

15

17

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1999/94

New Delhi this the 8th day of February, 1996.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Ashok Kumar Gupta,
Driver,
Headquarter Ghaziabad
under Senior Electric
Loco Foreman (R),
Northern Railway,
Loco Shed, Ghaziabad.

..Applicant.

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

..Respondents.

By advocate Shri D.S. Mahendru, proxy for Shri P.S. Mahendru, Counsel.

O R D E R

Hon'ble Shri N.V. Krishnan, Acting Chairman.

The applicant, a driver in the Northern Railway at Ghaziabad, is aggrieved by the Annexure A-1 order dated 23.12.1993 which has been issued in pursuance of the judgement dated 5.11.1993 in O.A. 740/91 filed by him earlier.

2. The brief facts leading to this grievance are as follows.

2.1 During the period of Railway strike, he was removed from service by an order of the Divisional

dated 10.6.1980

Engineer which was passed by invoking the provisions of Rule 14(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 - Rules for short - namely, that it was not reasonably practicable to hold an inquiry in the manner provided in the Rules. This order was reviewed on 23.6.1980 by the Chief Operating Superintendent who reduced the penalty to reduction to the grade of Shunter for two years, with loss of seniority. The two appeals filed by him were dismissed. However, the applicant did not resume his duty as Shunter and remained unauthorisedly absent. He was again removed from service under Rule 14(2) on 2.2.1981, on the ground that he threatened Shri K.K. Sharma, Engine Driver on duty to make over the key of Electric Engineer No. 21018 and to de-energise the engine.

2.2 To cut matters short, the appellate authority who was directed by the Tribunal in an earlier proceeding to consider whether conditions have changed to permit the holding of a departmental inquiry, dismissed the appeal holding that it is still not possible to hold an inquiry. The applicant, therefore, filed O.A. 740/91 to quash the order dated 23.6.1980 of reversion to the post of Shunter, and the subsequent order of removal dated 2.2.1981. When that O.A. was heard, it was brought to the notice of the Bench by the respondents that the case of all Railway employees who have been dismissed or removed under Rule 14(2) had come up in appeal before the Supreme Court against the judgements of various Benches of the Tribunal which quashed the orders of the respondents. After considering all the issues, the Supreme Court disposed of those appeals (CA 4681-82

of 1992, Union of India Vs. R. Redappa & Anr. with the following directions, on 5.8.1993:

(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 posts within a period of three months from today.

(ii) a) Since more than 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 to those who are dead by calculating the period till date of retirement or death".

That O.A. was heard by a Bench to which one of us (Shri N.V. Krishnan) was a party. It felt that that O.A. should also be disposed of in the light of the order of the Supreme Court. It was held in para 6 of the judgement as follows:

"6. In the light of this judgement of the Supreme Court, which applies to all employees who have been dismissed under Rule 14(2) for having participated in the Loco Running Staff Association strike, the benefit of this judgement will be available to the applicant also. Therefore, the order dated 2.2.1981 (Annexure A-5) removing the applicant from service is liable to be quashed and the applicant is liable to be reinstated

in service in terms of the Supreme Court's judgement".

The O.A. was allowed with the following directions:

"i) The respondents are already bound to give effect to the judgement dated 5.8.1993 of the Supreme Court in Civil Appeal No. 4681-82/92 Union of India and Ors. Vs. R. Reddappa and another in terms of the directions given therein. Thus, the applicant gets full relief against the Annexure A-5 order of removal dated 2.2.1981. (Emphasis given)

ii) For the purpose of determining the post to which the applicant would be restored in terms of directions of the Supreme Court's judgement supra, we declare that the applicant should be deemed to be holding the post of Driver when the impugned Annexure A-5 order was passed as we have set aside the Annexures A-3, A-4 and A-1 and R-9 orders by which the applicant was first removed from service but later reduced to the rank of Shunter and his application was dismissed".

2.3 It is in pursuance of these directions that the respondents have issued the Annexure A-1 notice dated 23.12.1993 and have given the monetary benefits to the applicant, as indicated in the Annexure A-8 Bill.

2.4 This O.A. had come up before a Hon'ble Single Member Bench who felt that what is really sought in this O.A. is barred by res-judicata in the light of the earlier judgement, referred to above, and that as the O.A. involves the interpretation of the earlier judgement, this matter has now been referred to us for decision.

u

2.5 The prayers in this O.A. are as follows:

"(i) declare that the Applicant, consequential to his acquittal in the criminal case initiated by the respondents, the Applicant is entitled to all the back wages with ancillary allowances and market rate interest at the rate of 18% P.A. with all consequential benefits of seniority and promotions in terms of F.R. 54A.

(ii) direct/order/command the Respondents to make payment of the arrears of pay and allowances for the intervening period from the date of removal from service to the date of reinstatement with all consequential benefits of seniority and promotion".

