

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * *

Allahabad : Dated this 3rd of September, 1996

Original Application No.928 of 1996

District : Bareilly

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T. L. Verma, J.M.

U.S. Rana S/o Late Shri Heera Singh Rana

Retired T.T.E., NE. Railway, Izzat Nagar,

Bareilly,

Resident of 26/01/B.D.A. Colony,

Kargaina Block, Badaun Road,

Bareilly U.P.

(By Sri K.N. Katiyar, Advocate)

• • • • • Applicant

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Commercial Manager, North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, Izzat Nagar, Bareilly.

• • • • Respondents

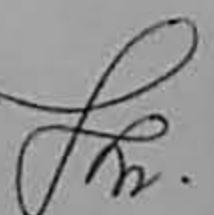
O R D E R (O_r_a_1)

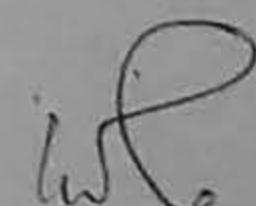
By Hon'ble Mr. S. Das Gupta, A.M.

Heard learned counsel for the applicant on admission. The applicant has sought a declaration that the order of the competent authority imposing penalty and reduction of pay for five years is void ab initio and illegal. A further direction sought is that the applicant be entitled to fixation of pay Rs.1470/- It was the last pay drawn as T.T.E. *WL* on the date of his retirement on 28.2.1993.

2. The facts averred disclose that the applicant has earlier approached this Tribunal through the OA No.539/90 challenging the penalty imposed on the applicant by the appellate authority in moderation of ~~penalty of~~ the removal from service imposed by the disciplinary authority. The moderated penalty was that of ~~reduction~~ ^{penalty of} reversion to the lower grade. A Bench of the Tribunal deciding the OA upheld the penalty of reversion to the lower grade but the order fixing his pay at Rs.950/- was set aside and it was directed that the applicant's pay would be fixed at the stage which he would have drawn in the lower scale of Rs.950-1500 had he not been ~~removed~~ ^{removed} to the higher scale from which he was reverted. In compliance with this order the respondents have issued the impugned order dated 28-7-1995 by which his pay has been fixed in accordance with the direction given by the Tribunal.

3. The earlier penalty of reversion imposed on the applicant was upheld by the Tribunal when it was challenged through OA No.539/90. It was only directed that his pay should be refixed in the manner provided in the Tribunal's order. The respondents have accordingly refixed the pay and the impugned order has been issued. In case case the refixation has not been correctly done, it may give rise to a fresh cause of action. However, the order of the appellate authority imposing the penalty of reduction cannot obviously be challenged as that matter has already been adjudicated and decided in the order in the OA. The present application on the basis of the reliefs prayed for is barred by res judicata and is dismissed accordingly.


Member (J)


Member (A)

OR.

M.A. 697/03 along
with copy of order dt.

27/1/03 passed in writ
petition No. 30433 of 97 by
Hon'ble High Court have
been filed on 20/2/03.

Submitted on 07/3/03.

P
4/3.

7/3/03

Hon Chaj Genke Sivdaswar AM
Hon Mr A K Bhattacharya JM

Sri O.P. Gupta for the applicant.

MA 697/03 is for taking the judgment
of Hon. Allahabad High Court dated 27.1.03
on record. Allowed. Judgment dt 27.1.03
of Hon. Allahabad High Court is taken
on record.

Issue notice to the respondents
returnable within 4 weeks. List
for orders on 28.4.03.

OR.

Notice issued to the
respects. in OA. on
13/3/03 along with copy
of order dt. 07/3/03 and
M.A. 697/03. Viz. o.c. is on record.
No reply has been filed
so far.

Submitted. JK

JK

AM

P
29/4.

CA 928196

28/4/03

28/11/2018 Hon. Mr. Gen. K. K. Srivastava, AM

Hon Mr AK Bhatnagar, JM

Sir O.P. Gupta learned counsel for the applicant and Shri K.P. Singh learned counsel for the respondents.

Shri K.P. Singh submitted that he has received instructions from the department today. Office is directed to print the name of Shri K.P. Singh as respondents' counsel in future cause list.

future cause list.
Shri K.P. Singh forays for and granted
3 weeks time to file CA. RA. if any, may be
filed within a week, thereafter.

List for orders on 28/5/03.

Ar

3M

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Am

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O A No. 928/96

26-05-03

Amendment
incorporated today
Open
26/5/03

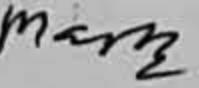
Hon'ble Mr. Justice R R K Tripathi, V.C.
Hon'ble Mr. S. K. Agrawal, A.M.

