

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2170 of 2001

New Delhi, this the 15th day of May, 2002

(B)

HON'BLE MR. KULDIP SINGH, MEMBER (JUDG)

Shri Asgar  
S/o Shri Saddique  
House No. 905, Ram Lila Tila  
Mimlana Road,  
Muzafar Nagar, UP.

-APPLICANT

(By Advocate: Shri P.S. Mahendru)

Versus

1. Union of India through  
The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad.

3. The DSE-I,  
Office of the DGM,  
Northern Railway,  
Moradabad.

-RESPONDENTS

(By Advocate: Shri R.L. Dhawan.)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judg)

This is an OA filed by the applicant seeking the following reliefs:-

(i) Allow the OA with costs and quash the impugned order dated 2.1.2001 (Annexure A-1).

(ii) To direct the respondents to pay salary to the applicant for the period 16.4.75 to 27.7.1979 by treating the same as on duty.

(iii) To direct the respondents to refix the pay of the applicant after treating the period from 16.4.1975 to 27.7.1979 as on duty and pay the difference

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of wages to the applicant.

(iv) To direct the respondents to revise the pension of the applicant in light of refixation of his pay and disburse the arrears of pensionary benefits to the applicant.

(v) To direct the respondents to pay interest to the applicant on the amount admissible to him at the rate of 18% per annum.

2. The facts, as alleged by the applicant are that vide an order passed by the Assistant Engineer, Northern Railway, Roorkee dated 16.4.1975 the applicant was removed from service. The applicant says that this order was passed without following the due procedure and ultimately the said order was set aside and the applicant was taken back on duty on 23.5.1979 but he had joined on 27.7.1979. So now the dispute centres around the intervening period from 16.4.1975 to 27.7.1979. The case of the applicant is that he had been submitting representations but to no effect. Ultimately the matter was taken up by the Northern Railwaymen Union in the PNM meeting held on 29/20.5.1995 and vide item No.2 it was decided that the intervening period as per rules should have been regularised as on duty and it was decided that the aforesaid period be regularised. In the said PNM meeting the DSE-I informed that the intervening period be treated as duty in terms of the extant instructions and the decision taken in the PNM meeting has also been annexed as Annexure A-4. Thereafter the applicant had

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been submitting representations for regularising of the intervening period and payment of salary for the said period, but to no effect.

3. Now after knocked the door of the Railway Pension Adalat the applicant could not be given relief thereto as he was informed vide Annexure A-1 that this intervening period had to be treated as leave without pay and the same could not be considered for regularisation of the intervening period as spent on duty as such nothing remains to be paid to the applicant.

4. The respondents are contesting the OA. The respondents in their reply had taken an objection with regard to limitation under Section 21 of the Administrative Tribunal's Act, 1985 and also with regard to jurisdiction of the Central Administrative Tribunal to entertain application as the grievance of the applicant relate prior to 1.1.1982 so in terms of Section 21 of the AT Act it is stated that this court cannot take cognizance of this dispute as the same related much prior to 3 years of the constitution of the Administrative Tribunal's Act, 1985.

5. However, on merits it has been submitted that the period in dispute have been treated as leave without pay and his pay has been rightly fixed.

6. I have heard the learned counsel for the parties and gone through the records of the case.



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7. As regards the plea of limitation is concerned, since the applicant's main prayer is regarding refixation of his pension by treating the period from 16.4.75 to 27.7.1979 as duty and hence refixation of pension is a continuous cause of action. Merely because period in question relates to April, 1975 to July, 1979 on that account it cannot be held to be barred by limitation. As regards refixation of pension is concerned, that cause is said to be within the period of limitation and the same is within the jurisdiction of this Tribunal to decide the case.

8. So now coming to the question whether this period should be treated as leave without pay or as on duty, the learned counsel for the applicant has invited my attention to Annexure A-4, which is at page 12 of the paper book. On going through the same I find that the dispute with regard to the regularisation of intervening period of the applicant was referred to the PNM meeting. The issue was discussed vide item No.2 in the opening speech of the PNM meeting held on 13/14-12-1994 and it was demanded that the period may please be regularised and a decision was taken and DSE-I informed that the intervening period will be decided as duty in terms of the extant instructions meaning thereby that the DSE-I had taken a conscious decision and had conveyed that the intervening period will be decided as duty as in terms of the extant instructions.

9. As against this, the learned counsel for the respondents has also shown the departmental file which also finds a mention of the PNM meeting but on going

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through the same record I find that no decision was taken by the DSE-I in the discussion held in the meeting and vide Annexure R-I a decision was taken to treat the period as leave without pay and on the basis of the same the learned counsel for the respondents submitted that as the intervening period has been treated as leave without pay so it cannot be treated as period spent on duty and consequently no refixation of pension can be ordered.

10. In my view the contentions of the learned counsel for the respondents has no merits because the order, Annexure R-I itself is qualified by clause starting with "however, if any order had been passed contrary to the norms laid down then the matter could be re-examined". In this order it is also there that as regard the PNM decision, no copy of the order passed by the then DSE is available on the file. It appears that though a decision has been taken in the PNM meeting and DSE-I had also informed that the intervening period will be decided as duty in terms of the extant instructions so in principle the DSE-I had agreed that the intervening period will be decided as period spent on duty in terms of the extant instructions. Though the authority who had passed the order Annexure R-I may have a different opinion but still he had observed that if any order had been passed then the same could not be re-examined, so I may mention that there is no scope for re-examination of the order passed by DSE-I who had himself informed that the intervening period will be decided as period spent on duty so the present incumbent is not required to reexamine but rather the present incumbent is bound by the decision as informed by the DSE-I in the PNM meeting.

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11. Moreover I may also mention that the fact that the applicant was removed from service without observing the due procedure that fact has also not been controverted so I am of the considered opinion that the then DSE-I in the PNM meeting had rightly taken a decision that the intervening period should be treated as duty.

12. Accordingly, I allow the OA in part and direct the respondents to treat the said period as duty period and refix the pay of the applicant treating the period from 16.4.75 to 27.7.79 as period spent on duty and accordingly his pension may be fixed accordingly. However, as regards salary for the aforesaid period is concerned that relief is clearly barred by time and that cannot be allowed.

13. The above directions may be implemented within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
( KULDIP SINGH )  
MEMBER ( JUDL )

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