

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2376/89.

Date of decision. 16.5.94.

Hon'ble Shri S.R. Adige, Member (A)

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

Shri K.C. Soorma, through
Mrs. Sita Devi Soorma, Legal Representative (Wife),
Chief Ticket Inspector,
Northern Railway,
Ambala Cantt.
Resident of 176, The Mall,
Ambala Cantt. ... Applicant

(By Advocate Shri S.K. Sawhney)

versus

Union of India, Through,
General Manager,
Northern Railway,
New Delhi. ... Respondents

(By Advocate None)

O_R_D_E_R

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

The applicant had challenged certain orders passed by the Respondents in Civil Suit No. 86/79 in the Court of Sub-Judge, First Class, Delhi and had sought declaration that the impugned orders were illegal and for consequential reliefs. The orders were passed by :-

(i) ... The Senior Divisional Commercial Superintendent, Northern Railway, dated 14.10.1974;

(ii) Divisional Superintendent, Northern Railway, order dated 31.7.1975;

(iii) General Manager, Northern Railways,

dated 4.5.1977; and

(iv) Railway Board's order dated 16.10.1978.

This suit was later transferred to this Tribunal as T.A.

No. 815/86 which was disposed of by judgment dated 13th

April, 1988. In this judgment the Tribunal held, inter-alia,

that none of the impugned orders were speaking orders. It

was observed that normally the case would have been

remitted to the disciplinary authority for passing a

speaking order in accordance with law. However, "in view

of the long distance of time, it may not be adviseable

at this stage to put the clock back by 14 years, and

prolong the matter." In the circumstances, the Tribunal

held that it will suffice if the punishment already

imposed is sustained except that recovery of the sum of

Rs. 22,593.55 towards the loss of Government cash is set

aside.

2. The applicant thereafter has filed this application claiming that his pay had not been restored after the penalty period in terms of the order passed by the General

Manager, Northern Railway dated 4.5.1977 (Annexure A-I).

The operative portion of this order reads as follows :-

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" I, therefore, hold you guilty of the charges levelled against you and have decided to impose upon you the penalty of reduction from the post of STE grade Rs. 330-650 (RS) to the post of

Ticket Collector, grade Rs. 260-400 (RS) for a period of three years and in addition recovery from your pay amounting Rs.22593.15 paise towards the loss of government cash."

3. According to the applicant, the Respondents have failed to grant the restoration of the scale of pay of Rs. 330-560 (RS) on expiry of the period of penalty of reduction to lower scale for 3 years and have also denied him revision of pay (in the higher scale). The learned counsel for the applicant submitted that since the judgment of the Tribunal dated 13.4.1988 has upheld Government except the latter portion regarding recovery of present loss the order dated 4.5.1977, at the end of 3 years of penalty, the applicant was entitled to be restored to his original Special Train Examiner pay in the senior scale of (STE). He has drawn our attention to the F.R. 29 read with Government of India's order, Ministry of Finance's O.M.No.F.2(34)-E.III/59, dt.17.8.60 and 9th June, 1960, FR 29 reads as follows :-

" F.R. 29. (1) If a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent.

(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post or to a lower time-scale, the authority ordering the reduction may or may not specify, the period for which the reduction shall be effective; but

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where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments and if so, to what extent."

The relevant D.M. of the Govt. of India provides :-

(b) The question as to what should be the pay of a Government servant on the expiry of the period of reduction should be decided as follows:-

(i) if the original order of reduction lays down that the period of reduction shall not operate to postpone future increments or is silent on this point, the Government servant should be allowed the pay which he would have drawn in the normal course but for the reduction. If, however, the pay drawn by him immediately before reduction was below the efficiency bar, he should not be allowed to cross the bar except in accordance with the provisions of F.R. 25;

(ii) if the original order specifies that the period of reduction was to operate to postpone future increments for any specified period, the pay of the Government servant shall be fixed in accordance with (i) above but after treating the period for which the increments were to be postponed as not counting for increments."

4. In this case the impugned order dated 4.5.1977

is silent on the point regarding postponement of future

increment. In the circumstances, the Respondents ought

to have fixed his pay at the end of the penalty period

of 3 years in accordance with clause (b)(i) of the D.M.

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dated 17th August, 1959 and 9th June, 1960.

5. We have perused the record of the case including the written statement filed by the Respondents. The main objections taken by the Respondents are that this application is barred on the principle of resjudicata on grounds that -

(i) the issues have already been dealt with by the Tribunal in T.A.No.815/86; and

(ii) the application is time barred since it is against the order dated 4.5.1977.

6. Having perused the earlier judgment of this Tribunal dated 13.4.1988, it is seen that the Tribunal, while upholding the punishment already imposed of reduction in rank for a period of 3 years from the post of STE to the post of Ticket Collector, had quashed the latter portion of the punishment relating to the recovery from applicant's pay of Government loss amounting to Rs. 22,593.15. The applicant had, no doubt, challenged the validity of the penalty order, which was, however, upheld by the Tribunal's order dated 13.4.1988. In this application, his grievance is that at the end of the penalty period of 3 years imposed by the impugned order dated 4.5.1977, he was entitled to be restored to his original pay and seniority in the scale of Rs. 330-560. The Respondents' reply to this averment is that in the face of the penalty having been upheld, the question of restoration of pay and seniority does not arise. The Respondents' reply cannot be accepted

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as it is contrary to the Government of India's orders referred to above. Since the impugned order is silent on the point regarding postponement of future increments at the end of 3 years reduction in the post, the applicant will be entitled to draw his pay in the earlier grade, subject to the conditions mentioned in the Ministry of Finance O.M. dated 17th August, 1959 and 9th June, 1960. Denial of the increment in this case is, therefore, contrary to the provisions of F.R. 29(i) & (ii) and the Respondents cannot take advantage of their own wrong and illegal action. In the circumstances, the Respondents cannot rely upon their own omission to fix the applicant's pay correctly at the end of the penalty passed in accordance with law. Therefore, in the facts and circumstances of the case, we do not think that this is a fit case where on the technical ground of limitation, the applicant's claim for fixation of his pay should be rejected. The issues before the Tribunal in TA No.815/86 were also different from those raised in this application and hence the plea of res judicata is also rejected.

7. The applicant has retired from service on 31.10.1991 and has expired on 26.3.1993. His

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wife has since been brought on record as legal representative vide Tribunal's order dated 13.7.1993.

8. In the result, the application is allowed. The Respondents are directed to restore the pay of the applicant in the post of S.T.E, in the scale of Rs 330-560 (RS) on expiry of the 3 years period of penalty in accordance with the provision of F.R. 29 read with the Government of India's orders and pay the arrears of pay to the applicant. The revised pay shall be taken into account for all purposes, including calculation of pensionary benefits and family pension. The Respondents are directed to take necessary action for payment of the amounts due on pay, pension and other pensionary benefits to the family of the deceased Government servant within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (Judicial)

H. J. Dige
(S. R. Dige)
Member (A)