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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1614/1994

New Delhi this the 19th Day of August 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri P.T. Thiruvengadam, Member (A)

Shri Kula Nand,
S/o Shri Maha Nand,
Driver Passenger
Northern Railway,
Delhi Dn.

... Applicant

(By Advocate: Shri G.D. Bhandari)

vs.

1. Union of India,
through
the General Manager,
Northern Railway,
Bareda House,
New Delhi.
2. The Divisional Railway,
Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. Loco Foreman,
Northern Railway,
Loco Shed,
Jind (Haryana)

... Respondents

(By Advocate : None

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

Heard the learned counsel for the applicant on admission. From the post of Loco Cleaner, which the applicant joined in 1954, he was promoted to the post of Driver Goods in 1981 and was working at Tuglakabad. He was elected as Branch Secretary of All India Loco Running Staff Association. In January of that year a strike call was given which came into

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effect from the mid-night of 28/29.1.1981. He was marked absent from duty on 29.1.1981 though he alleges that he has worked. He was arrested on 2.2.1981 under Section 506 IPC and was released on bail on 3.2.1981. He was acquitted by the Metropolitan Magistrate, Delhi on 30.8.1982. The applicant was also removed from service on 2.3.1981 under Rule 14(2) of the D&AR 1968 without holding an enquiry. The applicant assailed his removal in a writ before Delhi High Court which was transferred to CAT, Principal Bench and decided by the judgement dated 9.10.1986 directing that the applicant shall file an appeal/revision which would be disposed of expeditiously by the respondents. The respondents did not take any action and he has, therefore, filed OA 526/88 assailing inaction on the part of the respondents. The OA was decided on 15.11.1991 and the order of removal from service dated 2.3.1981 was quashed and the matter was remitted to the respondents for holding an enquiry, if possible, in accordance with law. However, on 16.12.1987, General Manager, Northern Railway, decided the revision of the applicant dated 24.10.1986 upholding the order of removal from service. The applicant filed CCP 216/92 and thereafter the applicant was reinstated as Driver Goods.

2. The Union of India has filed SLP against the judgement of 526/88 decided on 15.11.1991 with IA No. 1 for condonation of delay in filing SLP. This SLP was disposed of by the order dated 23.8.1993 by the following order:

"Delay condoned. In view of the judgement in CA No. 4681-82/92 this SLP is disposed of".

3. The respondents on 12.7.1994 issued a show

cause notice to the applicant that he was reinstated as Driver Goods on 11.12.1992 subject to outcome of SLP filed in the Hon'ble Supreme Court of India. He was promoted as Sr. Driver Goods with effect from 1.3.1993 and was called for the selection of Driver Passenger by the order dated 12.8.1993. The SLP has been disposed of as per the judgement of R. Reddoppa and ors. under para 3 of the decision of the Hon'ble Supreme Court the employees shall not be entitled to any promotion benefit but they should be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefit. He was asked to explain within 10 days as to why his promotion as Sr. Driver Goods and as Driver Passenger Goods with effect from 1.3.1993 and 30.4.1994 respectively should not be withdrawn. Before this order was passed on 1.7.1994, DRM Office, New Delhi, issued an order in compliance with the decision of the Hon'ble Supreme Court in the case of R. Reddoppa and ors. Subsequently in supersession of this order another order was issued on 13.7.1994. The following order was issued:

Annexure A-3

Northern Railway

JRM Office
New Delhi

Notice

In part supersession of this office notice of even number dated 1.7.1994, Shri Kula Nand Driver Goods may be paid compensation equivalent to three years salary inclusions of dearness allowance @ Rs. 1350/- instead of Rs.1640/- in Gr. 1350-2200 (RPS). He wil not be entitled to annual increments during the intervening period i.e. from 22.8.91 to 10.12.92 as also for reckoning the intervening period for fixation of seniority. No HRA/CCA will be paid.

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This is as per Rly Board letter No. E(D&A) 94 RG 6-9 dated 20.6.1994 received under GM/P NDLS letter No. E/D&A/Inf/Bd/14/90 Pt. II dated 30.6.1994.

Sd/-
for Divl. Personnel Officer
New Delhi

In this application, the applicant has assailed the order dated 1.7.1994, 12.7.1994, 13.7.1994 and 2.8.1994. He has prayed for the grant of the relief.

Relief Sought

In view of the facts and circumstances explained in the foregoing paras, the Applicant most respectfully prays this Hon'ble Tribunal to be graciously pleased to:

- i) Set-aside and quash the Respondents Orders No. 727/E/23/3692/PV dated 2.8.1994, Annexure A alongwith Respondents Orders of even number dated 13.7.1994, A-12 and 12.7.1994, A-15, being badly vitiated on the grounds submitted in para 5 and submissions made in para 4 above:
- ii) command/order/direct the Respondents to allow the Applicant to function on the post of Driver Passenger Gr. Rs. 1600-2660 till the date of his retirement i.e. 31.8.1994 when he would attain the age of superannuation.
- iii) command/order/direct the Respondents to grant all the benefits consequent to the non-holding the disciplinary proceedings/dropping of the charges/re-instatement, viz. pay fixation, increments, seniority, promotion and payment of back wages with arrears thereof alongwith interest @ 18% P.A. and with other ancillary benefits.

