

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NUMBER 1039 OF 2001

ALLAHABAD, THIS THE 24th DAY OF JANUARY, 2003

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Chakreshwar Nath Jain
aged about 66 years,
son of Late Bhola Nath Jain,
r/o H.297-A, Railway Harthala Colony,
Moradabad.

.....Applicant

(By Advocate Shri T.S. Pandey)

V E R S U S

1. Union of India through its Ex-Officio,
Secretary and Chairman, Railway Board,
Rail Bhawan,
New Delhi.

2. General Manager,
Northern Railway,
Bareda House,
New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad.

4. Divisional Electrical Engineer,
Northern Railway,
Moradabad Division,
Moradabad.

.....Respondents

(By Advocate : Shri Prashant Mathur)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member-J

By filing this O.A. applicant has sought following

relief :

(a) Issue a writ, order or direction in the nature of certiorari quashing the order dated 27.6.01.
(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay back the entire arrears of pension alongwith the amounts of provident fund, gratuity, group

insurance dearness allowance and leave encashment due to the applicant/petitioner within a stipulated period of time whatever is fixed by this Hon'ble Tribunal with further order and direction to fix the pension of the applicant/petitioner shall suffer irresponsible loss which may not be compensated in terms of money.

- (c) Costs of this litigation to the applicant/petitioner from the respondents, and
- (d) Issue any other and further writ, order or direction which this Tribunal deem fit and proper in the circumstances of the case, but may have not been pleaded by the applicant/petitioner and is found just and appropriate to this Hon'ble Tribunal, be also awarded to the applicant against the respondents/opposite parties.

2. The facts as alleged by applicant are that he was appointed as Head light fitter on 07.08.1958 and finally he was promoted and was working as Highly skilled fitter Grade-I when a criminal case was lodged against him and he was also chargesheeted for major punishment. After the enquiry, applicant was dismissed from service vise order dated 20.08.1974 which was challenged by him but ~~that~~ was also dismissed vise order dated 05.12.1974. Being aggrieved he filed Civil Writ Petition No.758/75 which was allowed by Hon'ble High Court of Allahabad vise their judgment and order dated 09.01.1981 (Annexure-3) quashing the orders passed by respondents. Union of India filed SLP No.2944/81 against the H.C judgment which was connected with Civil Appeal No.1088/87. The Hon'ble Supreme Court decided the case on 01.11.1985 by observing this appeal has to be allowed in view of decision of the constitution bench in U.O.I. & others Vs. Tulsi Ram Patel etc. 1985(3)SCC 398. All interim orders were vacated & contempt petition was also dismissed (Annexure SCA-II).

3. It is submitted by applicant's counsel that since



the Hon'ble Supreme Court did not quash the order passed by Hon'ble High Court, quashing of the dismissal order by Hon'ble High Court was upheld by Hon'ble Supreme Court and since appeal was allowed in view of Tulsi Ram Patel's case, Tribunal should decide the question whether applicant would be entitled to retiral benefits as he retired on 31.05,1993. He gave representation demanding pension, provident fund, leave encashment, group insurance as well as gratuity but since respondents did not make the payments he approached Tribunal by filing O.A. in Principal Bench, but since nothing was being done, he kept giving representation and reminders to release his retiral benefits. He even filed O.A. No.295/2000 in Allahabad Bench which was disposed off vide order dated 29.03.2001 whereby respondents were directed to decide the pending representation dated 15.02.99 of applicant within 6 months and pass a detailed order. Pursuant to Tribunals's directions, the respondents issued orders dated 27.06.2001 (pg.14) which has been challenged by applicant in present O.A. on the ground that Hon'ble High Court while deciding his case had relied on AIR 1975 SC 2216 which was not overruled in Tulsi Ram Patel's case. Moreover Hon'ble Supreme Court did not quash the orders of Hon'ble High Court therefore, the Hon'ble High Court's order still holds good and since he had retired on 31.05.1993 he is entitled to all the retiral benefits.

