

Reserved

**Central Administrative Tribunal
Allahabad Bench, Allahabad**

Original Application No. 422 of 2005

Allahabad, this the 20th day of Nov 2009

Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

A.K. Pandey, Son of Sri Deena Nath Pandey, Resident of Village and Post Rajpur, District Varanasi.

Applicant

By Advocate: Sri Sajnu Ram

Vs.

1. Union of India through General Manager and North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Senior Divisional Engineer (I) North Central Railway, Allahabad.

Respondents

By Advocate: Sri P.N. Rai.

O R D E R

Delivered by Hon'ble Mr. Ashok S. Karamadi, J.M.

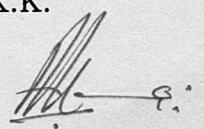
This O.A. is filed against the order dated 31.08.2004 passed by Respondent No. 3, who has rejected the representation of the applicant, which was preferred to the General Manager, North Central Railway, Allahabad on 29.04.2004 and 09.05.2004 as per direction of this Tribunal in the Judgment and Order dated 23.03.2004.

2. The facts of the case are that the applicant is working as Gangman at Chunar under supervision of Permanent Way Inspector, North Central Railway, Mirzapur and under control of Assistant Divisional Engineer, North Central Railway, Mirzapur in Allahabad

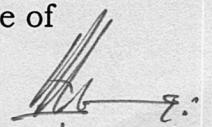


Division. It is informed by the applicant that the separate zone of North Central Railway has now been formed and Allahabad Division of Northern Railway has been included in this zone. The services of the applicant were dismissed on the false ground of three month's unauthorized absence by the Assistant Engineer, Mirzapur vide his letter dated 26.02.1988 communicated on 05.01.1992 by the Divisional Engineer, Northern Railway, Allahabad to the applicant vide his letter dated 05.01.1992. Consequently, the applicant filed O.A. No. 666 of 1992 against the aforesaid dismissal order in this Tribunal, and the O.A. was allowed vide Judgment and order dated 17.04.2000, quashing the dismissal order of the applicant, directing the respondents to reinstate the applicant with all consequential benefits. Applicant made several representations for reinstatement and giving consequential benefits that to no avail. The respondents filed the Civil Misc. Writ Petition No. 5433 of 2001 in the Hon'ble High Court, Allahabad against the Judgment and order of this Hon'ble Court. The aforesaid Writ Petition was dismissed on 11.12.2001 by the Hon'ble High Court and after dismissal of the Writ Petition, applicant was allowed duty on 26.1.2002 in pursuance of the order dated 11.12.2001 (Annexure No. A-7).

The respondents did not give any consequential benefits of pay and allowances of dismissal period from 26.2.88 to 10.1.2002, seniority and promotion in continuation of their removal period which was set-aside by this Hon'ble Court on 17.4.2000 and confirmed by the Hon'ble High Court. The applicant had filed Contempt Petition No. 1666 of 2002 for giving consequential benefits of pay and allowances, seniority, promotion, payment of bonus counting of LAP etc. in compliance of the Judgment and order mentioned above. Bench of this Hon'ble Court consisting of Hon'ble Maj. Gen. K.K.



Srivastava and Hon'ble Mr. A. K. Bhatnagar who dismissed the Contempt Petition vide order dated 25.8.2003 directing the applicant to file fresh petition for getting consequential benefits Photo copy of the order dated 25.8.2003 is Annexure No. A-8. It is stated that the applicant filed another Original Application No. 1505 of 2003 in this Hon'ble Court. It is further stated that the respondents could not file counter reply of the aforesaid Original Application in spite of Several dates were granted to them for the purpose thereof. Then the Hon'ble Court disposed of the Original Application finally on 23.3.2004 giving direction to the applicant to file fresh representation to the Competent Authority who was directed to consider the representation by passing a reasoned order within a period of three months. The applicant filed a representation on 29.4.2004 to the General Manager North Central Railway Allahabad through registered Post on 29.4.2004 (Annexure No. A-2). It is stated that the applicant also handed over the copy of the above representation personally on 10.5.2004 in the office of the General Manager. The applicant stated in his representation that his dismissal order dated 26.2.1988 has been quashed and declared illegal. It was also stated in the representation that the respondents have also been directed to reinstate the applicant with all consequential benefits. Applicant requested the General Manager in his aforesaid representation that he is legally entitled to the pay and allowances of dismissal period from 26.2.1988 to 10.1.2002, seniority, promotion, bonus, LAP and LHAP during the aforesaid dismissal period which has been set aside by the Court of law. The applicant further stated that he also mentioned in the above representation that the Hon'ble Supreme Court has discussed the Fundamental Rule 54 which has been referred in Rule 1334 of Railway Establishment Code Vol. II in case of



