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Central Administrative Tribunal
Principal Bench

O.A. No. 603 of 1997

New Delhi, dated this the ²18th June, 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Dr. J.P. Aggarwal,
Sr. Medical Superintendent,
Northern Railway Divisional Hospital,
S.P. Marg,
Delhi. ... Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Medical Director,
Northern Railway,
Baroda House,
New Delhi. ... Respondents

(By Advocates: Shri N.K. Aggarwal with
Shri B.S. Jain)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated
25.4.96 (Ann. A-1) and seeks pay arrears in regard
to

- i) Pay in the scale of Rs.3700-5000 (Sr.
DMO/Medical Supdt. from October, 1989
to 10.7.90.
- ii) Pay in the scale of Rs.4500-5500 (Sr.
Medical Supdt. (Selection Grade) from
11.7.90 to 25.5.96

with interest @ 18% p.a. thereon, and

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- iii) interest on Rs.3,02,844.00 @ 18% p.a. which was paid to him in 1995, when as per his claim it should have been paid to him in 1993.

2. Applicant while working as ADMO, Ghaziabad was apprehended by CBI, Dehradun in June, 1986 on the charge of having demanded and accepted illegal gratification from a railway employee for issuing him a medical certificate. He was arrested and his house was also raided/searched. Subsequently he was released on bail. He was suspended vide order dated 4.6.86 (Ann. R-1). Criminal proceedings were initiated against him in the Court of the Special Judge, Dehradun who by his judgment dated 2.2.93 (Ann. R-11) acquitted him. Applicant's suspension was revoked on 10.2.93 (Ann. R-III) and he was reinstated in service. Applicant filed O.A. No. 2622/93 seeking treatment of the entire suspension period as duty; payment of backwages; and for promotion as DMO from Sept., 1987, Sr. DMO/Medical Supdt. from June, 1989 and Sr. Medical Supdt. from June, 1990 when his juniors were promoted with consequential benefits. Applicant, however, does not deny in rejoinder, respondents' averments in their reply to the O.A. that during arguments, applicant's counsel only prayed for treating the suspension period as duty along with backwages, and did not press for subsequent promotions with consequential benefits. That O.a. was disposed of by order dated 7.11.94 (Ann. A-4) directing respondents to pass an order regarding treatment of the suspension period within two months and to grant to applicant the benefits

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flowing therefrom within one month thereafter. It was made clear that if applicant was aggrieved by the order, he could reagitate the matter. In so far as promotions and consequential benefits were concerned, in view of submissions of applicant's counsel, no orders were passed on merits, and applicant was allowed to pursue the matter separately. and his hous

3. Railway Board issued orders on 6/7.2.95 (Ann. A-5) addressed to G.M., Northern Railway which reads thus

"The matter of regularising the period of suspension of Dr. J.P. Aggarwal has been carefully considered by Board in the light of CAT, PB/Delhi's order dated 7.11.94 and they have decided that the total period of suspension ordered vide Board's order No. E(0) 1-86/Su 1/3 dated 4.6.86 to the date of revocation of suspension orders vide Board's order No. E(0) 1-86/Su 1/3 dated 10.2.93 may be treated as duty for all purposes and full pay and allowances to which he would have been entitled to had he not been suspended may be paid to him.

Further action may be taken by the Railways accordingly and also for grant of consequential benefits within one month as per judgment."

4. Necessary payments to applicant for the suspension period have admittedly been made to him.

5. Applicant then represented on 22.2.95 for promotion to Sr. Scale; JAG and SAG with reference to his juniors. Promotion to Sr. Scale was to be considered by Northern Railway and he was admittedly promoted to Sr. scale in October, 1995 retrospectively from September, 1987. Northern

Railway also paid him arrears of salary, although respondents in their reply contend that this payment was made erroneously without obtaining the approval of the competent authority viz. Ministry of Railways.

6. Promotion to JAG in the rank of Sr. DMO/ Medical Supdt. (Rs.3700-5000) and SAG in the rank of Sr. Medical Supdt. Selection Grade (Rs.4500-5500) requires approval of Railway Board. By order dated 25.4.96 (Ann. A/1) applicant has been promoted to JAG w.e.f. 31.10.89 and SAG w.e.f. 1.6.90 with notional fixation of pay, but without payment of arrears of pay.

