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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2234/95

New Delhi this the 29th day of September 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Shri Amba Prasad
S/o Shri B.R. Sharma
Head Clerk
under Dy. Chief Mechanical Engineer (Diesel Shed)
Shakurbasti
Delhi-34

...Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi
3. The Dy. Chief Mechanical Engineer (Diesel)
Northern Railway
Shakurbasti
Delhi-34.

...Respondents

(By Advocate: Shri O.P. Kshatriya)

ORDER (Oral)

By Reddy, J.-

Heard the counsel for applicant and the respondents.

2. The only question that arises in the OA is whether the applicant is entitled for back wages as per the judgment of the Supreme Court in Civil Appeal No. 5317/90 dated 12.11.90.



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3. The applicant was initially appointed in class-IV post in Railways in 1971 and he was later promoted as Power Recorder/Clerk on ad hoc basis w.e.f. 26.3.75 in Class III, after he got through the selection test. Thereafter he has been continuously working as a Clerk in the grade of Rs. 260-400. The applicant was regularised in the post of Clerk in 1986. The grievance of the applicant is that he was not given the benefit of the continuous period of his ad hoc service w.e.f. 1975 in fixing his seniority. The applicant, therefore, along with other colleagues filed OA No. 372/88 before the Principal Bench of the Tribunal, seeking a direction to the respondents to assign proper seniority from the date from which he was promoted to the post of Clerk in Class-III. It was further prayed that the respondents be directed to give promotion to the higher grade from the date from which his junior had been promoted and also to fix the pay of the applicants in the higher grade from the back date and also pay him arrears of pay, with other benefits of promotion, seniority etc. The OA was, however, dismissed by an order dated 1.1.89.

4. Aggrieved by the order of the Tribunal, the applicant filed SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide Judgment dated 12.11.90 set aside the judgment of the Tribunal and directed the authorities concerned to consider the case of the applicant alongwith others to determine his seniority taking into account the period of ad-hoc service since the initial date of promotion in Class-III till the date of regularisation in 1986.

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The appeal was thus allowed. It is the case of the applicant that in accordance with the judgment of the Hon'ble Supreme Court, respondents had regularised the services of the applicant as a Clerk and gave promotions to the applicant in the post of Sr. Clerk as well as Head Clerk from the date from which his junior had been promoted. Applicant has been promoted as Sr. Clerk on 22.4.1983 and Head Clerk on 8.3.1986. He was also paid all the arrears from the date from which he was given promotions with retrospective effect. All the arrears were paid in 1991.

5. The cause of action for filing this OA arose when the respondents issued a show cause notice to the applicant proposing to recover the aforesaid amount paid towards pay amounting to Rs. 24,617/-. The applicant submitted his reply and thereafter the impugned order was passed confirming the show cause notice and directing the recovery of Rs. 24,617/-.

6. It is contended by the learned counsel for the applicant that in view of the Judgment of the Hon'ble Supreme Court, the applicant is entitled for all the back wages in the promoted post as the Hon'ble Supreme Court allowed his appeal and thus allowing the OA. Since the applicant had prayed for payment of back wages and all the other benefits in the OA and the Hon'ble Supreme Court having allowed the appeal, he is entitled for all the benefits not only of promotion, but also back wages in the promoted posts. It is also contended that the similarly placed persons

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who have approached the Tribunal and Tribunal having allowed thier cases, were also given the benefits of wages with retrospective effect in the promoted posts.

7. Learned counsel for respondents, however, submits that in the absence of any direction given by the Supreme Court for the payment of back wages to the applicant, the applicant is not entitled for the payment of back wages. It is also contended that under para-228 of the Railway Manual Vol-I, the applicant having not been discharged the duties in the promoted posts he is not entitled for the payment of back wages.

8. The only point that has to be examined is whether the applicant is entitled for back wages by virtue of the order of the Hon'ble Supreme Court. It is the case of the applicant that subsequent to the judgment of the Hon'ble Supreme Court his services have been regularised in the post of Clerk from 1975 and he was given promotions in the post of Sr. Clerk on 22.4.1983 and Head Clerk on 8.3.1986 i.e. the date from which his junior has been promoted. He has thus wrongly been deprived of the same. The respondents, it is not disputed, have also paid all the arrears to the applicant from the date from which he was given promotion with retrospective effect. It is, however, stated in the counter affidavit that the arrears were given to the applicant by mistake. The arrears have been paid to the applicant in 1991. Now the impugned order is passed in 1995 directing the recovery of all the arrears to the extent of Rs. 24,617/-. It is

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stated by the applicant in para-4.7 of the OA that he had made a specific prayer for payment of the arrears of pay along with other benefits of promotion, seniority etc. This para was admitted in the counter. As stated above, the OA has been dismissed by the Tribunal. The Hon'ble Supreme Court, however, allowed the appeal setting aside the order of the Tribunal. It is contended by the learned counsel for respondents that the operative portion of the order of the Supreme Court, there was no clear direction ^{to} from the respondents for payment of the salary with retrospective effect. But the fact remains that the Hon'ble Supreme Court has allowed the appeal. It only means that the applicant is entitled for all the claims made by the applicant in his OA. Since the applicant has prayed for back wages and all the consequential benefits in the OA, the applicant is entitled for the same.

9. There is yet another reason for allowing the back wages. It is not in dispute that all the colleagues of the applicant, who approached the Tribunal, were also given the promotions retrospectively and also paid the back wages in the promoted posts w.e.f. their notional promotions. Infact the applicant was also paid all the back wages after he was notionally promoted retrospectively in accordance with the judgment of the Hon'ble Supreme Court. Without any reason, now impugned order is passed seeking to recover the back wages to the applicant. This order of recovery is being made after 4 & 1/2 years. We are not prepared to accept the

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reason given by the respondents that by mistake the applicant was paid the back wages. The applicant being placed similarly with all his colleagues he should also be extended the same benefits.

10. In U.O.I. Vs. K.V. Jankiraman AIR 1991 SC 2010, it has been held in the context of exoneration of all the charges against the employee, that the normal rule of 'no work no pay' can be made applicable but the employee although willing to work, was kept away from work by the authorities for no fault of his. It was not a case where the employee remains away from work for his own reasons, although the work is offered to him. The court also held that for this reason FR 17(1) was also in-applicable in such cases.

11. In view of the above decision of the Hon'ble Supreme Court, the rule relied upon in para 228 of Indian Railway Establishment Manual Vol-I has no application.

12. For the above reasons, O.A is allowed quashing the impugned order dated 31.10.95 seeking to recover an amount of Rs. 24,617/- from the applicant.

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It is also made clear that amounts already recovered from the applicant, should be refunded. There shall be no order as to costs.

Shanta S-

(Mrs. Shanta Shastry)
Member (A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

cc.