We have heard Sri O. P. Gupta counsel
for the applicant and Sri K. P. Singh
counsel for the respondents.

Order dictated separately.


A.M.


V.C.


M.R.

2. The facts in brief giving rise to this O.A. are that the applicant was serving as Travelling Ticket Examiner with Headquarter at Bareilly. He was served with the memo of charge ^{for} accepting illegal gratification from passenger. The enquiry was completed and order of punishment was passed on 26.02.1990 reverting him to the next lower scale of Rs.950-1500. The order of reversion was challenged in O.A. No.539 of 1990 which was disposed of on 04.04.1994. Against the order dated 03.09.1996 the application ^{for review} was filed in this Tribunal which was also rejected on 16.05.1997. Thus the ~~reversion~~ of the applicant ~~was~~ the lower time scale became final. The Tribunal further considered the pay fixation and disagreed with the pay fixed by the respondents and passed the following direction:

"Regard being had to the decision of the Tribunal referred to above, we find that the appellate authority could not have fixed the pay of the applicant at Rs.950/- after reverting him to lower scale of pay. In the result, we allow this application in part, and hold that the applicant will be entitled to such pay as he would have drawn in the scale of Rs.950-1500/- had he not been promoted to scale Rs.1200-2040/-. The order of the appellate authority imposing upon the applicant the punishment of reverting him to the scale of Rs.950-1500/- upheld, however the further order fixing his pay at Rs.950/- in the lower grade is set aside. The applicant will be entitled to such pay as he would have drawn in scale Rs.950-1500/- had he not been promoted to the scale 1200-2040/-.

3. From the aforesaid, it is clear, that, the reversion of the applicant was upheld and the matter was remitted only for fixation of pay scale. The respondents, however, passed the order fixing the period of 5 years for reversion which was challenged in the present O.A. The O.A. was dismissed as barred by res-judicata by order dated 03.09.1996. The order was challenged in the Hon'ble High Court by filing writ petition No.30433 of 1997. The writ petition

has been allowed by order dated 10.02.2003 with ~~the~~ the following direction:

"In the result, this writ petition succeeds and is allowed. The order of the Central Administrative Tribunal dated 03.09.1996 annexure-1 to the writ petition and order dated 16.05.1997, annexure-2 to the writ petition are quashed. The tribunal is directed to decide the claim of the petitioner afresh after giving opportunity of hearing to the parties expeditiously in accordance with law. Respondent No.3 the Divisional Railway Manager, (Karmik), Izat Nagar, Bareilly is directed to supply a copy of the order dated 06.05.1992 by which a fresh reversion order had been passed by the respondent fixing the period of reversion for five years to the petitioner within a period of two weeks from the date a certified copy of this order is produced before him".

4. In pursuance of the direction of Hon'ble High Court, the respondents have supplied copy of the order dated 05.05.1992 to the applicant. An Amendment Application No.1811 of 2003 has been filed for incorporating para 4.14 in the O.A. The application is allowed. The learned counsel for the applicant ~~was~~ ^{was} allowed to incorporate the amendment in the O.A. during the course of the day.

5. The learned counsel for the applicant has submitted that the order dated 06.05.1992 cannot be legally sustained for two reasons, First submission is that the earlier order of reversion passed on 26.02.1990 became final between the parties and respondents could not alter it. The second submission is that in view of the matter, as respondents wanted to fix the period, which was not earlier provided, they ought to have ^{any} given opportunity of hearing to the applicant for modifying the order. The course adopted by the respondents was ~~done~~ in violation of principle of natural justice and order dated 06.05.1992 is liable to be quashed on this ground also.



6. The learned counsel for the respondents though submitted that the fixation of period for reversion of the applicant was necessary under rules which was done by respondents. However, learned counsel could not satisfy us as to ~~why~~^{how} order could be passed, after earlier order of reversion was upheld by the Tribunal, and in any case, without giving opportunity of hearing to the applicant.

7. In the circumstances, we are satisfied that the order dated 06.05.1992 suffered from manifest illegality and is liable to be quashed. The O.A. is accordingly allowed. The order dated 06.05.1992 is quashed. Respondents are directed to fix the pay of the applicant in the light of the observation made, in the earlier order of this Tribunal as well as the observation of the Hon'ble High Court. The order shall be implemented within a period of 4 months from the date, a copy of the order is filed. If necessary the pension of the applicant shall also be revised.

8. There will be no order as to costs.



Member-A.



Vice-Chairman.

Manish/-