Devendra Pratap Narain Rai Sharma Vs. State of U.P. and others
(A.I.R. 1962 SC-1334) In para 11 of above Judgment the Hon'ble Supreme Court has held that when dismissal order is set-aside by Court of Law, the period of absence shall be treated as the period spent on duty for all purposes and the appellant being public servant cannot be deprived of remuneration which he would have earned had he been permitted to work. The applicant also pointed in his representation dated 29.4.2004 and 9.5.2004 that Hon'ble Vice-Chairman and Hon'ble Mr. D.R. Tiwari have also discussed the aforesaid Rules 54 and para 1343 of Indian Railway Establishment Code Vol. II in reference to the aforesaid Judgment and Hon'ble Supreme Court in Original Application No. 302 of 2000 (P.N. Chaubey Vs. U.O.I. and others) and have held on 20.11.2003 that when dismissal order is quashed by the Court of law, Employee is not only entitled for seniority promotion but also to back wages of dismissal period (Annexure No. A9). The copy of aforesaid representation was also given to the Divisional Railway Manager but neither the General Manager the Respondent No. 1 nor the Respondent No. 2 the Divisional Railway Manager considered the representation of the applicant but Respondent No. 3 the Senior Divisional Engineer (1) North Central Railway, Allahabad rejected the representation arbitrarily and illegally without considering all the aforesaid judgment and fundamental Rules 54 and provisions of Rule 1343 of Railway Establishment Code Vol. -II.

It is stated that the Respondent No. 3 has wrongly stated that he is competent authority to decide the case as per judgment and order da-ted 23.3.2004 of Original Application No. 1505 of 2003. That the Respondent No. 3 has also stated wrongly that the FR 54 and Rule 1343 of the said statutory Code empowers him to pass



arbitrary order. Respondent No. 3 rejected the representation ignoring the aforesaid Judgment of Supreme Court which has held in para 11 that this Rule will not apply in case of removal or dismissal which are set-aside the Court of Law. It is further stated that Rules contained in para 1343 (FR 54) of Railway Establishment Code Vol. - II empowers the Authority only in those cases of removal or dismissal which are decided in departmental proceedings which have been clarified by the Hon'ble Supreme Court in the aforesaid case which the respondent has misinterpreted and passed non-reasoned and arbitrary order ignoring the judicial decisions treating the period of dismissal (No work no Pay). It is stated that this Hon'ble Court quashed the removal order of the applicant dated 26.2.88 vide its Judgment and order dated 17.4.2000 against which the writ petition No. 5433 of 2001 filed in the Hon'ble High Court, Allahabad was also dismissed on 11.12.2001. In the aforesaid Judgment and order this Hon'ble Court has held that the dismissal order of the applicant was illegal arbitrary and void. The Hon'ble Court also directed the respondents to reinstate the applicant with all consequential benefits. Even then ignoring the Judgment of this Hon'ble Court and Hon'ble High Court, Respondent No. 3 is justifying the dismissal order dated 26.2.1988 and stating in his order dated 31.8.2004 that applicant did not join his duty for three months in unauthorized manner and is treating the absent period of dismissal, "No Work No Pay" illegally and unconstitutionally. That the Respondent No. 3 has also cited the judgment and order of Hon'ble Supreme Court dated 18.1.2002 Gurpreet Singh Vs. State of Punjab ATJ 2002 (2)....in which aforesaid para 1343 (FR 54) has not been discussed and moreover this Judgment is not applicable in the case of the applicant. In the referred case lower Appellate Court taking into account that fact and

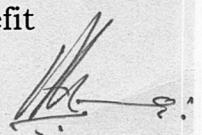


circumstances has held that appellant-plaintiff was not entitled to pay and allowances of termination period whereas in the present case learned Lower Court of C.A.T. quashed the removal order and directed the respondent to reinstate the applicant with all consequential benefit. That it is stated that the Hon'ble Supreme Court and various High Courts have held that the consequential benefits includes the payment of salary and allowances continuity of service, seniority, and promotion etc. which was mentioned in the above representation dated 29.4.2004 by the applicant but the respondent did not consider even a single point which rejecting the same illegally and unconstitutionally. That the applicant is legally entitled to continuity of service, payment of salary and allowances seniority promotion and LAP etc. after the removal order was declared illegal and void but the respondents are determined to deprive all these consequential benefits. It is further stated that the respondents are violating the provisions of Article 14 and 16 of the Constitution of India in depriving aforesaid consequential benefit.

