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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BRANCH

O A NO. 2131/1999
New Delhi , this the 15th day of Dec. 2000

Hon'ble Shri Justice Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Mrs. Kulwant Parmar & ORs LRS
R/o 26 B, Pkt. A, LIG Flats,
Phase II, Ashok Vihar
New Delhi
through Shri S K Gupta, Advocate
.....Applicant
(by Shri S K Gupta, Advocate)

Versus

Union of India,
Through Secretary,
Railway Board,
Rail Bhawan Rafi Marg, New Delhi

General Manager,
Northern Railway, Baroda House,
New Delhi.

.....Respondents
(By Shri R L Dhawan, Advocate)

O R D E R (ORAL)

JUSTICE SHRI V RAJAGOPALA REDDY, VC(J)

The applicant , since deceased , was compulsorily retired vide order dated 1.9.89 while he was working as Executive Engineer. The order of compulsory retirement was quashed by the Tribunal by the Judgement dated 30.1.96. He filed OA No.2047/96 claiming promotion from senior time scale to junior Administrative grade with all consequential benefits as order for compulsory retiring him was quashed by the Tribunal. The applicant was re-instated on 2.4.1996 and on attaining the age of superannuation was retired on 30.4.1996. The above OA was allowed vide judgement dated 27.8.97 directing the Respondents to convene a review DPC for considering the applicant's case

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for promotion from the date when his juniors were promoted. Accordingly the applicant was promoted but the actual benefits from 24.8.97 upto the date of retirement were denied. This order in so far as it denied the actual benefits, is challenged in this OA. The learned counsel for the applicant raised following 2 points:

i) He is entitled for the actual benefits of pay and arrears with retrospective effects as the punishment of compulsory retirement has been quashed. Since he was not allowed to work he could not work during the period till his reinstatement and hence he should have been paid the pay and other allowances He relies upon Union of India & Others Versus K V Janki Raman & Others (1991) 4 Supreme Court Case 109 and

ii) Though the order shows that the notional pay of the applicant should be taken into consideration for computation of pensionary benefits the respondents had not so far refixed the pension accordingly and paid the arrears.

2. Ld Counsel for the Respondents Shri E.X. Joseph Sr. Counsel contends that the applicant was not entitled for actual benefits from 1987 as no such direction was given by the Tribunal in its judgement dated 27.8.87 in OA No.2047/96 and also on the principle of "No work No pay". Learned counsel also relied upon para 228 IREM Vol. I in support of his contention. As regards the second

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submission the learned counsel undertakes to pay the pensionary benefits, but the heirs of the applicant are not entitled for any interest.

3. We have given careful consideration to the submissions made by the learned counsel. While disposing of the OA 2047/1996 the direction that was given was to convene a review DPC to consider the applicant's case for promotion from the date his junior was promoted.

4. It is seen that there was no specific direction by the Tribunal for payment of consequential benefits. It is stated by the learned counsel for Respondents that as there are no specific direction was given by the Tribunal even though such payer was made, in the application, it should be held that such benefits were refused by the court. On the other hand the learned counsel for applicant submits that in the absence of any such direction it should be treated that the consequential benefits should be paid, if he were entitled to it, under law. We tend to agree with the learned counsel for the applicant. It is not disputed that the punishment awarded to the applicant has been set aside and hence the applicant should be placed in the status quo position if as he were in the service. The question of payment of back wages for the period the officer was not on duty on the ground of pendency of disciplinary proceedings has come for discussion in UOI Vs Jankiraman AIR 1991 SC 2010 where it was held as under:

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"In the normal course, on the conclusion of the disciplinary course/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the juniormost officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion."

Learned Judges proceeded to observed that :

"While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph; Phd 3 of the said memorandum, viz, "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum.

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary of part of it, it will record its reasons for doing so."

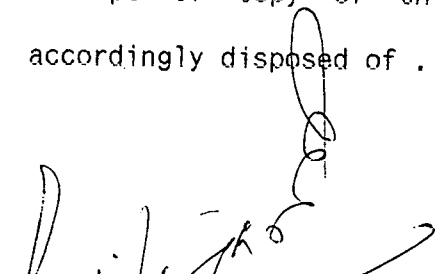
5. From the above judgement it is clear that the power is vested with the authority to consider the order by which the punishment was set aside and pass the suitable orders for grant of arrears of salary or denial for the same. The order by which the applicant was punished of compulsory retirement is not before us. The authorities concerned should have considered the order dated 30.1.96 passed by the Tribunal in OA


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2116/89 and passed the orders in the light of above judgement of the Supreme Court. No such order was passed in this case.

6. The learned counsel for applicant however relies upon the case of Amba Prasad Vs UOI OA No. 2234/95 where the question was whether the applicant was entitled for backwages. Relying upon the judgement of Janakiraman case the bench in which one of us VC(J) was a member, in its order dated 29.9.99 directed the respondents to pay back wages. Considering the facts of that case where the amounts already paid were directed to be refunded, we passed the above order. The same judgement of the Supreme Court was also relied upon in that case also.

7. In the circumstances the OA is disposed of with the direction to respondents to consider the judgement of the Tribunal in OA 2116/99 dated 30.1.96 and pass orders whether the applicant is entitled for payment of consequential benefits for the period from 24.3.87 to the date of retirement. If it were to be held that he was not so entitled to, there, reasons must be given. The respondents may also pay the arrears and difference of pay on the revised rates with interest of 15% on receipt of copy of this order. The OA is accordingly disposed of. No cost.


Govindan S. Tampi (V.
Member (A)


Rajagopala Reddy
VC(J)

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