

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/021/309/2019

Date of C.A.V : 11.11.2020

Date of Pronouncement: 27.11.2020



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

N.V. Subba Rao, S/o. Late N. S. Sastry,
Aged about 68 years,
Ex. Depot Store Keeper ó Grade-II,
Worked in Durg Nagpur Railway Electrification,
Project ó Now Retired on Superannuation,
R/o. House No. 1-1-648/4-A,
Near Canara Bank, Gandhi Nagar,
Hyderabad ó 500 080, Telangana State.

...Applicant

(By Advocate : Sri T.G.S. Srivastava)

Vs.

1. Union of India rep. by its
The Chairman Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi ó 110 001.
2. The General Manager,
Central Organisation for Railway Electrification,
Nayab Yusuf Road, Civil Lines,
Allahabad ó 211 011, Uttar Pradesh.
3. The General Manager,
South East Central Railway,
S.E.C. Railway Zonal Office Buildings,
Railway Station Sub-Post Office,
Bilaspur ó 495 004, Chhattisgarh.
4. The Divisional Railway Manager,
South East Central Railway,
S.E.C. Railway Divisional Office Buildings,
Railway Station Sub-Post Office,
Bilaspur ó 495 004, Chhattisgarh Stage.

....Respondents

(By Advocate : Sri. S.M. Patnaik, SC for Rlys.)

ORDER

(Hon'ble Mr. Ashish Kalia, Judl. Member)

Through Video Conferencing:



The applicant, while working as Depot Store Keeper Gr.II in Kalumna Stores Depot, South East Central Railway, on an additional charge, was deputed to work in another Division in alternate days. He was suspended on 10.4.1990 and ultimately, the penalty of removal from service was imposed on him vide order dated 7.3.1994. After exhausting the departmental remedies, the applicant had approached the Central Administrative Tribunal, Bombay Bench in O.A. No.784/1999. The Tribunal also concurred with the view taken by the department. Aggrieved over the same, the applicant approached the Hon'ble High Court of Bombay, by filing Writ Petition No.2528/2005. It is pertinent to mentioned that during the pendency of the Writ Petition, the applicant was superannuated on 28.2.2011. The Hon'ble High Court of Bombay has decided the Writ Petition on 13.4.2018, by setting aside the punishment order dated 7.3.1994 and the order of the Tribunal dated 3.8.2004. The applicant was allowed to retire by the respondents. Now, by the present Original Application, the applicant has sought the following relief:

iii) to direct the Respondents to reinstate the applicant to his former post as DSK-II and pay the full back wages for the suspension period from 10.4.1990 to 6.3.1994 and the removal service period from 7.3.1994 to 28.2.2011 i.e. the date of superannuation treating the whole period as spent on duty with all other consequential service benefits since the applicant is entitled for such reliefs as prayed for.

ii) to direct further to the respondents to fix pension at par his juniors for the retirement period from 1.3.2011 to till the actual

date of payment with all arrears of pension and other retirement benefits as admissible under pension rules.

iii) to grant any such other relief or reliefs as this Hon^{ble} Tribunal thinks fit and proper in the circumstances of the case.ö

2. The applicant has submitted that the Hon^{ble} High Court of Bombay has given two options to the petitioner/ applicant that he will be allowed to retire as a suspended employee with consequential reliefs or the department may drop the proceedings and allow him to retire with retiral benefits, which has not been done by the respondents. He is aggrieved by that. He has also emphasized that he is entitled for full back wages for the suspension period and also for the period from the date of removal to the date of superannuation. In support of his case, the applicant has relied upon the judgements passed by the Hon^{ble} Supreme Court in *R.P. Kapur vs UOI 1966-I-LLJ-164 (SC) 171, Khemchand vs UOI & Others 1963-I-LLJ-665(SC), A.L. Kalra vs The Project and Equipment Corporation of India Ltd., 1984-II-LLJ-186, Dev Prakash Tewari vs U.P. Cooperative Institutional dated 30.6.2014.*

3. Notices were issued. The respondents put appearance and filed detailed reply.

4. The basic contention raised by the learned counsel for the respondents is that Pension Payment Order was issued on 3.9.2019 along with gratuity. The specific contention raised in the reply statement is that the Chairman, Railway Board is not necessary party. Lastly, it is submitted that the present Application has become infructuous as the order of the Hon^{ble} High Court of Bombay has been implemented and, therefore, the applicant is not entitled for the relief prayed for in the O.A.