3. Thus, the main grievance of the applicant relates to total denial of the backwages in pursuance of the aforesaid judgement. He contends that in respect of the alleged second incident on the basis of which he was removed from service by the order dated 2.2.1981 a criminal case had been filed at the instance of the Railway authorities and in that criminal case the applicant was acquitted. A translated copy of the judgement is enclosed at Annexure 'H'. He contends that his removal from service was on account of an incident which amounted to a penal offence triable by a competent criminal court. As that Court had acquitted him, he was liable to be reinstated with wages for the period from the date he was removed. He contends that there is no ground for applying the judgement of the Supreme Court in the case of Union of India & Ors. Vs. R. Redappa and Anr. (1993(4) SCC page-269) because the incident had nothing to do with the Railways strike. Therefore, the judgement of the Supreme Court ought not to have been taken into account. That is the real grievance ^{this}

of the applicant is established by the Annexure A-9 that representation made by him against the notice dated 23.12.1993 (Annexure A-1) issued to him. Paras 11 to 13 of that representation are as follows:

"11. On 5.11.93, final decision was rendered by Hon'ble CAT/NDLS on the question of validity of removal, reversion and again removal order in O.A. No. 740/91 in terms of law laid down by the Hon'ble Supreme Court in case of U.O.I. and others Vs. R. Redappa and others on 5.8.1993.

12. Hon'ble CAT/N.DLS has clearly set aside/ dismissed all the impugned orders A-3, A-4, A-5, R-9 considering the grounds and merits of the case. Para 8,9,10,11 and 7 of the judgement dated 5.11.1993 may please be taken as record.

13. There was no such acquittal orders dated 31.8.1984 of the Judiciary, exonerating the employee from all the allegations as in mine case, to consider before the Hon'ble Supreme Court, while deciding the case of R. Redappa. It is only the difference in between the case of mine and R. Redappa. And only on this ground, Rule No. 1343(FR-54) and 1344 (FR 54-A) of Railway Establishment Code Vol. II of 1987 are applicable in my case and hence the removal period is to be decided as spent on duty and entitle me to get all the consequential benefits".

If the applicant felt that the Bench which decided the earlier O.A. 740/91 had committed an error in applying the Supreme Court's judgement in Redappa's case to dispose of that O.A, the applicant ought to have submitted an application to seek a review of that order. That was not done. Instead, he filed a petition for special leave to appeal against that judgement in the Supreme Court which was dismissed on 20.10.1995. In the circumstance, that order has become final and, therefore, the applicant cannot question the validity of that judgement.

u

4. That apart, in that O.A. also the applicant had referred to the criminal trial and his acquittal in Ground 'M' and hence any challenge to that order on this ground is barred by res-judicata.

5. The learned counsel, however, submitted that his real grievance arises from the fact that the respondents have misinterpreted both the directions given by this Tribunal in the earlier O.A as also the directions of the Supreme Court in Redappa's case relied upon therein.

6. He submitted with reference to the Annexure A-8 which gives the details of the bill prepared by the respondents, for the purpose of reckoning compensation, ^u that his pay has been treated as Rs.1480/- ^u on 23.12.1990. This is the pay ^u in the revised pay scale which is equivalent of the pay in the pre-revised pay scale which ^u he was drawing as a Driver when he was first removed from service by the order dated 10.6.1980. The respondents have not given him the benefit of any increment for the period 10.6.1980 to 23.12.1990. The second grievance is that the backwages have been denied to him for the period from 10.6.1980 to 22.12.1993 which is the date of his reinstatement. His third grievance is that the pay of Rs.1480/- does not include the running allowances of 30% though the DA paid to him is on an amount which includes 30% in addition to the pay as running allowance.

7. He contends that a perusal of the order of the Supreme Court in Redappa's case, which has been extracted in para 5 of the judgement in the earlier O.A., would show that there was no justification in interpreting the directions of the Supreme Court

in this manner. The Supreme Court directed that the employees who were dismissed under Rule 14 (2) for having participated in the Loco Staff strike of 1981 shall be restored to their respective posts. It further directed that the employees shall be paid compensation equivalent to three years' salary, inclusive of dearness allowance, calculated on the scale of pay prevalent in 1990. There are further directions that such employees will 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 calculations of pensionary benefits. The learned counsel pointed out that nowhere in these directions the Supreme Court has denied to them the benefit of the past service or the benefit of backwages.

8. We are unable to agree. The only financial benefit which was granted to the Loco employees who were directed to be restored to their posts is contained in para ii)(a) of the directions of the Supreme Court, namely, the compensation equivalent to three years pay on the scale of pay prevalent in 1990. No other financial benefit was either intended to be given or directed to be given. The direction (iii) of the Supreme Court limits the benefit available to such employees, in respect of the period from the date of their termination from service under Rule 14(2) until the date of the restoration, as directed by the Supreme Court. Any promotion that would have been due to them during that period is completely denied. They will be given notional continuity in service from the date of termination till the date of restoration, for purposes of calculation of

pensionary benefits. In other words, only for the purpose of calculating the length of service rendered before retirement, the aforementioned period will be counted on a notional basis, which means that though they had not served during that period, nevertheless, it will be counted notionally. Obviously, therefore, that entire service is forfeited for all other purposes including fixation of pay, counting of increments, etc.

