

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Dated Allahabad : This the 16th day of 1999 1999.

Present:- Hon'ble Mr. Rafiquddin, Member (J.)

Original Application No.124 of 1997.

Ganga Saran Sharma s/o Late Sri Gulab Singh
r/o 171/3, Babu Ka Purwa, New Labour Colony,
Kedwai Nagar, Kanpur.

. . Applicant.

Through Counsel Sri A.K. Srivastava, Adv.

Versus

1. Union of India, through its Secretary,
Ministry of Railway, New Delhi.
2. General Manager, Northern Railway,
Baroda House, New Delhi.
3. Divisional Railway Manager,
Northern Railway, Allahabad.

. . Respondents.

Through Counsel Sri A.K. Gaur, Adv.

Order (Reserved)

(By Hon'ble Mr. Rafiquddin, Member (J.)

The applicant has approached this Tribunal for a direction to the respondents to pay the due amount as may be found due to him during the period he remained under suspension and also the difference of wages of the post of Electric Driver Grade 'C' and of the post of E.T. Driver.

2. The applicant was appointed as Cleaner on 28.6.57 and during the course of employment with

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the respondents he was promoted as Electric Driver Grade 'C'. At the relevant time i.e. 28th March he was posted at Kanpur as Electric Driver Grade 'C'. It appears that he was removed from the service after a domestic enquiry was conducted against him vide order dated 28.3.89. He also remained suspended in the aforesaid enquiry during the period from 14.9.88 to 28.3.89 i.e. the date of his removal. During this period he was paid only subsistence allowance by the respondents. Aggrieved by his removal order, the applicant filed an appeal before the Appellate authority. The appellate authority has partly allowed his appeal and reduced the punishment of removal and he was permanently reduced to the post of E.T. and the intervening period was treated as dies on vide order dated 16.11.89. Being aggrieved by the aforesaid order he filed O.A. No. 59/90 before this Tribunal. The Tribunal vide order dated 14.10.92 allowed the application and quashed the order dated 16.11.89. It was made clear that it was open to the disciplinary authority to go ahead with the enquiry proceedings in case he chooses to do so after giving an opportunity of hearing ^{to} the applicant.

3. Thereafter the applicant retired from the service with effect from 1.7.1995 and after his retirement his all dues including gratuity and other retiral benefits were paid to him by the respondents. But full salary for the period of suspension i.e. from 14.9.88 to 20.3.89 and difference of wages for the post of Electric Driver Grade 'C' and ^{that} of the post of E.T. Driver with effect from 29.3.89 to 30.6.95 i.e. the date of the retirement has not been paid. It is worth mentioning that after order of this

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Tribunal no disciplinary proceedings were conducted against the applicant by the respondents.

4. According to the applicant since the punishment order has been quashed by the Tribunal and no disciplinary proceedings were started against him, he is entitled to receive the full salary of the period of suspension because he was paid only subsistence allowance during that period. Moreover he is also entitled to receive difference of wages at the post of electric driver Grade 'C' and E.T. Driver with effect from 29.3.89 to 30.6.85 because he was reduced to lower rank of E.T. Driver from Electric Driver Grade 'C'

5. The application has been contested on behalf of the respondents mainly on the ground that since the applicant was found negligent for passing loop station without any authority and excess speed failing to pay his immediate attention and obey signal. He was ^{given} full opportunity of being heard at the time of enquiry and therefore the respondents were justified in withholding of salary during the period of suspension and also the difference of pay of his reduced rank E.T. Driver.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. It is evident from the facts of this case that after quashing of the punishment order dated 16.11.89 no disciplinary proceedings were drawn up against the applicant by the respondents. This Tribunal vide order dated 14.10.92 made it clear to the respondents that fresh enquiry proceedings may be taken up against the applicant after providing

an opportunity to file representation to the respondents. It was not done for the reasons best known to the respondents. It is no doubt correct that the respondents vide para 4 of the C.A. have asserted that after passing of the order of this Tribunal the Disciplinary authority acted as per directives and the employee was given an opportunity of hearing on the representation and the employee was held responsible for over shooting of signal in read condition while working IED Passenger train. Therefore the punishment was upheld by the disciplinary authority. However no such order or document showing disciplinary proceeding after passing the order of this tribunal has been placed on record. This assertion appears to be misleading as no such disciplinary proceedings taken up against the applicant after passing of the order of this tribunal dated 14.10.92.

8. It is admitted case that all retirement benefits have also been given to the applicant by the respondents except the amount in respect of the suspension period and the difference of wages which were paid to the applicant in the reduced rank as E. T. Driver. It is thus clear that in compliance of the order of this Tribunal all the benefits have been given to the applicant hence there is no reason to withhold payment of salary of suspension period and also the difference of wages of the rank of Electric Driver Grade 'C' and the amount of wages paid to him as E.T. Driver.

9. It has also not been brought to my notice that there is any rule or provision under which the payment may be withheld in such conditions. There is a very recent decision Bhagirathi Jena

Versus Board of Directors O.S.F.C. and others reported in 1999 S.C.C. (L & S) page 804. The Supreme Court has held that in the absence of any such provisions for continuance of departmental enquiry after superannuation, it must be held that there is no legal authority to make any reduction in the retiral benefits. Similarly if there is no provision for conducting a disciplinary enquiry after the retirement of the employee and for deduction from retiral benefits in the case of applicant's misconduct. It must be held that enquiry had lapsed and the employee was entitled to full retiral benefits. Consequently the applicant was held entitled to balance of salary after deducting subsistence allowance already paid to him. As already stated it is not brought to my notice that there is any provision under rule in which the enquiry may be continued after the retirement of the applicant or for making deduction from retiral benefits on salary etc. in case no disciplinary proceedings were taken.

10. Consequently the applicant is entitled to receive the balance of salary after deducting subsistence allowance already paid to him during the period of suspension i.e. 14.9.88 to 28.3.89. Similarly he is also entitled to receive the wages as Electric Driver Grade 'C' with effect from 29.3.89 to 30.6.95 and as such the difference of wages will be paid to him after deducting the amount of salary already paid to him as E.T. Driver.

11. There shall be no order as to costs.

Raf. Uddin
Member (J.) 16.8.99