3. On notice, the respondents have filed counter reply stating that the applicant is working as Trackman under Section Engineer Chunar, under the Control of Divisional Engineer Chunar. The applicant was transferred from the office of Section Engineer (T) Mirzapur, with effect from 05.05.2003 on the request of the applicant. That it will not be out of place to mention here that the applicant's Original Application was allowed by the Tribunal. The applicant thereafter filed a contempt case no. 21 of 2001. Against the order of the Tribunal dated 17.4.2000, the Railway Administration approached Hon'ble High Court by way of filing Writ Petition No.



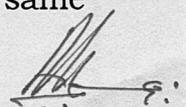
5433 of 2001. It is significant to mention here that the respondent's with a view to uphold the majesty of law, and with a view to ensure compliance of the order of the Tribunal allowed duty to the applicant with effect from 11.1.2002 under section Engineer (T) Mirzapur, by giving all Consequential benefits under the rules. That with regard to the payment of salary and other allowances from the date of the removal of the applicant upto 10.1.2002 i.e. before joining of duty is not liable to be paid to the applicant under consequential benefits. It this regard Hon'ble Supreme Court has clearly laid down in the case of Gurpreet Singh Vs. State of Punjabs and others reported in 2002 (9) SCC Page 92. That in the facts and circumstances of the case the applicant will not be entitled for any arrears of salary for the period for which he has not served. It is settled principal of law that an employee is not liable to get the benefit of arrears of salary on the principle of "no work no pay". That it may be stated that fixation of pay of the applicant has been allowed on initial grade of pay of Trackman with effect from 01.1.1986 (Fourth Pay Commission) and with effect from 01.1.1997 (Fifth Pay Commission). It is also relevant to mention here that regularization of service, promotion to higher post, and fixation of seniority will be given only after the empanelment of the applicant and the process of empanelment is in progress. As regards the payment of arrears of salary is concerned the reasons for non payment of the same have already been enunciated in the preceding paragraph of this reply. That in compliance of the order dated 23.3.2004 of this Hon'ble Tribunal the representation of the applicant date 24.9.2004 and 09.5.2004 has already been disposed of by the Competent Authority vide its letter dated 31st Aug 2004. That the Competent Authority has considered the case of the applicant with regard to grant of consequential benefit



and in view of (F.R. -54) and Rule 1343 the Competent Authority is fully empowered to consider the same. The representation of the applicant has duly been considered by the competent authority vide its order dated 31.8.2004 and the same has also been communicated to the applicant. That the order passed by the competent authority is wholly just and proper on the principle of "no work no pay" and also due to non joining of post by the applicant to the place where he was transferred and even after cancellation of transfer, the applicant deliberately failed to join duty for a period of three months. In view of the above facts, the respondents have prayed for dismissal of the O.A.

4. We have heard the learned counsel for the parties and perused the pleadings and materials on record.

5. Learned counsel for the applicant submits that action of the respondents in not granting the relief prayed by the applicant is contrary to the decision of this Tribunal, and that of the Hon'ble Supreme Court. Learned counsel for the respondents that said decisions are not applicable to the case of the applicant, and the decision taken by the respondents is just and proper. They further relied upon the decision of Hon'ble Supreme Court reported in 2002 (9) SCC 492. It is an admitted fact that the removal order dated 26.02.1988 against the applicant was quashed, and the respondents were directed to re-engage the applicant with all consequential benefits within three months. Against the said order, Writ Petition was filed by the respondents before Hon'ble High Court, and the same was dismissed on 11.12.2001, and thereafter the applicant was allowed to duty, but they failed to give the consequential benefits of pay and allowances of the period from 26.02.1988 to 10.01.2002, for that he made a representation to the respondents, same



was rejected on the ground of 'no work no pay'. In view of admitted facts, we have to see whether the decision taken by the respondents in rejecting the claim of the applicant, is called for interference.

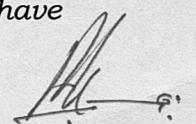
6. Relevant portion of the decision relied upon by learned counsel for the applicant reported in *AIR 1962 SC page 1334 Devendra Pratap Narain Rai Sharma vs. State of Uttar Pradesh and others* is reproduced as under: -

(b) Constitution of India, Art, 309 – Rules under – Fundamental Rules framed by State of Uttar Pradesh, R. 54 (as amended in 1953) – Applicability – Rule does not apply where dismissal of public servant is declared invalid by Civil Court.

Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under Art. 309 undoubtedly enables the State Government to fix the pay of a public servant where dismissal is set aside in a departmental appeal. But the rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work."

