

Central Administrative Tribunal  
Principal Bench

O.A.No.2383/95

Hon'ble Shri Justice K.M.Agarwal, Chairman  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 22nd day of September, 1999

Inder Singh,  
s/o Shri Gokul Chand  
at present working as Diesel Assistant Driver  
R/o House No.5386, Laddu Ghati, Pahar Ganj  
New Delhi. ... Applicant

(By Shri Romesh Gautam, Advocate)

Vs.

1. Union of India  
through  
the General Manager  
Northern Railway  
New Delhi.
2. The Divisional Railway Manager  
Northern Railway  
State Entry Road  
New Delhi. ... Respondents

(By Shri O.P.Kshatriya, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant while working as Fire Man Grade 'B' in the Railways was removed from service under Rule 14(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 in February, 1981. The applicant along with some others including one Shri Kula Nand who was also dismissed from service in similar circumstances filed a Writ Petition before the Delhi High Court which was transferred to this Tribunal as T-745 of 1985. The same was dismissed on 9.11.1986 subject to the direction that the Petitioners if so advised may file a revision application under Rule 24(2)/25 of the Railway Servants (Discipline & Appeal) Rules, 1968 to the General Manager, Northern Railway. The applicant accordingly filed a representation on 24.10.1986 but as no action thereon was taken he filed

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an OA No.1039/88. Shri Kula Nand, whose representation had also not been disposed of also filed a separate OA No.526/1988. The latter OA came to be decided by the Tribunal on 15.11.1991 in the following terms:

"In view of the above, we quash the order of the disciplinary authority dated 2.3.1981 by the appellate authority and remit the matter to the respondents for holding an enquiry if possible in accordance with law. The enquiry has to be completed within a period of six months from the date of receipt of this order."

2. OA No.1038/89, filed by the applicant herein, was also decided in terms of the Tribunal's orders in Shri Kula Nand's case with the following directions:

"In view of the above circumstances, we are of the opinion that the petitioner is entitled to the reliefs which have been granted to Kula Nand (who was his co-petitioner in T-745/85) in our judgement in OA 526/88 dated 15.11.1991. The matter, therefore, stands concluded in the wake of the Kula Nand's (Supra) judgement. Accordingly the order of the disciplinary authority dated 2.2.1981 removing the petitioner from service with immediate effect and the order of the appellate authority dated 14.5.1981, upholding the penalty of removal from service are quashed. The respondents are further directed to hold enquiry in the case, if possible, in accordance with law with utmost expedition but preferably within six months from the date of communication of this order. We, however, do not pass any order regarding back wages. The parties shall bear their own costs." (Emphasis supplied)

3. The applicant was thereafter reinstated in service as Fire Man Grade 'B'. No enquiry was initiated against him. He was also promoted as Diesel Assistant Driver w.e.f. 8.11.1994. The applicant submits that he discovered that certain persons who were juniors to him as Loco Cleaner in 1972 had superseded him for appointment as Driver Grade 'C'. He further states that though no reply has been given to his representation on this point, he understands on verbal enquiry that he has not been given the benefit

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of seniority in view of the judgment of the Hon'ble Supreme Court in SLP filed in the case of Kula Nand. He has now therefore come before the Tribunal with the prayer that the respondents, ~~as terms~~<sup>per</sup> of Rule 1344 of the Indian Railway Establishment Code - Vol.II, be directed to grant him seniority and all promotions in terms of the orders of the Tribunal in OA No.1038/89 with all consequential benefits.

4. The respondents submit that in Tribunal's order in OA No.1038/89 there were no directions as regards the seniority. They further submit that the Supreme Court, in the SLP filed by them, in the case of Shri R.Radappa & Others, had decided that the employee shall not be entitled to any promotional benefits, but only notional continuity from the date of termination till the date of restoration for the purposes of calculation of pensionary benefits shall be given. Hence the claim of the applicant for seniority and promotion for intervening period is not tenable.

5. We have heard the counsel. It is the contention of the respondents that the Hon'ble Supreme Court also decided the case of Kula Nand (supra) in terms of R.Radappa & Others and since orders of the Tribunal in the case of applicant in OA No.1038/89 were on the basis of earlier orders of the Tribunal in the case of Kula Nand in OA No.526/88, the ratio of Supreme Court's Judgment in R.Radappa's case would also apply in respect of the applicant. On the other hand, the main contention of the learned counsel for the applicant is that no SLP was filed by the

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respondents in respect of the Tribunal's orders in OA No.1038/89 and therefore the order of the Tribunal therein became final; the respondents could not apply the ratio of the decision in SLP in respect of an entirely different case and thereby seek to modify the directions given by the Tribunal in case of the applicant. The crux of the controversy therefore is whether the ratio of Supreme Court's decision in Kula Nand's case can be applied in respect of the applicant whose case was not taken up by the respondents in their SLP.

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6. We have carefully considered the matter. The operative part of the orders of the Tribunal in OA 1038/89 has been reproduced above in para No.2. The words used by the Tribunal are that "The matter, therefore, stands concluded in the wake of the Kula Nand's (supra) judgement." The orders of the Tribunal followed "accordingly." Admittedly, the orders of the Tribunal in Kula Nand's case were modified by the Hon'ble Supreme Court. It goes without saying that the orders of the original Court merge into those of the appellate Court. Thus the original order in Kula Nand's case having been modified by the Hon'ble Supreme Court the very basis of the order of the Tribunal in OA 1038/89 also underwent a transformation as the original order of the Tribunal in Kula Nand's case ceased to exist.

7. We also find that the Tribunal in its order in OA 1038/89 had given no specific direction in regard to the protection of the seniority of the applicant. In fact the Tribunal permitted the

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respondents to hold an enquiry if possible with utmost expedition preferably within six months from the date of communication of the order. It is stated that no enquiry was initiated and therefore the order of the Tribunal should be read to mean that the applicant was exonerated from the charges against him and thus became entitled to the benefit of Rule 1344 of IRE Code - Vol.II. We do not see any ground for such an inference as there was no declaration that the applicant was exonerated from the charges against him. In these circumstances, the Supreme Court has already decided Kula Nand's case which was on all fours to that of the applicant, the ratio thereof was rightly applied in the case of the applicant. We are unable to find therefore any contradiction between the directions of the Tribunal and the action taken by the respondents, the question of seniority was of a grey area in the order of the Tribunal ; this came to be settled by the order of the Hon'ble Supreme Court.

In the result, the OA is dismissed. No costs.

(K.M. AGARWAL)  
CHAIRMAN,

(R.K. AHOOJA)  
MEMBER(A)

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