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- iv) Command/order/direct the Respondents to give all the ancillary benefits consequent to the re-instatement of the Applicant by treating the intervening period from 2.2.1981 i.e. date of removal from service and 10.11.1992, the date of reinstatement as present on duty, in terms of the Rules 2344 of the Indian Railway Establishment Manual.
- v) To declare that ratio of Union of India & Ors. vs. R. Reddappa & Anr. (CA NO. 4681-82/1992 decided on 5th August, 1993) cannot be made legally applicable with retrospective effect, particularly, when there is no mention of the same in the aforesaid judgement and the case of the applicant, decided on 15.11.1991 almost two years prior to R. Reddappa case, cannot be made subject to application of the Ratio of R. Reddappa's case.
- vi) Any other relief deemed fit and proper, in the facts and circumstances of the case and humble submissions made, may kindly be granted in addition to the cost of the case in the interest of justice.

4. We have heard the learned the learned counsel at the admission stage on the maintainability of this application. The applicant was removed from service by the order dated 2.3.1981 under the provisions of Rule 14(II) of the Disciplinary Appeal Rules, 1968. This order was assailed by the applicant in the writ Petition which was transferred to CAT, Principal Bench and disposed by the order dated 9.10.1986 directing

the applicants to file appeal revision. That revision was disposed of by the respondents on 16.12.1991 upholding the order of removal dated 2.3.1981. The applicant filed OA 526/88 before the Principal Bench which was disposed of by the Judgement dated 15.11.1991 quashing the order dated 2.3.1981 with the liberty to the respondents to hold disciplinary enquiry which had been earlier dispensed with if possible in accordance with law. This order was assailed before Hon'ble Supreme Court in a SLP which was disposed of by the order dated 23.8.1993. The SLP was disposed of after condoning the delay in view of the judgement of R. Reddoppa case. The respondents have followed the direction issued in the case of R. Reddoppa, the concluding part of the judgement is reproduced below:

"... Keeping this in light we issue following directions:

- (i) Employees who were dismissed under Rule 14(2) for having participated in the Loco Staff strike of 1981 shall be restored to their respective post within a period of three months from today.
- (ii) (a) Since morethan three years have elapsed from the date the orders were found to be bad on merits by one of the tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scale of pay prevalent in the year the judgement was delivered, that is, in 1990.
(b) This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.
- (iii) Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purposes of calculation of pensionary benefits. This benefit shall be available to retired employees as well as those who are dead by calculating the period till date of retirement or death".

5. The respondents by the impugned orders dated 1.7.1984, 13.7.1984 and 12.7.1984 have only followed the direction given by the Hon'ble Supreme Court. In reply to the notice dated 12.7.1994, the applicant filed the reply on 24.7.1994. After considering this reply to the notice dated 12.7.1994, the respondents have passed the order dated 2.8.1994. The said order is quoted below:

D.R.M. Office,
New Delhi

Notice

The defence submitted by Shri Kula Nand S/o Shri Maha Nand Driver Passenger JHI dated 24.7.1994 in reference to this Office notice of even number dated 12.07.1994 has been considered by the competent authority. His defence is not accepted as Hon'ble Supreme Court decision is very much applicable to his case and has to be effected in its spirit. Accordingly his promotion orders as Sr. Driver Goods in Grade Rs. 1600-2660 (APS) with effect from 01/03/1993 issued vide this office Notice No. 758/E/564/P-5 dated 19/05/1993 and as Driver Passenger Gr. Rs. 1660-2660, (APS) issued vide this office notice No. 758-E/127/XVIII P-5 dated 30/03/1994 are withdrawn with immediate effect. And he is reverted to his substantive post as Driver Goods in Grade Rs. 1350-2200 (APS) on pay Rs. 1380/- with immediate effect.

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The arrears paid to him under this Office
Letter No. 758E/564/P-5 dated 19/05/1993
may be recovered.

Sd/-
Divisional Personnel Officer
Northern Railway
New Delhi "

6. The contention of the learned counsel that the order of 15.11.1991 is the final order and the order of the Hon'ble Supreme Court dated 5.8.1993 in R. Reddoppa case will not apply retrospectively to his case has no basis. The order of the Hon'ble Supreme Court is the final order and that will govern the OA 526/88 decided by the judgement dated 15.11.1991. The respondents didn't hold an enquiry because the Hon'ble Supreme Court has finally decided the issue and the mis-conduct alleged against the applicant was never decided on merits because the order passed of removing him from service on 2.3.1981 was passed after dispensing with the disciplinary enquiry in view of Rule 14(2) of the D&AR, 1968. The applicant was given benefit of the judgement dated 15.11.1991, in view of the CCP filed by the applicant 216/92. He was reinstated in service because of the order passed in CCP directed the respondents to reinstate the applicant before 25.11.1992 and because of this order the applicant was reinstated in service as Driver Goods on 11.12.1992. Thus, the case is fully covered by the judgement of R. Reddoppa and ors. and the impugned orders passed by the respondents are in accordance with the judgement of the Hon'ble Supreme Court passed in SLP against the order dated 15.11.1991. The application, therefore, does not make out the prime facie

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case for interference in the impugned orders, and
the application is dismissed at the admission stage
itself.

P.T. Thiruvengadam

(P.T. Thiruvengadam)
Member (A)

J.P. Sharma

(J.P. Sharma)
Member (J)

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