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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO. 1549 of 1986

Union of India and others applicants.
Versus
R.K. Srivastava Respondent.

Hon'ble D.S.Misra-AM
Hon'ble G.S.Sharma-JM

(Delivered by Hon'ble D.S.Misra)

This is a civil appeal no.213 of 1985 which has come on transfer from the court of District Judge, Varanasi under Section 29 of the A.T. Act XIII of 1985. In the civil suit no.605 of 1983, the plaintiff-respondent had sought a declaration that he be entitled to receive wages at the rate of Rs.620/- p.m. as Head Clerk on 1.9.1980 by way of proforma fixation since 29.8.1962.

2. The brief facts of the case are that the plaintiff, while employed as Senior Clerk in the office of Deputy Chief Commercial Superintendent Northern Railway, Varanasi Cantt (defendant no.2) was illegally suspended on 29.8.1962 and wrongly removed from service on 16.6.1985; that the III Addl. Munsif, Varanasi by his judgment dated 21.4.72 declared the punishment as illegal and without effect declaring the plaintiff as fullfledged employee as before in the office of Chief Commercial Superintendent, Varanasi; that the said judgment was maintained in the First Appeal as well as in the Second Appeal in the High Court; that the

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applicant approached the Railway Administration to reinstate him in accordance with the judgment and pay him due wages but the railway-administration kept him out of duty and did not make the payment that the plaintiff was reinstated w.e.f.1.9.1980 after the High Court judgment, but inspite of his various representations for proforma fixation of his pay and promotion according to his seniority position and also to make due payments, no heed was paid by the defendants.

3. In the written statement filed on behalf of the defendants, it was stated that the plaintiff had already been paid much more than what was due to be paid to him. On the basis of the pleadings of the parties, the trial court framed the following issues

1. Whether plaintiff is entitled to the relief of declaration as alleged in the plaint?
2. Whether suit is time barred?
3. Whether court has no jurisdiction to try this suit as alleged in paragraphs 28 and 29 of the written statement?
4. To what relief, if any, plaintiff is entitled

The trial court after discussing the evidence on record decreed the suit of the plaintiff. On issue nos. 1 and 4, it held that on the basis of the decision of the civil court the salary of the plaintiff was not fixed correctly as his junior Sri K.N.Tripathi was drawing higher salary than the plaintiff. The trial court had also observed that the defendants had admitted that the

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the period of his suspension, ^{with the quashing} it held that of the order of removal, the order of suspension got merged in this order and the plaintiff would be deemed to be on duty in his job under the defendants. Similarly Issue no.2 was decided in favour of the plaintiff on the ground that the cause of action arose only after the reinstatement in service of the plaintiff and that the suit was filed within three years of the above mentioned date and the suit was within time. In respect of issue no.3 it was held that under para 2044, A3 of the Indian Railway Establishment Code Vol.II, the plaintiff was entitled to full wages and allowances for the period of his suspension till the date of his reinstatement.

4. We have heard the arguments of the learned counsel for the parties and have also perused the record. Learned counsel for the appellant contended that the findings of the trial court regarding re-fixation of the salary of the plaintiff-respondent was without jurisdiction and that the plaintiff-respondent was not entitled to get any salary for the period of his suspension which was a legal and valid order passed by the competent authority. The following case law was cited in support of the case of appellants.

1. State of Haryana Vs. Baldev Raj Guliani and others, reported in Lab.I.C. page 1633.
2. P.C.Lal. and others Vs. The Chief Justice H.C.Allahabad and others, reported in Lab.IC 1976 page 655.

The first case deals with the case of a government officer, who was suspended and then reinstated and subsequently the reinstatement

salary for the period of suspension was in dispute. The instant case is different from the cited case and we find that this is not applicable to the facts and circumstances of the present case.

In the second case, a junior officer, promoted to the senior cadre was drawing higher salary than his seniors in that cadre and the High Court has held that under Fundamental Rule-22- I the senior officers were entitled to the refixation of their salary at the same stage as his junior in the same cadre. This case law helps the case of the present plaintiff-respondent.

5. We have considered the matter and we are of the opinion that the plaintiff's case is fully covered under the provisions of para 2044A(3) of the Railway Establishment Code Vol.II. The rule reads as follows:

" If the dismissal removal, or compulsory retirement of a railway servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension proceeding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal, or compulsory retirement, as the case may be"

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The trial court has referred to this provision and held that the plaintiff- respondent was entitled to count his period of suspension as period spent on duty and entitled to salary and allowances for that period and the period being counted towards the future increment.

6. Regarding issue no,2, the trial court has held that as the suit was filed within 3 year of his reinstatement on 1.9.1980, the suit was within time. We agree with the observation of the trial court that the cause of action arose on or after 1.9.1980 and the suit was filed within the period of limitation prescribed under the relevant law.

7. We also agree with the findings of the trial court on issue no.3 and hold that the objection raised by the appellant /defendant is not correct. For the reasons mentioned above, we hold that the findings of the trial court are based on a proper appreciation of the evidence on record and there is no need for interfering with this order.

In the result the appeal is dismissed. Parties shall bear their own costs.

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