

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ

Prayagraj, this Tuesday, the 29th day of December, 2020

Original Application No. 330/01414/2013

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Navin Tandon, Member (Administrative)

Hari Om S/o Late Tej Singh, R/o Village-Mamouta Kala, Post-Basai Kazi, District-Hathras, Presently Posted as Porter under Section Station Manager, Block Hut GG, North Central Railway, Allahabad.

...Applicant

By Advocate: Shri Vinod Kumar (In Court)

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, Allahabad Division, North Central Railway, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
4. Senior Divisional Operating Manager, North Central Railway, Allahabad Division, Allahabad.

...Respondents

By Advocate: Shri Ajay Kumar Rai (In Court)

Reserved on 03.12.2020

O R D E R

By Hon'ble Shri Navin Tandon, Member (Administrative)

Through Video Conferencing.

1. The applicant is aggrieved that the appellate authority while modifying the order of "removal from service" has imposed a penalty of withholding of increment of five years and the intervening period as dies-non.

2. The applicant has made the following submissions in the original application:-

2.1 He was appointed as porter on compassionate ground with the respondent department.

2.2 He was issued a major penalty chargesheet on 25.06.2001 for unauthorized absence. An enquiry was conducted, wherein the charges were proved. Accordingly, the disciplinary authority vide order dated 23.01.2002 imposed the penalty of removal from service. His appeal and review petition were also rejected.

2.3 He approached this Tribunal in OA No.1557/2010 wherein this Tribunal vide order dated 05.10.2012 (Annexure A-4) quashed the orders of the appellate and revisional authority and directed the appellate authority to pass a reasoned and considered order.

2.4 The appellate authority vide its order dated 21.12.2012 (Annexure A-1) reduced the penalty of removal from service to withholding of increment for five years with cumulative effect. Further, the intervening period is to be treated as dies-non.

2.5 In view of the settled law as laid down by Hon'ble Apex Court in Union of India Vs. Janki Raman he is entitled to receive all consequential benefits w.e.f. 23.01.2002 to the date of joining his services.

3. The applicant has prayed for the following reliefs:-

8. Relief Sought For :

In view of the facts mentioned above the applicant prays for the following relief(s):-

8.1 To issue an order or direction in the suitable nature quashing the impugned order dated 21.12.2012 to the extent that his five annual increment has been withheld couple with forfeiting his past 11 years services w.e.f. 23.01.2002 to the date of joining his services (Annexure No. A-1 to this O.A).

8.2 To issue an order or direction in the suitable nature directing the respondent authorities to count the 11 years

intervening period of the applicant for all the purpose by allowing all consequential benefits in favour of the applicant.

8.3 To issue an order or direction in the suitable nature directing the respondent authorities to allow the regular annual increment in favour of the applicant as and when it may be due with all consequential benefits.

8.4 To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8.5 To award the cost of the application to the applicant."

4. The respondents have filed their reply wherein it has been submitted as under:

4.1 The appellate authority has taken a sympathetic view and ordered for his reinstatement.

4.2 The dies-non has been ordered based on the principle of no work no pay.

4.3 There have been no instructions from the office of Minister of State for Railways for reinstating the applicant as has been claimed by the applicant.

4.4 The case of Janki Raman, cited by the applicant is not applicable in the facts and circumstances of the case.

4.5 Being devoid of merit, the respondents have prayed for dismissal of the original application.

5. The applicant has filed the rejoinder wherein it has been stated that the appellate authority has exceeded his power by imposing further punishment by stopping the annual increment of five years as well as forfeiting the intervening period of his services from 23.01.2002 to 13.03.2013 without giving the applicant an opportunity to defend his case. Further, it has been averred that no opportunity was allowed by the learned enquiry officer as well as disciplinary

authority while passing the impugned punishment order against him. This Tribunal has quashed the punishment order in OA No.1557 of 2010.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available in PDF form.

7. Learned counsel for the applicant argued that the applicant was not given an opportunity to defend himself while the appellate authority had passed the impugned order dated 21.12.2012 (Annexure A-1). He has placed reliance on the judgment of Hon'ble Apex Court in the case of ***Shiv Shanker Vs. Union of India, AIR 1985 SC 514*** to say that natural justice has not been provided the applicant.