Another Order, relied upon by the applicant, passed by this Tribunal in O.A. No. 302 of 2000 *Prabhu Narain Chaubey vs. Union of India and others*, decided on 20.11.2003 relying upon the decision of Hon'ble Supreme Court and considered para-1343 of Indian Railway Establishment Manual Vol. II, which corresponds to FR-54. Relevant para-4 and 5 of the said Order is as follows: -

4. *In Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh & others AIR 1962 SC 1334, the Lordship Supreme Court while considering the fundamental Rules 54 framed by Uttar Pradesh has held that the rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. In such a contingency it has been held by Hon'ble Supreme Court that it would not be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work. The effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authorities to deprive the public servant of the remuneration which he would have earned had he been permitted to work.*



5. The judgment of the Tribunal declaring the termination as illegal would have the same effect as that of the decree of a civil court. We are, therefore, of the view that in view of the law laid down by Hon'ble Supreme Court, the applicant is not only entitled to count his seniority but also to back wages. In the result, therefore, the O.A. succeeds and is allowed. The respondents are directed to re-fix the applicant's seniority by reckoning the service in continuation of his original service by ignoring the termination order, which has been set aside by the Tribunal and pay him the back wages. It goes without saying that the respondents shall consider the applicant's claim for promotion on the basis of his seniority so reckoned according to law effect from the date his juniors were considered for promotion".

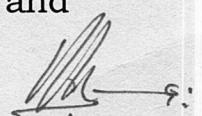
7. The decision relied upon by the respondents is reported in 2002 (9) SCC 492 *Gurpreet Singh vs. State of Punjab and others*.

Relevant para-2 and 3 of the Order are as follows: -

2. The plaintiff is in appeal against the impugned judgment of the High Court of Punjab and Haryana in a second appeal. The plaintiff's services stood terminated and he filed the suit for declaring the order of termination null and void. The suit was dismissed. The lower appellate Court, however, on reappreciation of the materials on record, came to the conclusion that the order passed by the DIG must be held to be illegal and consequently directed that the plaintiff should be reinstated in service. Having directed so, the first appellate court categorically held that the plaintiff will not be entitled to any arrears of salary for the period for which he has not served. The plaintiff assailed the appellate decree by filing a second appeal claiming that he would be entitled to the arrears of salary. The High Court by the impugned order not only confirmed the decree of the lower appellate court that the plaintiff will not be entitled to any arrears of salary, but also further added that he plaintiff will not get his continuity of service. The plaintiff, therefore, is in appeal before this Court.

3. Having heard the learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above.

8. On perusal of the decision relied upon by both the counsel, it is clear that the decision relied upon by learned counsel for the respondents is not applicable to the present facts and circumstances of the case. On the other hand decisions relied upon by the applicant's counsel are applicable to the facts and



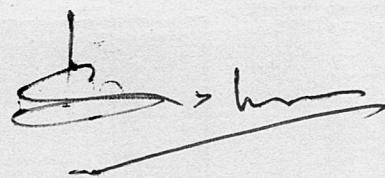
circumstances of the case, and also with regard to applicability and entitlement of back wages for the period for which applicant was denied, is unsustainable in law, as the order of removal passed by the respondents was set aside. Consequently, the period for which payment is not made, is not in accordance with the Rules. It is clear from the Rule that if the orders are set aside by the Court, the period shall be regularized treating the said period as a period spent on duty. In the instant case, the respondents have not applied the Rule properly, and also failed to take into consideration all the decisions rendered by the Hon'ble Supreme Court, which was brought to the notice of the respondents, by the applicant. The applicant has specifically pleaded the points in para-8 and 9 of the O.A., even though the respondents have filed the Counter Affidavit, they have only denied the same without there being any explanation or reasons against the contentions taken by the applicant.

9. Having regard to the facts and circumstances of the case, and in view of the decisions referred above, applicant has made out a case for grant of relief. Accordingly rejecting the contention of the respondents, and following the findings given in the order dated 20.11.2003 passed in O.A. No. 302 of 2000, the relief sought for by the applicant in this O.A. is granted by passing the following order: -

10. O.A. is allowed. The respondents are directed to re-fix the applicant's seniority by reckoning the service in continuation of his



original service by ignoring the termination order, which has already been set aside, and pay him the back wages for the period for which it is not paid. It goes without saying that the respondents shall consider the applicant's claim for promotion on the basis of his seniority so reckoned according to law with effect from the date his juniors were considered for promotion. The above exercise shall be completed within a period of three months. There will be no order as to costs.



Member (A)



Member (J)

/M.M/