9. The other argument of the learned counsel is that in the earlier judgement, the Bench has not only given the benefit of the Supreme Court's judgement in Redappa's case but also full relief against the order of removal dated 2.2.1981. He, therefore, contends that even if the Supreme Court's direction is interpreted in a restricted manner, he is, nevertheless, entitled to full benefits as claimed by him in view of this direction.

10. We are unable to agree. The learned counsel has completely misread this direction. That direction has to be read with para 6 of the judgement which has been reproduced above, which makes it clear that the applicant was liable to be reinstated in terms of the Supreme Court's judgement in Redappa's case. In other words, this applicant who was removed from service in similar circumstances as Redappa and others, whose cases were considered by the Supreme Court, is not entitled to any benefit, whatsoever, in excess of what has been granted to them by the Supreme Court in that judgement. Therefore, the claim made by the learned counsel relying upon the emphasised portion

of direction (i) of the earlier Bench is based on total misconception and is entirely unfounded.

11. That leaves only one question for consideration, namely, whether for the purpose of reckoning the compensation on the basis of the scale of pay prevalent in 1990, the respondents ought to have included therein the running allowances also. The direction of the Supreme Court was to pay compensation equivalent to three years salary, inclusive of dearness allowance calculated on the scale of pay prevalent in the year 1990 when the earliest judgement was delivered by a Bench of the Tribunal. The learned counsel for the applicant submits that the salary also includes "Running Allowance Rules" running allowance. He relies on Chapter IX/ of the (stated to be 1989 edition) Railway Establishment Code (Vol.2), / a copy of which has been produced for our perusal. Para 903 thereof reads as follows:

"903. Pay element in running allowance.

30% of the running staff will be treated to be in the nature of pay representing the pay element in the Running Allowance. This pay element would fall under clause (iii) of Rule 1303-FR-9 21(a) i.e. "emoluments which are specially classed as pay by the President".

(1987 edition)

12. Rule 1303 of the Code/defines 'Pay' which corresponds to FR 9(21)(a). One of the components of 'Pay' is any emolument, not treated as pay otherwise, but specially classified as pay by the President. The learned counsel, therefore, submits that in view of the above Rule 903, the pay element of the running allowance has to be treated as pay for all purposes, including for payment of compensation according to the Supreme Court's order.

13. We have carefully considered this submission. The Supreme Court's direction is to pay compensation equal to three year's salary inclusive of dearness allowance, on the scale of pay prevalent in 1990. The only allowance payable besides what is payable on the scale of pay is dearness allowance. Therefore, the salary payable will be equal to pay on the time scale of pay plus DA thereon. No other allowance is payable. Hence, running allowance is also not payable. Therefore, the question of including the pay element of the running allowance in pay does not arise at all. That apart, there is one more reason why the running allowance is not to be included. This is due to the fact that as mentioned above, the Supreme Court has, in fact, forfeited all the service from the date of termination till the date of restoration for all purposes except for reckoning the length of service for purpose of pensionary benefits. The running allowance is payable only if running duties are performed. Obviously, no such duty was performed for the three years for which the compensation was required to be paid. Hence, on this ground also running allowance was rightly denied to the applicant. In our view the Supreme Court has restricted the computation of pay for the purpose of salary to that element of pay which is referred to in Clause (i) of Rule 1303. That element of pay is the pay to be given on the time scale of pay attached to the post, by reason of one's length of service on the post and does not include the allowances, mentioned in clauses (ii) and (iii) thereof.

(2)

14. The learned counsel, however, points out that the respondents have paid dearness allowance on an amount inclusive of 30% of the pay for computing the compensation. Therefore, if this element is included for computing dearness allowance, it should also have been included for computing salary.

15. We have considered this submission. Apparently, the pay element of the running allowance at the rate of 30% of the basic pay has been included for computing the DA in view of Note 1 below Rule 1403 of the Indian Railway Establishment Code (Vol.II), which reads as follows:

"NOTE 1.- 30% of the basic pay of running staff will be treated as pay representing the pay element in the Running Allowance. From 1-8-1981, Dearness Allowance, and Additional Dearness Allowance at the appropriate rates as sanctioned by the Government from time to time shall be paid on the basic pay plus the pay element of the Running Allowance viz., 30% of the basic pay"

This would apply if running allowance was paid or payable. We have held above that running allowance was not payable at all and, therefore, there was no question of including the pay element of this allowance, computed at 30% of the pay, for working out the dearness allowance. In our view, the dearness allowance was also to be paid only on that portion of the pay that is described in Rule 1303(i), i.e. pay payable on the scale of pay prevalent in 1990. Therefore, in our view, the inclusion of 30% of pay for computing dearness allowance was a mistake. However, as this amount has already been paid, we

restrain the respondents from effecting any recovery based on our above findings.

16. For the aforesaid reasons, we do not find any merit in this O.A. It is, therefore, dismissed.

Lakshmi
(Smt. Lakshmi Swaminathan)
Member(J)

817/pt
(N.V. Krishnan)
Acting Chairman

'SRD'