

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/01454/2014

HYDERABAD, this the 21st day of December, 2020.

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



K.Kondal Rao S/o Posaiah,
aged about 65 years, Retd. CMS-1,
S.C.Railway, R/o Flat No.202,
Sai Durga Enclave, Saipuram Colony,
Gollapudi Vijayawada,
Krishna District – 521225.

...Applicant

(By Advocate : Mrs.G.Manjula, learned counsel representing
Mr. P.Krishna Reddy)

Vs.

1. Union of India, Rep. by Chairman,
Railway Board, Rail Bhavan, New Delhi.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Chief Mechanical Engineer,
South Central Railway, Secunderabad.
4. The Divisional Railway Manager,
South Central Railway, Guntakal Division,
Guntakal, Ananthapur District.
5. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal Division,
Guntakal, Ananthapur District.

....Respondents

(By Advocate : Mrs . Vijaya Sagi, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed for settlement dues including the arrears of pay w.e.f. 01.03.1993 and refixation of pension as per the revised pay.



3. Brief facts are the applicant, while working Lab Superintendent, was issued a charge memo for having contracted a 2nd marriage when the 1st marriage subsisted and penalty of reversion to lower scale as CMA was imposed on 28.11.1991 and the said penalty was confirmed by the Appellate Authority on 28.06.1997. On revision, the Revisionary Authority on 10.04.2003 modified the penalty to reduction to the lower stage in the time scale of pay of Lab Superintendent for a period of one year. Penalty, on being challenged, was set aside by the Tribunal in OA No.498/2003 on 18.11.2003 and the same was upheld by the Hon'ble High Court on 30.11.2005 in WP No. 5368/2004. Respondents have re-fixed the pay and pension, but have not paid the arrears of pay due as per the Tribunal's order and hence the OA.

4. The contentions of the applicant are that the arrears of pay are to be paid as per the Tribunal's order in OA No.498/2003 which was upheld by the Hon'ble High Court. Not doing so is illegal.

5. Respondents while admitting that the challenge they mounted against the Tribunal's order in OA No.498/ 2003 was dismissed by the Hon'ble High Court on 30.11.2005, they have stated that pay and pension were re-fixed and the arrears of pay were not paid in view of judgment of Hon'ble

Supreme Court in ***Union of India & Another Vs. Tarsem Lal (AIR 2007 SC 259)***, wherein the Hon'ble Court while dealing with para 228 of IREM had held that, employee is not entitled to salary and allowances even if there is administrative error/ delay in promoting him.



6. Heard both the counsel and perused the pleadings on record.

7(I) It is not under dispute that the penalty imposed on the applicant, as modified by the Revisionary Authority, was set aside by the Tribunal in OA No.498/2003 on 18.11.2003 and the order of this Tribunal was upheld by the Hon'ble High Court in WP No.5368/2004 on 30.11.2005. The order of the Tribunal is extracted here under:

"In the result, this OA is allowed. The impugned orders passed by respondent Nos. 3, 2 & 1 are hereby set aside. As a consequence, the applicant is entitled to all consequential benefits such as restoration of his original pay, arrears of pay, increments, promotion, etc. There shall be compliance of this order by the respondents within a period of three months from the date of receipt of a copy of this order."

The order of the Tribunal *supra* clearly states that the impugned orders passed by the respondents therein are set aside and applicant is entitled to all the consequential benefits. It would mean that the penalty imposed virtually does not exist and on the basis of the same, Respondents are expected to release the benefits due to the applicant including arrears of pay. The order of the Tribunal has been upheld by the Hon'ble High Court in WP No.5368/2004 on 30.11.2005 as under:

"The Administrative Tribunal on a consideration of the above material came to the conclusion that the respondent herein could not have been legally found guilty of any misconduct falling within the scope of Rule 21 of the conduct Rules, 1966. It is not even a case where the alleged first wife was examined during the departmental enquiry.

In the circumstances, we do not see any illegality to interfere with the order of the Administrative Tribunal, which is under challenge. The Writ Petition

is devoid of any merits and accordingly the same is dismissed. No order as to costs.”

Therefore, the issue has attained finality. Consequently, the Headquarters of the respondents organization has issued the following order on 12.04.2007:



“4. Now Sri K. Kondala Rao, is extended with the benefit of promotion as Spectro Supdt. (CMS-I) in scale Rs.2000-3200 (RSRP)/ Rs.7450-11500 (RP) w.e.f. 1.3.1993 i.e. the date of his junior Sri K.C. George, CMS-I (presently working as ACMT/KZJ).

Sri K. Kondala Rao, Ex.CMS-II/Dsl.Shed/GY is eligible for all the consequential benefits including retirement benefits.”

After the Headquarters had taken a decision, it was not within the brief of the Divisional Office as subordinate to go beyond the brief of the Headquarters. Respondents admitted in the Reply Statement that they have re-fixed the pay and pension by considering the pay drawn by the junior to the applicant Sri K.C.George. However, that would not mean they have complied with the order of the Tribunal fully. It is well settled in law that the judgment of a Court, whether right or wrong, has to be implemented, unless it is stayed or set aside by a superior forum, as observed by the Hon’ble Supreme Court in the following cases:

a. The Commissioner, Karnataka Housing Board vs C. Muddaiah on 7 September, 2007 in Appeal (civil) 4108 of 2007

“31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.”

b. Director of Education, Uttarakhand & Ors v. Ved Prakash Joshi, (2005) 6**SCC 98 :: AIR 2005 SC 3200**

The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt.

(Emphasis supplied).

c. Referring to the above case, the Apex Court has stated in its judgment in *Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami, (2008) 5 SCC 339* as under:

"22. While exercising the said jurisdiction this court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. The court is not concerned with as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. In short, it will not do anything which would amount to exercise of its review jurisdiction."

II. The order of the Hon'ble High Court has attained finality and the respondents citing the judgment of Hon'ble Supreme Court in *Union of India & Anr v. Tarsem Lal (supra)* may not be relevant. There are a catena of judgments of the Hon'ble Supreme Court which have allowed payment of back-wages fully or by 50% or rejecting the request altogether. It depends on the facts and circumstances of each case. Hence, in a case where the judgment of the Tribunal has attained finality with the Hon'ble High Court upholding the same and the Headquarters of the Respondents organization issued an order complying with the judgment of the Tribunal/ Hon'ble High Court on 12.04.2007, we are surprised that a lower formation has issued an order not, in compliance with the Headquarters directives, which we rarely come across.

III. Therefore, based on the above, the decision not to pay the arrears of pay and pension due to the applicant is irregular and illegal. Hence, they are directed to work out the arrears of pay / pension due to the applicant as per the Tribunal's order dated 18.11.2003. Time allowed for compliance is three months from the date of receipt of this order.



IV. With the above direction, Original Application is allowed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/