7. Thereupon applicant submitted a representation to respondents against the aforesaid decision which was disposed of by order dated 18.3.98 (Ann. VI) in which it is stated that as applicant's acquittal in the criminal case before Special Judge, Dehradun was with benefit of doubt he is not entitled to arrears in terms of respondents circular dated 21.1.93, which was issued in the background of the Hon'ble Supreme Court's judgment dated 27.8.91 in Union of India & Ors. Vs. K.V. Janakiraman & Ors. AIR 1991 SC 2010.

8. Meanwhile applicant filed the present O.A.

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9. I have heard applicant's counsel Shri Mainee and respondents' counsel Shri N.K. Aggarwal assisted by Shri B.S.Jain. I have perused the materials on record and considered the matter carefully.

10. Rule 2044-B (1) available under Rule 5 Railway Servants (Discipline and Appeal) Rules - Bahri Brothers 6th Edition, Page 31 lays down that when a Railway servant who has been suspended is reinstated.....the authority competent to order reinstatement shall consider and make a specific order:

- (a) regarding the pay and allowances to be paid to the Railway servant for the period of suspension ending with reinstatement.....
- (b) whether or not the said period shall be treated as a period spent on duty.

Rule 2044-B (2) is not relevant for our purpose, but Rule 2044-B (3) lays down that when the authority competent to order reinstatement is of opinion that the suspension was wholly unjustified the Railway servant shall subject to provisions of Sub-Rule (8) be paid the full pay and allowances to which he would be entitled had he not been suspended. Rule 2044-B (4) provides that in a case falling under Sub-rule (3) the period of suspension shall be treated as period spent on duty for all purposes.

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11. When respondents by their order dated 6/7.2.95 after careful consideration have treated the entire period of suspension as period spent on duty and ordered payment of full pay and allowances for this period as if applicant had not been suspended, it must be concluded that they were of the opinion that this suspension was wholly unjustified. When forming this opinion the judgment dated 2.2.93 in the criminal case the Hon'ble Supreme Court's ruling in Janakiraman's case (Supra) as well as the Railway Board's letter dated 21.1.93 were on record. Under the circumstances if despite that, Respondents formed an opinion that applicant's suspension was wholly unjustified, such an opinion could have been formed only if they had satisfied themselves, that he was "completely exonerated meaning thereby that he is not found blameworthy" to use the words of the judgment in Janakiraman's case (Supra). It is on that basis that Respondents gave him his postings, promotions and seniority and also arrears of pay to one of three levels to which he was promoted, which was within the competence of the Northern Railway authorities to order.

12. It is only when the question of release of pay of the remaining two levels arose, which was within the competence of the Railway Board alone, that respondents issued impugned order dated 25.4.96 (Ann. A-1) denying the benefit of pay

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arrears with respect to those two promotional posts. By treating the entire suspension period as duty period and entitling applicant to pay and allowances for the aforesaid period as if he had not been suspended it would follow that if applicant was granted promotions for this period, he would be entitled to pay and allowances including arrears on the promoted posts and Respondents by denying him the arrears for the two promotional posts vide impugned order dated 25.4.96 (Ann. A-1), have in fact taken back what has been granted by letter dated 6/7.2.95 without giving applicant a reasonable opportunity of pre-decisional hearing, and have thereby offended the principle of natural justice as held by the Hon'ble Supreme Court in Hindustan Petroleum Corporation Vs. H.L. Trehan & Ors. and connected case 1989 (1) SCC 765 relied upon by Shri Mainee. The relevant extracts of the aforesaid ruling is as follows:

".....It is now a well established principle of law that there can be no deprivation or curtailment of existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard."

In another ruling relied upon by Shri Mainee in much the same vein that any modification or cancellation of favourable order which visits the Govt. employee with civil consequence, can only be

passed after following the principles of natural justice. M. Venkaiah Vs. UOI & Ors. ATR 1989 (2) CAT 23.

13. In the present case after the issue of letter dated 6/7.2.95 conferring certain benefits on the applicant no opportunity was given to him of being heard before the issue of the impugned order dated 25.4.96, and this serious infirmity is not cured by Respondents' order dated 18.3.98 rejecting his representation.