4. The respondents have opposed the O.A. on the ground



that applicant had concealed very important facts not only from the department but from Tribunal also in the earlier O.A., therefore, this O.A. is liable to be thrown out on this ground itself. They have submitted that applicant was convicted by the judicial magistrate on 02.07.1974 and the conviction was upheld by the appellate court also, therefore, applicant was dismissed from service under rule 14(1) of D&A Rules 1968 w.e.f. 20.08.1974 by the competent authority. His appeal and revision petitions were also rejected on 05.12.1974 and 25.11.1975 respectively. Applicant filed Writ Petition No.758/75 in High Court of Allahabad which was allowed by quashing the notice for imposition of penalty vide judgment dated 09.01.1981. Union of India filed SLP in Hon'ble Supreme Court which was pleased to stay the judgment of High Court with a condition that Railways should pay salary to the applicant in the meanwhile. Finally the appeal of Railways was allowed and interim orders were vacated and contempt also dismissed (Annexure SCA-I & SCA-II).

5. They have thus submitted that once their appeal was allowed & interim order also vacated by the Hon'ble Supreme Court, applicant continued to be a dismissed employee, therefore, he is not entitled to pension, D.C.R.G., group insurance etc. They have also submitted the O.A. is barred by limitation as the Supreme Court had also decided the matter in 1985 and if he had any grievance, he ought to have approached the court at that relevant time. The respondents have relied on Rule 40 of Pension Manual and

have explained in their letter dated 10.01.2003 (which is taken in record) that applicant had been dismissed in 1974 itself while group insurance scheme was introduced only in 1982, therefore, no ^{were under} group insurance scheme is payable to him.. They have further annexed an order dated 15.07.99 to show that old and time barred records of Senior DAO's Office, Moradabad had been weeded out up to December 1991, therefore, it is not possible at this stage to give any other details.

6. I have heard both the counsel and perused the pleadings as well. At the outset it would be relevant to point out that the orders by which applicant was dismissed or appeal or revision rejected have not been annexed by the applicant nor the orders passed by Hon'ble Supreme Court however, respondents have annexed the orders passed by the Hon'ble Supreme Court which would be very relevant.

7. The issue raised by applicant in this case is that since Hon'ble Supreme Court did not quash the judgment of Hon'ble High Court who had in turn quashed the dismissal of applicant, he continued to be in service till the date of his superannuation and is entitled to all retiral benefits. The counsel for the applicant also wanted the Tribunal to ^{as according to law S.C.R} interpret the order passed by Hon'ble Supreme Court could not have quashed the orders of High Court as they had relied on Chalappan's Case which was not overruled by Hon'ble Supreme Court in Tulsi Ram Patel's case.

8. A perusal of Hon'ble Court's judgment shows that the

Writ Petition was allowed on the ground that no notice was given to the petitioners with regard to quantum of punishment (Pg.17), therefore, relying on AIR 1975 SC 2216 the Hon'ble High Court quashed the orders passed by the Railway Administration vide their judgment and order dated 09.01.1981. The matter was carried to Hon'ble Supreme Court by the Railways and Hon'ble Supreme Court was pleased to pass the following order on 05.11.1985.

"pending the hearing and final disposal of this court of the application for stay after notice, the operation of the order dated the 09.01.1981 of the Allahabad High Court at Allahabad in Civil Misc. Petition No.758 of 1975 be and is hereby stayed on the condition that the petitioners/appellants herein continues to pay the respondents herein his monthly salary as & when it accrues commencing from 01.11.81."

The applicant was accordingly paid salary from 01.11.81 in compliance with the Supreme Court's order.

The matter was finally decided on 01.11.1985 and the Hon'ble Supreme Court passed following order:

"IN THE SUPREME COURT OF INDIA
CIVIL APPLIATE JURISDICTION
CIVIL APPEAL NO.2944 OF 1981
CIVIL MISCELLANEOUS PETITION NO. 39623 OF 1985

The Divisional Electrical EngineerAppellants
Northern Railway & Others

Versus
Shri Chakraeshwar Nath JainRespondent

O R D E R

In view of the decision of the Constitution Bench in Union of India and another etc. Vs. Tulsiram Patel etc. (1985)3 SCC 398, this appeal has to be allowed. The appeal is therefore allowed and all interim orders are vacated. Contempt Petition is dismissed.

