of no work, no pay would not apply in his case. This view gains support from the decision of the Hon'ble Apex Court in the case of

K.V.Jankiraman (supra) Applicant is therefore correctly entitled for arrears actual pay and allowances taking into consideration his promotion as Superintendent in the grade of Rs.2375-3500/-. However, no interest is thereon is to be paid as the same is hit by res judicata.

10. Applicant's request for cost has no basis in this circumstances of the case.

11. In the above view of the matter, the OA succeeds partially and is accordingly disposed of with the following

i) respondents shall pay to the applicant interest worked out at the rate of 8% P.A. on the amount of Rs.52,043/- being the GPF held back from 31.8.91, his date of superannuation to 25.4.2001 when it was released

ii) applicant's request for re-computing the GPF by making yearwise recoveries, interest of the lumpsum recovery of Rs.19942/- is rejected.

iii) respondents shall re-calculate his pay and allowances by granting his full monetary benefit of promotion to the grade of Rs.2375-3500/- from the date of such promotion on 1.1.84 to his date of superannuation on 31.8.1991. However, no interest as these arrears is to be granted.

iv) the party shall bear their own costs.

11. Operative portion of this Order will be pronounced in Court on 8.1.2002

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(Govindan S.Tampi)
Member(A)