

R/2
A/2

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1018 of 1987

Allahabad this the 31st day of May 1995

Hon'ble Dr. R.K. Saxena, Member(Jud.)
Hon'ble Mr. S. Dayal, Member(Admn.)

Ram Pyare, aged about 56 years S/o Shri Girdhari
R/o Village Bela Ahiran, Tehsil Meja, District
Allahabad.

APPLICANT

By Advocate Shri Satish Dwivedi

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Personnel Officer,
Northern Railway, Allahabad.
3. The Assistant Engineer, Northern Railway,
Mirzapur.

RESPONDENTS

By Advocate Shri A.K. Gaur

ORDER

By Hon'ble Dr. R.K. Saxena, Member(J)

The applicant has approached the Tribunal
for seeking relief of his being treated as Permanent

2/3

:: 2 ::

Way Inspector Grade III and for payment of salary and allowances from the date of his reversion *i.e. from* 24.11.1985 to 31.12.1985 in the grade of Rs.425-700/- and from 01.1.1986 till the date of his retirement in the scale of Rs.1400-2300/-.

2. The brief facts of the case are that the applicant was promoted as Permanent Way Inspector Grade III on 02.6.1982 but was reverted to the post of Permanent Way Mistri on 23.9.1985. The order of reversion was challenged by filing O.A. 93 of 1986 before this Tribunal and the said O.A. was decided on 11.3.1987 whereby order of reversion was quashed and the applicant was allowed to continue as Permanent Way Inspector Grade III on ad-hoc basis subject to his promotion on regular basis in accordance with rules. It is ~~said~~ that the applicant gave report about resumption of his duties. He was, however, informed vide letter dated 09.4.1987 (annexure-2) that his report had been referred to the office of Assistant Engineer, Mirzapur. He was, however, required to send sick and fit memos from 26.2.1985 till that date because he had ~~been~~ continued on sick leave. The applicant on receipt of this letter, sent the relevant sick and fit memos for the said period and explained that from 26.12.1985 to 01.3.1986, he had been under the treatment of Assistant Medical Officer, Northern Railway, Mirzapur while during the period from 02.3.1986 to 13.5.1986 he was under the treatment of Divisional Medical Officer

.....pg.3/-

P2
11

:: 3 ::

Northern Railway, Allahabad. He received no information, therefore, although he had been running from pillar to post to resume duty but all in vain. He, however, retired from service on 31.10.1988. Hence, this O.A. with the reliefs disclosed above.

3. The respondents contested the case and urged that the application was wholly misconceived and was liable to be dismissed as such. The respondents did not deny the case being decided by this Tribunal on 23.12.1985. The contention of the applicant that he had been under treatment of two Medical Officers during the period of sick leave, has been denied. It is also denied that the sick and fit memos were submitted by the applicant. It is also disputed that the applicant ^{had ever} approached the authorities to resume his duties, ^{and} for ^{that} reason, application is described as mis-conceived.

4. The applicant submitted rejoinder-application, reiterating the facts which were narrated in the O.A.

5. We have heard the learned counsel for the parties and have perused the record.

6. There is no dispute that the applicant was reverted from the post of Permanent Way Inspector Grade III on 23.12.1985 against which case was

:: 4 ::

instituted, ~~which~~^{and} was decided on 11.3.1987. The Tribunal had quashed the order of reversion dated 23.12.1985 and had also allowed the applicant to continue as ad-hoc Permanent Way Inspector Grade III subject to his promotion on regular basis and ⁱⁿ accordance with the rules. The applicant has filed the copy of the judgement as annexure-1 and ~~the same~~ could not be disputed by the respondents. The applicant also averred that he had given report about his resumption of duties after ~~the~~ judgement was rendered by the Tribunal. No doubt, he has not filed any copy of the said report but this fact stands concluded from the perusal of the letter dated 09.4.1987(Annexure-2) which speaks about the matter having been referred to the office of Assistant Engineer, Mirzapur. Anyway, the applicant had approached the authorities to allow him ~~to~~ join his duties before 09.4.1987. What appears from the averments made by the applicant and from the letter(annexure-2) and the reply thereof through annexure-3 that the respondents had been disputing the contention of his absence from 26.2.1985 to the date when he approached for joining duties. It is a different matter that if the respondents were not satisfied about the explanation of his sick leave, the applicant could have been proceeded against by way of departmental action but, there was no point for not allowing him to join the duties.

.....pg.5/-

7. Learned counsel for the respondents argued that the matter was barred -- by the principle of res-judicata and, therefore, neither this O.A. could be filed nor any relief could be sought. We have already pointed out that the relief claimed by the applicant is two fold. He has sought directions to the respondents about the applicant being allowed to work as Permanent Way Inspector Grade III. The second part of this relief is that he should be directed to be paid salary. So far as the declaration of the applicant being treated as Permanent Way Inspector Grade III, this relief was already granted but it was not complied with by the respondents. The learned counsel to the applicant during arguments, however, conceded that this part of relief could not be claimed but he insisted that the second part of relief relating to payment of salary, cannot be denied. He also urged that @ distinct cause of action has arisen on the day when the salary as Permanent Way Inspector Grade III was not paid to him. We are in agreement with this argument because the respondents could not refuse to comply with the judgement unless it was set aside in appeal. The respondents did not bring any fact to aver that any appeal ^{was} preferred against the said judgement, and the appeal was allowed. The result, therefore, is that the judgement of

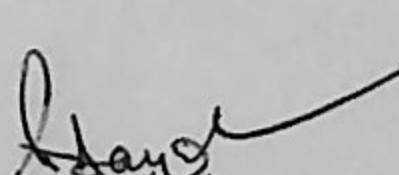
A2

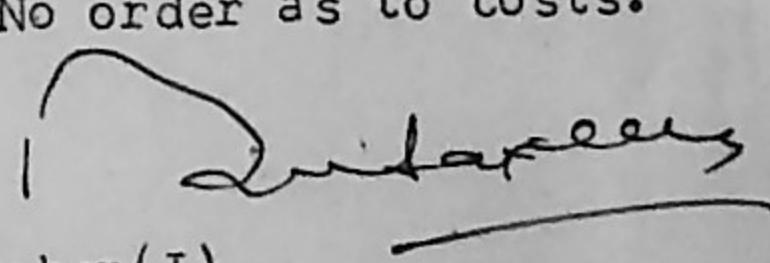
:: 6 ::

the Tribunal treating the applicant as Permanent Way Inspector Grade III after quashing the reversion order, holds good and he is entitled to get the salary as Permanent Way Inspector Grade III.

Therefore, the respondents are directed to make payment of the salary to the applicant as Permanent Way Inspector Grade III from the date when he was reverted and the said reversion order was set aside ² till his date of retirement.

8. The learned counsel for the applicant has also sought interest at the rate of 18%. It is true that the salary has not been paid to the applicant for a long period, we, therefore, award an amount of Rs500/- as compensation therefor. The application is disposed of accordingly. No order as to costs.


Member (A)


Member (J)

/M.M./