

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 533 of 1996

Allahabad this the 07th day of September, 2000

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.K.I. Naqvi, Member (J)

Suresh Chandra, S/o Sunder Lal R/o Sundar
Bhawan, Mohalla ; Afreedi, Kasba Meeranpur,
Katra - Shahjahanpur.

Applicant

By Advocate Shri V.K. Agnihotri

Versus

1. Union of India through General Manager,
Northern Railway, Head Quarter Office,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern
Railway, Moradabad.

Respondents

By Advocate Shri Amit Sthalekar

ORDER (Oral)

By Hon'ble Mr. S. Dayal, Member (A)

This application has been filed
under Section 19 of the Administrative Tribunals
Act, 1985, seeking direction to the respondents
to pay the arrears pending from 06.2.1980 to
13.7.1981, from 29.12.1990 till 31.07.1995
when the applicant claims to have retired
A direction is also sought to the respondent
no.2 to give pension and other benefits.

2. The case of the applicant is that he was working as Boiler Maker Grade II in the Loco Shed of Bareilly Junction, when the order of removal dated 13.8.1981 was passed against him by the respondents. The order of removal was challenged in the Court of Munsif & VIIth, Bareilly in the Suit No.45 of 1982, which was decreed in favour of the applicant on 08.12.1982 and the order of removal dated 13.8.1981 was set aside by the learned Munsif. The Union of India filed an appeal before Additional District Judge, Bareilly as Appeal No.23 of 1983 Union of India and Others Vs. Suresh Chandra, which was dismissed by the Learned Court on 15.2.1985. The applicant thereafter moved an application for joining his services on 18.3.1985, and joined the services on 03.7.1985. He was paid arrears from 13.8.81 to 03.7.85, but arrears from 06.2.1980 till 12.8.81 remained to be paid by the respondents. The applicant claims to have moved an application on 11.7.1995 requesting the respondents to allow the applicant to join, and pay him the arrears of salary from 08.2.1980. It is mentioned by the applicant that he was then promoted from Boiler Maker Grade II to Boiler Maker Grade I and transferred to Luxer Junction without issuing the transfer pass, which fact he brought to the notice of the respondents in his application dated 11.7.95. The application was rejected by the order

dated 11.3.1996. It is claimed that the transfer of the applicant from Moradabad to Loco Road, Luxer Junction was illegal and that a transfer pass was not issued to the applicant. It is claimed that the respondents are not permitting the applicant to work from 29.12.1990, till the date of retirement on 31.7.1995. The applicant has moved a number of representations in 1991, but no reply was given to him.

3. The arguments of Shri V.K. Agnihotri, learned counsel for the applicant and Shri Amit Sthalekar, learned counsel for the respondents, have been heard.

4. We find that the applicant had filed a supplementary affidavit on 17.1.1997, in which he had mentioned that the respondents had no right to start a new inquiry, once the removal order has been set aside. He has also mentioned that the applicant was transferred on promotion by order dated 23.11.90 to Loco Shed, Luxer, but no transfer pass has been issued to him. The applicant went to join at Luxer, but was returned and was moving about from one place to another without any request. He has filed the copies of the Judgments of VIIIth Munsif, Bareilly and Additional District Judge, Bareilly.

5. The learned counsel for the applicant during his arguments stated that he was proceeded

against in a second departmental enquiry for the same absence which was the subject matter of the first departmental enquiry in which removal is ordered and was set aside by the Munsif Magistrate and appeal rejected by the Addl. District Judge. The respondents, we find have filed their counter reply in which they have made averments about the second departmental enquiry against the applicant. It has been stated that after the order passed first on the basis of enquiry was set aside, the applicant was paid Rs. 36953-60 P. for period from 15.8.81 to 5.2.85. Thereafter the case of the applicant for promotion was processed after recommendation of P.N.M. and the applicant was promoted as boiler maker grade-I. The promotion was granted with effect from 15.4.86, the date of promotion of his juniors and was posted at Laksar Road Junction by order dated 23.11.90. The applicant did not receive the order of promotion but requested Loco Foreman office Bareilly for a copy of his order for preparing an appeal against the order of transfer for promotion. He filed the appeal but the authorities decided to carry out of order of transfer and promotion. The applicant is stated to have been informed by registered letter dated 29.4.91. He had already been spared from 27.12.90 but the applicant did not join at Laksar Road Junction and remained absent from 27.12.90. A chargesheet was ordered to be issued by Senior Divisional Mechanical Engineer for his unauthorised absence as the counter reply only shows that a chargesheet was issued in Standard Form-5 for unauthorised absence. We put the question to learned counsel for the respondents as to whether this unauthorised

absence was for period from 7.12.90 onwards. The learned counsel for the respondents affirmed that Standard Form-5 chargesheet was for period from 27.12.90 onwards. The applicant stated to have submitted his defence reply to the enquiry officer so appointed by the disciplinary authority but the applicant did not attend the enquiry and refused to receive information at his declared address. Therefore ex parte enquiry was held. Copy of the enquiry report was sent to the applicant on 21.4.92 by registered A.D. which was returned with the remarks that the applicant knows about registered letter but he does not want to take delivery of the letter. Therefore the order of removal was passed with effect from 20.7.92 after sending of removal notice dated 10.7.92 by registered A.D. The punishment notice was pasted in the notice board in the office of Loco Foreman Bareilly on 18.4.92. The applicant took personal interview of Divisional Railway Manager and also made representation dated 11.7.95. His representation was turned down by letter dated 11.3.96.

6. The learned counsel for the respondents has also mentioned regarding payment of salary claimed by the applicant for the period extending from 6.2.80 to 13.7.81. The counter reply states that the applicant was removed from service from 17.8.81 on account of unauthorised absence from duty with effect from 7.2.80. from the averments made by the learned counsel for the

respondents it is clear that the applicant seeks to get payment for the period of his absence from 6.2.80 to 17.8.81. He is not ~~authorised for~~ ^{entitled to any} payment for this period because he did not perform any work.

7. We find that the applicant has concealed the fact of second enquiry and the punishment of removal passed in the second enquiry for unauthorised absence held against him. This appears to have been so done because the applicant wants to establish his ~~maximum~~ claim for payment of pensionary benefits. The applicant has filed no rejoinder after the counter reply was filed and we therefore go by the facts regarding the second enquiry revealed in the counter reply. The applicant, therefore, is not entitled to any payment from 6.2.80 to 17.8.81 and is also not entitled for payment of any pensionary benefits because he was removed from service.

8. Consequently we find no merit in the claim of the applicant and the same is therefore dismissed
No order as to costs.

[Signature]
Member (J.)

[Signature]
Member (A.)

Nafees.