14. Respondents' order dated 18.3.98 has disentitled applicant to arrears, on the ground that his acquittal by the judgment dated 2.3.93 of Special Judge, Dehradun was with benefit of doubt. The operative portion of that judgment reads as follows:

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"Accused Dr. J.P. Agarwal has not been found guilty u/s 161 I.P.C. and Section 5(1)(D) read with Section 5(2) P.C. Act, 1947 and he is acquitted."

15. There is no mention of applicant being acquitted by giving the benefit of doubt in the operative portion of the judgment. It is no doubt true that in the body of the judgment there has been occasional use of terms such as "the story of prosecution is not provided beyond doubt"; "the story of prosecution cannot be taken correct beyond doubt"; "the whole story becomes doubtful". It is

also true that in the penultimate portion of the judgment, which respondents have quoted in their reply to Para 4.4 & 4.5 of the O.A. it has been mentioned that "the prosecution has failed to prove its case beyond doubt" and "I reach the conclusion that "on the basis of the lone statement of the complainant to hold the accused guilty (is) against the law and he deserves the advantage of doubt in this case", but from a reading of the judgment as a whole it is clear that applicant was acquitted because the statement of the complainant, who also happened to be PW-1, contained many contradictions and was not supported by the testimony of the other witnesses. Under the circumstances notwithstanding the use of phrase 'benefit of doubt' at some places in the body of the judgment it cannot be said that it was a border line case in which applicant was acquitted by giving him the benefit of doubt, more particularly because in the operative portion of the judgment extracted above, applicant stands acquitted and there is no mention that his acquittal is with benefit of doubt.

16. During hearing Respondents' counsel has relied upon the rulings in Sr. Supdt. of Post Offices, Pathanamthitta and others Vs. A. Gopalan (1997) (11) SCC 239 and (1997) (11) SCC 361 Govind Das Vs. State of Bihar & Others, but a perusal of the same makes it clear that neither of them advances the case of the Respondents.

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17. Another important fact that cannot be lost sight of is that Respondents' own letter dated 6/7-2-95 treating the period of suspension as duty for all purposes, with full pay and allowances to which applicant would have been entitled to had he not been suspended had been issued under Rule 2044-B, while the impugned order dated 25.4.96 denying applicant arrears of pay for two of the promotional posts has been issued pursuant to the Respondents' circular dated 21.1.93. It well settled that action taken in accordance with rules would prevail over those taken pursuant to the certain executive instructions, and if in accordance with rules respondents have treated applicant as on duty during the suspension period and entitled him to full pay and allowances for this period, and during the suspension period if he was subsequently promoted, he would be entitled to the pay for the promotion posts in accordance with rules which cannot be denied to him on the basis of certain executive instructions.

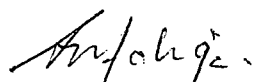
18. In the result the O.A. succeeds and is allowed to the extent that the orders dated 25.4.96 and 18.3.98 denying applicant arrears of pay are quashed and set aside. Respondents are directed to pay applicant arrears of pay in the scale of Rs.3700-5000 (Sr. DMO/Medical Supdt.) from October, 1989 to 10.7.90 and arrears of pay in the scale of Rs.4500-5500 [Sr. Medical Supdt.

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(Selection Grade)] from 11.7.90 to 25.5.96 within two months from the date of receipt of a copy of this order. Theⁿ prayer for payment of interest is rejected, as it is clear that there was no deliberate, wanton or flagrant attempt on the part of respondents to deny applicant the arrears, and it is only because of their interpretation of law, which in the light of the aforesaid discussion has not been found to be correct, that they denied the same to him by the impugned order dated 25.4.96.

19. In so far as the claim of interest @ 18% p.a. on the amount of Rs.3,02,844.00 is concerned it was open to applicant to have pressed the same in O.A. No. 2622/93. Not having done so then, the claim is now clearly hit by constructive res judicata under Section 11, Explanation IV, CPC as well as Order 2, Rule 2, CPC as held by the Hon'ble Supreme Court in Commission of Income Tax, Bombay Vs. T.P. Kumaran ATJ 1996 (2) 665. This claim is therefore rejected.

20. The O.A. succeeds and is allowed to the extent contained in Para 18 above. No costs.


(S.R. ADIGE)
VICE CHAIRMAN (A)

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