

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.2099/91

DATE OF DECISION: 10.03.92.

SH. P.N. KAPOOR APPLICANT

VERSUS

UNION OF INDIA & ANOTHER RESPONDENTS

CORAM:-

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

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

COUNSEL FOR THE APPLICANT : SH. S.K. SAWHNEY

COUNSEL FOR THE RESPONDENTS : SH. R.L. DHAWAN

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)
(delivered by Hon'ble Mr. I.K. Rasgotra, Member(A)).

Heard the learned counsel of both the parties.

The controversy in this case revolves around the claim for payment of arrears of salary and allowances for the period from 26.7.1977 to 31.7.1984 in the grade of Assistant Engineer Class-II and from 1.8.1984 in the Senior Scale. The learned counsel pointed out that this claim is based on the respondents' letter at Annexure A-8 (Page 16 of the paperbook), according to which the applicant was given "Proforma fixation in the pay scale of Rs.2000-3500(RPS) w.e.f. 26.7.1977 i.e. the date of his junior Shri Keshav Prasad promoted as AEN and in senior scale in grade of Rs.3000-4500 (RPS) w.e.f. 01.08.1984 i.e. from the date of his junior Shri R.P. Rastogi promoted in senior scale." The learned counsel

submitted that the applicant was acquitted in RA 11/80 C.B.I. filed under Section 409 I.P.C. by the court of Metropolitan Magistrate vide order dated 29.11.1986. The aquittal was absolutely clear and no benefit of doubt etc. was involved. Accordingly, he should have been promoted and made payment of actual salary and allowances related to the post of Asstt. Engineer and ad hoc Sr. Civil Engineer w.e.f. the date, his next juniors in respective grades were promoted.

2. Sh. R.L. Dhawan, learned counsel for the respondents pointed out that the applicant has rushed to the Tribunal without availing of the departmental remedy available to him under Rule 18 of Railway Servants (Discipline & Appeal) Rules; he should have filed an appeal before the Appellate Authority before coming to the Tribunal in September, 1991. The learned counsel, therefore, submitted that in terms of Full Bench Judgement in B. Parmeshwari Rao's case, the O.A. is not maintainable. On merits, he referred us to R-2 annexed to the counter-affidavit which contains Railway Board's Letter No. E(D&A)71/RG6/23, dated 1.6.1971. According to para-5 of the said letter, the applicant would be eligible for payment of arrears of salary and allowances if the disciplinary proceedings against him are finalised within a period of two years, and in that case, he will be entitled to full benefits. In other cases, the benefit of Proforma fixation of pay in the higher grade alone can be extended. He also referred us to the judgement of the Hon'ble Supreme Court in the case of Union of India etc.etc. Vs. K.V. Jankiraman etc.etc. reported in

91

Judgements Today 1990(3) SC 527 and drew our attention to para 26 of the said judgement and emphasised that in accordance with the law laid down by their Lordships in the Hon'ble Supreme Court, the applicant should have filed an appeal before the Appellate Authority and that authority to take a decision whether the applicant shall be entitled to full payment of salary and allowances. In case, the said Authority rejects his representation, such authority will be bound to record the reasons for such rejection. The learned counsel for the applicant countered this plea by stating that the applicant had submitted a representation to the Chief Administrative Officer/Const., Northern Railway, Kashmere Gate, Delhi in July, 1990 in which he had stated "that neither the payment of arrears nor payment of damages as well as no pay fixation as Assistant Engineer as well as Sr.Civil Engineer has so far been paid to me and delay in above subject matter is causing great hardship to me as well as my family members....." According to the learned counsel, the representation of the applicant was rejected as the respondents vide their pay fixation statement dated 4.3.1991, which allowed only Proforma fixation and not the arrears of salary and allowances for the period in question.

3. We have considered the rival contentions carefully and perused the record. We are of the view that the representation made by the applicant vide Annexure A-9 does not constitute an appeal before the Appellate Authority. Further, in the said representation, the applicant had not made a

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10

specific point as to the reliefs which he wanted. He had claimed payment of arrears, payment of damages and fixation of pay etc. After the respondents issued the statement regarding fixation of pay, the applicant should have filed a proper appeal before the Competent Authority with the specific request that the payment of salary and allowances which has been unjustly denied to him be granted to him.

4. Having regard to the above situation of the case, we order and direct that the applicant should file an appeal before the Appellate Authority with the request that he should be allowed in the circumstances of his case, the arrears of pay and allowance for the period in question within a period of 4 weeks from the date of this order. The Appellate Authority shall decide the appeal within a period of 8 weeks from the date of filing of the appeal by the applicant. If the applicant is aggrieved with the disposal of the appeal by the Appellate Authority, he shall be at liberty to approach the Tribunal.

5. O.A. is disposed of as above, with no order as to costs.

De Ligny
(I.K. RASGOTRA)
MEMBER(A)

De Ligny 10.3.52
(T.S. OBEROI)
MEMBER(J)