

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1117/89  
T.A. No.

199

DATE OF DECISION 3.5.1991.Shri Bhim Sain

Petitioner

Shri G.D. Bhandari,

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri O.P. Kshtariya,

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. T.S. OBEROI, JUDICIAL MEMBER

The Hon'ble Mr. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *✓*
4. Whether it needs to be circulated to other Benches of the Tribunal? *X*

*[Signature]*  
(I.K. RASGOTRA)  
MEMBER(A)  
3.5.91.

*[Signature]*  
(T.S. OBEROI)  
MEMBER(J)  
3.5.91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1117/89

DATE OF DECISION:3.5.1991.

SHRI BHIM SAIN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

SHRI O.P. KSHTARIYA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A) )

The applicant, Shri Bhim Sain, has filed this application on 24.5.1989 challenging the Notice/Order dated 21.4.1988 issued by respondent No.2, terminating the period of punishment of reduction as Shunter on 28.3.1987 in accordance with the judgement of the Central Administrative Tribunal, Allahabad in 462-T/86 filed by the applicant. The applicant was further deemed to have been restored as Driver Grade 'B' w.e.f. 29.3.1987. The grievance of the applicant is that he should have been restored as Driver grade 'A' (Rs.1600-2660).

2. The facts of the case are that the applicant was appointed on 10.2.1948 in the Loco department and having worked as Fireman, Shunter, Goods Train Driver, Driver 'B' was promoted as Driver grade 'A' (Rs.1600-2660). While working 19 Down Express Train from New Delhi to Dehra Dun, on 17.1.1983 the applicant overshot the starter signal of Delhi Shahdara by three bogies, resulting in failure of the automatic vacuum brake. There were, however, no casualties

on account of this accident. The applicant was served a major penalty chargesheet on 30.6.1983 and the enquiry was completed on 27.2.1984. The disciplinary authority agreeing with the findings of the enquiry authority awarded the punishment of reduction in rank from the post of Driver 'A' to the post of Shunter 'B' vide order dated 24.5.1984 (Annexure A-3) and directed the applicant to file appeal, if any, within 45 days from the date of receipt of the said orders. The appeal filed by the applicant was rejected by the appellate authority as time barred and no orders were passed on merits. The applicant submits that he was not supplied a copy of the enquiry report before imposing the penalty and was thus deprived of a fair opportunity to defend himself.

To fortify his case, he cited the Full Bench judgement in the case of Prem Nath K. Sharma v. Union of India & Ors. T-2/86 decided on 6.11.1987 and Union of India v. E. Bashyan AIR 1988 SC 1000.

The copy of the enquiry report was supplied to him only on 29.6.1984 vide Annexure A-7. The applicant filed an O.A. under Section 19 of the Administrative Tribunals Act, 1985, impugning the order of reduction in rank in three stages before the Allahabad Bench of the Tribunal. The operative part of the judgement delivered on 25.3.1987 by that Bench is reproduced below:-

"Considering all the circumstances of the case including the nature of the incident attributed to the plaintiff, we feel and direct that in case the plaintiff retires before the execution of the punishment of reversion for 3 years, his period of punishment shall be reduced so as to expire on a date

2

preceding the date of his retirement. There is no other point for consideration in this case and no other interference with the impugned order is possible."

Thus, the penalty imposed on the applicant was reduced in such a manner as to expire on a date preceding the date of his retirement. In pursuance of the said judgement the respondents passed orders on 21.4.1988 (Annexure A-8) restoring him to Driver grade 'B' w.e.f. 29.3.1987. The applicant claims that he was substantively holding the post of Driver grade 'B' and was officiating in the post of Driver grade 'A' and, therefore, he should have been restored to the position of Driver grade 'A' (Rs.1600-2660). The applicant has also retired from service on 31.3.1987.

3. The stand taken by the respondents in their written statement is that the application is barred by res judicata, as the case of the applicant has already been finally decided vide TA-462/86 by the Allahabad Bench of the Tribunal on 25.3.1987 which had not interfered with the order of reversion. Further the application is said to be time barred under Section 21 of the Administrative Tribunals Act, 1985, having been filed after one year of the impugned order dated 21.4.1988. The respondents have not disputed the facts of the case. It is, however, contended that the applicant was holder of the substantive post of Driver grade 'B' and he was accordingly restored to that position in accordance with the judgement of the Allahabad Bench of the Tribunal. Promotion as Driver 'A' was purely on an ad hoc basis which did not confer upon him any prescriptive right for promotion to the post of Driver grade 'A' and, therefore, his claim of restoration to the post of Driver 'A' is not tenable.

4. The applicant has filed a rejoinder and placed heavy reliance on the fact that he was holding the post of Driver grade 'A' when he was reverted and not that of Driver grade 'B'.

5. We have heard the learned counsel of both the parties. The judgement of the Allahabad Bench of the Tribunal intended to ensure that the period of punishment is executed before the retirement of the applicant. Had his period of punishment not been curtailed it would have resulted in not only reduction in rank for a period of three years and loss of emoluments but also loss in pension and death-cum-retirement gratuity (DCRG), as the same would have been fixed according to the pay he has drawn as Shunter grade 'B'. This would have resulted in punishment which was not really intended by the disciplinary authority. Admittedly, the applicant was promoted on ad hoc basis as Driver grade 'A' vide notice dated 17.12.1983 (Annexure A-6) purely on a temporary basis pending selection. Whether he would have been selected had he not been involved in this accident is purely a matter in the realm of conjecture and, therefore, there is no reason to hazard such an exercise. Again the issue raised before us that the applicant was not supplied a copy of the enquiry report is not of much help, as the enquiry cannot be recommenced from the stage of supply of the copy of the enquiry report to the applicant since the applicant has already retired.

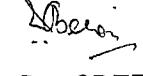
In the circumstances of the case and keeping in view the spirit of the judgement delivered by the Allahabad Bench of the Tribunal, we feel that it will be proper to direct the respondents to restore the applicant to the position of Driver grade 'A' on the date preceding the date of his retirement, as that was the post which he was holding on the

date, he was reverted.

Accordingly, we direct that the respondents shall make the payment of the differential in the amount of DCRG to the applicant, as due, reckoning his last drawn pay as Driver 'A' in accordance with the rules, with interest, as applicable under the rules. They shall also pay him arrears on account of the differential in the amount of pension from the date of retirement, reckoning the salary and allowances etc., as he would have received as Driver grade 'A'. We further direct that the above orders shall be implemented within 8 weeks from the date of communication of these orders.

There will be no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER (A)  
3.5.91.

  
(T.S. OBEROI)  
MEMBER (J)  
3.5.91.

'SKK'