5. Heard Sri T.G.S. Srivastava , learned counsel appearing for the applicant and Sri S.M. Patnaik, learned Standing Counsel appearing for the respondents. The written arguments filed by both the parties have also been gone into.



6. In the present case, Hon'ble High Court of Bombay has set aside the order of this Tribunal dated 3.8.2004 in O.A. No. 784/1999 and the punishment order dated 7.3.1994. The Hon'ble High Court has granted two options to the respondents. The first option is to allow the applicant to retire as suspended employee with all consequential benefits and the other option is that the respondents may drop the departmental proceedings and take applicant as superannuated and pay all retiral benefits, including pension. The Hon'ble High Court stated 'we are consciously not awarding the petitioner any back wages as such'. Learned counsel for the applicant Sri Srivastava, at the time of argument, has emphasized that as the respondents have chosen the 2nd option, he is entitled for full back wages for the suspension period and also for the period from the date of removal to the date of superannuation, treating the whole period as spent on duty with all consequential benefits on par with his juniors. The applicant has relied upon the above said judgements in support of his case.

7. On the contrary, learned counsel for the respondents Sri Patnaik has categorically submitted that there is no issue left to be decided by this Tribunal as the present O.A. is barred by resjudicata, non-joinder of party.

8. After hearing the parties at length, this Tribunal has to weigh the pros and cons of this case. In this regard, legal position is as under:

i) In ***Senior Supdt. Of Telegraph (Traffic) Bhopal vs Santosh Kumar Seal 2010 (111) LLJ 61***, the Hon'ble Supreme Court held in the last few years, it has



been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

ii) In ***Chairman & Managing Director, Coal India Limited & Another vs Anantha Saha & Others 2011 (111) LLJ 165***, the Hon'ble Supreme Court held the issue

of entitlement for back wages has been considered by this Court time and again and consistently held that even after punishment imposed on an employee, if quashed by the Court or Tribunal, the payment of back wages is to be exercised by Court or Tribunal, keeping in view the facts in their entirety as no straitjacket formula can be evolved nor rule of universal application can be made for that case. Even if delinquent employee is reinstated, he would not be automatically entitled for back wages.

iii) Recently, in ***Om Pal Singh vs Disciplinary Authority on 14.1.2020 (Civil Appeal No.176/2020)***, the Hon'ble Apex Court held continuity of service and/ or consequential benefits is seldom visualized while granting consequential benefits automatically. Whenever Courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether continuity of service and/or

-consequential benefits should also be directed. The Hon'ble Apex Court has relied on its own previous judgement in *J.K. Synthetics Ltd. vs K.P. Agrawal & Anr.* 6 (2007) 2 SCC 433 wherein it was held "Whenever reinstatement is directed, continuity of service and consequential benefits should follow, as a matter of course. The disastrous effect of granting several promotions as a consequential benefit to a person, who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts is seldom visualized and hence declined back wages."

9. The crux of the legal position narrated hereinabove is while setting aside the order there is no straitjacket formula. The Courts & Tribunals have to see the entirety of the circumstances and consequential benefits are not to be granted as a matter of course.

10. After considering the facts and circumstances of the case, this Tribunal holds that this is no more res integra as the Hon'ble High Court of Bombay took a conscious decision declining the back wages and directed the respondents to pay retiral benefits including pension, if the 2nd option given by the Hon'ble High Court is opted by the respondents. In fact, the respondents had opted the 2nd option and the applicant had accepted the same without questioning/ challenging the orders of the Hon'ble High Court before the Hon'ble Apex Court. Thus, the judgement of the Hon'ble High Court of Bombay assumed finality and it cannot be re-opened by any Court/ Tribunal/Authority below to the Hon'ble High Court. Thus, the authorities concerned have no option to go and grant back wages beyond the directions issued by the Hon'ble High Court.



11. After considering the rival contentions and the legal position, we find no merit in the present Original Application. The same is liable to be dismissed. Hence, dismissed. Last but not the least, as held by various Benches of this Tribunal and the Honorable High Court, we hold that Chairman, Railway Board is not a necessary party to this O.A. There shall be no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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