8. Learned counsel for the respondents submitted that he has been reinstated only on humanitarian grounds. There is no break in service and dies-non has been made on the basis of no work no pay. He further submitted that once the applicant has accepted the order of the appellate authority and joined the duty on 13.03.2013, the applicant cannot challenge the legality of the impugned order. He has placed reliance on the judgment of Hon'ble Apex Court in the matters of ***State of Punjab and Others Vs. Krishan Niwas, (1997) 9 SCC 31*** and ***Sanat Kumar Dwivedi Vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others, (2001) 9 SCC 402.***

FINDINGS

9. It is not disputed that an enquiry was held in the disciplinary proceedings and after considering the same, the disciplinary authority had issued the orders of removal from service. In the earlier round of litigation in OA 1557/2010, this Tribunal in its order dated 05.10.2012 (Annexure A-4) had remanded the case back to the appellate authority. This implies that this Tribunal had not found any irregularity up to the order of disciplinary authority. Therefore, it is concluded that the applicant was accorded natural justice up to the stage of imposition of penalty by the disciplinary authority. In any case, no copy of chargesheet, enquiry report, order of disciplinary authority has been filed alongwith this original application. Therefore, even the applicant has not raised any issues up to that point.

10. The applicant has also raised the point that Minister of State for Railways had directed the respondent department to take the applicant back in service. However, perusal of the said letter dated 27.07.2005 (Annexure A-5) indicates that it is addressed to the applicant informing that the matter has been sent to the concerned department. No instructions have been given to take the applicant back in service.

11. All the subsequent developments of the year 2007 are also prior to the order of this Tribunal in OA No.1557/2010. Therefore, no cognizance can be taken about the same.

12. Learned counsel for the applicant highlighted the following portion of judgement of Hon'ble Supreme Court in **Union of India**

and Others Vs. K.V. Jankiraman, (1991) 4 SCC 109 to buttress

his point that "no work no pay" cannot be applied everywhere:

"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which reads as follows: -

"F.R. 17.(1) Subject to any exceptions specifically made in these rules and to the provision of sub rule(2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases".

13. The judgement of **K.V. Jankiraman (Supra)** will not be of help to the applicant as the reference is to those cases where the employee has been completely exonerated. In the present case, the applicant has been held guilty, and punishment has only been reduced by the appellate authority.

14. Similarly, the circumstances in **Shiv Shankar (Supra)** are completely different from the present case. In that case, Hon'ble Supreme Court has held that "an order of forfeiture of past service cannot be made without observing the principles of natural justice". However, in the present case, there were proper disciplinary proceedings and only after following the principles of natural justice, the disciplinary authority had imposed the penalty. No lacuna was found by this Tribunal in earlier round of litigation.

15. Learned counsel for the applicant vehemently argued that dies-non can be marked only in the cases mentioned in Rule 11(6) of the CCS (CCA) Rules, which is as under:-

"(2) When a day can be marked as dies non and its effect.-Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the Competent Authorities might take against the persons resorting to such practices."

16. We found that there is no such Rule 11(6) in the CCS (CCA) Rules as described above. On further scrutiny, we found that the above is extracted from Rule 62, P. & T. Manual, Vol. III. The conditions mentioned for marking dies-non are without initiating

disciplinary proceedings. Even there it is mentioned that "*This will be without prejudice to any other action that the Competent Authorities might take against the persons resorting to such practice*". In the present case, the disciplinary proceedings have been conducted and subsequently the period has been marked dies-non.

17. Hon'ble Apex Court in **Krishna Niwas (Supra)** has held as under:-

"4. The learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on 5-6-1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate court stand set aside and that of the trial court stands confirmed. No costs."

18. In the matter of **Sanat Kumar Dwivedi (Supra)** has held as under:-

"2. The admitted facts are that the appellant was reinstated in service by order dated 12-5-1978 with a condition that he will not get any back wages. Obviously, earlier on 8-3-1976 his services were terminated but by the aforesaid order, he was reinstated without back wages. He accepted such reinstatement without back wages by his joining report, Annexure R-4 at p. 106 of the paper-book that he has joined his duty on 13-5-1978. By his own conduct, the appellant has accepted the correctness of the order of reinstatement without back wages. Under these circumstances, subsequent dispute raised by him regarding back wages was clearly not maintainable as held by this Court in State of Punjab v. Krishan Niwas. In view of the settled legal position, no interference is called for. The appeal is therefore, dismissed.

3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even Conditions 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given."

19. The present case is very much similar to **Krishna Niwas (Supra)** and **Sanat Kumar Dwivedi (Supra)** in that the applicant has joined duty after the orders of the appellate authority, wherein the punishment of removal from service has been reduced to withholding of increments for five years with cumulative effect has been accepted by the applicant and has joined his duty on 13.03.2013. The same order also specifies that the intervening period is to be treated as dies-non.

20. In view of the above, we do not find any illegality in the action taken by the respondents. Accordingly, the original application is dismissed. No Costs.

(Navin Tandon)
Member (Administrative)

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(Justice Vijay Lakshmi)
Member (Judicial)