Sd.
V.D. Tulzapurkar

Sd.
R.S. Pathak

Sd.
Sabyasachi Mukherji

9. Now simply because the Hon'ble Supreme Court did not use the words judgment of High Court is quashed and set aside it cannot be said that High Court order was upheld for the reason that Hon'ble Supreme Court allowed the appeal and vacated the interim order. It would be relevant to point out here that in Hon'ble Supreme Court SLP is filed against the judgment & order of Hon'ble High Court and once leave is granted it becomes an appeal SLP is not a statutory appeal but special leave has to be sought for appeal against the impugned order. If the Hon'ble Supreme Court had intended to uphold the judgment of High Court they would have simply rejected the appeal but in the instant case the appeal was allowed meaning thereby the contentions of Railway Administration challenging the judgment of High Court have been accepted by the Hon'ble Supreme Court. It becomes important to see that Hon'ble Supreme Court specifically vacated the interim order and dismissed the Contempt Petition meaning thereby that Railways were not required to pay the salary any more.

10. After the appeal was decided and allowed in 1985, the respondents herein treated the applicant as dismissed employee and if the applicant felt it was contrary to Supreme Court's order, he ought to have either filed a Contempt Petition before the Hon'ble Supreme Court or sought clarification from Hon'ble Supreme Court but he did not do any such thing and is insisting now that I should interpret the order of Supreme Court. I am afraid such a contention is not at all tenable. I have no hesitation in saying that

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ence the appeal is allowed, it means automatically that the judgment against which appeal was filed has been reversed. I cannot even entertain the contention of applicant's counsel to comment on Hon'ble Supreme Court's order. The counsel was trying to say that Hon'ble Supreme Court could not have reversed the judgment of High Court as it was based on judgment of Challappan. The applicant's counsel should have raised all these contentions before the Hon'ble Supreme Court at the time when his appeal was being decided. Once the appeal has been decided by Hon'ble Supreme Court, he cannot find fault with the Supreme Court's order that too before the Tribunal which is the court of 1st instance. Therefore, the contention of applicant's counsel is rejected as not maintainable.

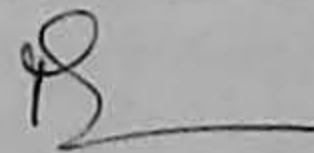
11. Admittedly the applicant was dismissed on 20.08.1974 after conviction by a trial court which was upheld by Hon'ble Supreme Court, therefore, Rule 40 of Railways pensions Rule would be attracted which for ready reference reads as under:-

"**Forfeiture of service on dismissal or removal -**
Dismissal or removal of a railway servant from a service or post shall lead to forfeiture of his past service."

12. Thus after dismissal he would not be entitled to pension, gratuity, leave encashment etc. As far as General Insurance Scheme is concerned the authorities have informed that the scheme itself was introduced in 1982 while he was already dismissed in 1974 itself so he is not entitled to any amount on account of General Insurance Scheme. The

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respondents have also shown me that records paid vouchers and pay orders upto December 1991 have already been weeded out vide order dated 15-7-1999. It is seen that applicant's first O.A had also been filed only in the year 2000 as it is numbered 295/2000 and respondents have specifically stated that from 1985 to 15/12/1999 applicant had not raised any claim which is evident from applicant's own O.A as well. Applicant has not given any justification as to why he didn't raise up the issue immediately after appeal was decided by the Hon'ble Supreme Court therefore his claim is definitely time barred now. Applicant's counsel has relied on the judgment of M.R.Gupta's case to suggest that since he is demanding pension, it is a recurring cause of action. This contention has to be rejected outright because M.R.Gupta's case would apply to a case where a person is entitled to pension but is not being paid according to law. It would have no application in the present case where applicant is not even entitled to it as he is a dismissed employee. Administrative Tribunals Act lays down limitation of one year from the date of cause of action arises. After the judgment and order passed by Hon'ble Supreme Court when respondents had stopped paying the salary, his cause of action if any would have arisen at that time and if he was aggrieved he ought to have approached the court at that relevant time. People can't be allowed to sleep over the matter and then approach the court at any time as per their convenience. If such petitions are allowed law of limitation would lose its sanctity and meaning. even otherwise applicant's counsel has not been able to show any flaw in the speaking order passed by respondents on 27-6-2001, the O.A is therefore devoid of merit. It is accordingly dismissed with no order as to costs.


Member (J)