

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

DATED : THE 30TH DAY OF NOVEMBER 1998

CORAM : HON'BLE MR. S.L.JAIN, J.M.

HON'BLE MR. G.RAMAKRISHNAN, A.M.

ORIGINAL APPLICATION NO.1706/92

Madan Lal son of Sri Baldeo Prasad

Resident of Block No.4, New Model Colony near Bareilly,  
City Station, Bareilly.

... Petitioner

C/A Shri A.S.Dewakar, Advocate.

Versus

1. Union of India through the General Manager,  
North Eastern Railway,  
Gorakhpur.

2. Divisional Railway Manager (Personnel),  
Izatnagar,  
Bareilly.

.... Respondents

C/R Shri Amit Sthalekar, Advocate.

S.401 -

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act 1985 for issue of writ/order/direction in the nature of certiorary quashing part of Annexure-2 which directs that the petitioner shall be paid salary as he was drawing on the date of his removal, writ/order or direction commanding opposite parties to pay entire arrears of salary between the period 18.2.82 to 8.6.92, refix the salary in accordance with law.

2. The parties are at dispute in respect of the following facts:

- (a) The applicant was removed from service on 18.2.82, departmental appeal filed by him was dismissed on 7.7.82.
- (b) The applicant then filed the writ petition challenging the order dated 18.2.882 and 7.7.82 before the Hon'ble High Court, Allahabad, <sup>and</sup> on Constitution of Central Administrative Tribunal, the writ was transferred to the Central Adminis-  
Tribunal, Allahabad.
- (c) The Central Administrative Tribunal decided the said matter on 6.9.91 and the orders in question were quashed, and the applicant was deemed to be in continuous service.

3. The applicant's case, in brief, is that he was posted <sup>on</sup> the post of fireman in the pay scale of Rs.950 - 1500, with stipulation that he will get the said pay as he was drawing at the time of removal and regularisation of the intervening period shall be considered separately. It is further ordered that the applicant <sup>be</sup> appearing <sub>in</sub>

S.Y.

at a medical test and if some <sup>refresher</sup> ~~reversal~~ course was necessary to be gone through, same may also be allowed to him. He went to the Loco shed <sup>and joined</sup> on 9.3.92. But no salary was paid for the said month. He was medically examined and was not found fit for the post of fireman one. He was interviewed for the alternative post on 23.4.92, found fit in category C-1 hence posted as junior clerk by the order dated 9.6.92. He claimed his salary for the period 17.2.82 to 8.6.92 along with increments vide representation dated 23.6.92 as he was absorbed in the pay scale of Rs.950 - 1500 at Rs.1400/- per month. On the salary which he was drawing at the time of removal against which he preferred the representations dated 24.3.92, 23.6.92, 6.8.92, 10.8.92 but in vain. Hence this O.A.

4. The respondents resisted the claim, admitting the fact of sending the applicant for medical examination, posting him in the cadre of Rs.950 - 1500 at the salary of Rs.1400/- which was payable to him at the time of removal, alleged <sup>not</sup> he is entitled for increments for the intervening period from 18.2.82 to 8.6.92, as increments are always granted to an employee while he remains on duty or authorise leave for the year or part of the year. As he remained absent from duty, hence he is not entitled for any increment. As he is not performing the duty in the said period on principle of 'no work no pay,' he is not entitled to any salary. He was adjusted on the pay which he was already drawing. <sup>✓</sup> at the case of Shri Shiv Shanker and Narendra Singh is being different one for the reason that they were regularly performing the duty and after being absorbed in the alternative cadre they have been promoted in the next higher grade as per A.B.C., i.e. to say senior clerk, hence prayed for dismissal of the O.A. with costs.

✓  
S.Y.M.

5. Annexure A-1 is the judgment passed in O.A.No.259/98 between the parties, para 10 of the judgment is worth mentioning as under:-

"Accordingly this application deserves to be allowed and the removal orders dated 17.2.82 and 7.7.1982 are quashed and the applicant will be deemed to be continuing in service. However, it is made clear in case the respondents decide to proceed with an enquiry, it will be open for them to proceed from the stage of the Enquiry Officer's report given to the applicant, otherwise they can take action for eviction of the applicant in accordance with law."

Admittedly the respondents did not proceed to enquire into the matter in respect of the misconduct of the applicant.

6. In para 10 it is specifically mentioned -

"The applicant will be deemed to be continuing in service."

7. After the said pronouncement which is final between the parties, the respondents cannot be heard that the applicant is not entitled to the salary for the period 18.2.82 to 8.6.93 and the increment as and when became due.

8. The learned counsel of the applicant relied on 19.9.98 Labour I.C. 1011 Shanker Dan Charan v. Union of India and others that the applicant is entitled to all the benefits for the said period. He further relied on fundamental Rule 54. It is not necessary for us to <sup>give opinion</sup> ~~appeal~~ on this ~~again~~ point again when the said exercise has already been done in O.A.No.259/97 by Central Administrative Tribunal Allahabad. Now the respondents are not entitled to agitate the same, matter again when the said judgment has become

final between the parties.

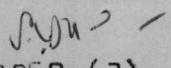
9. The result would be that the respondents passed order Annexure-A2 as under:-

KARAMCHARI DUTY JOIN KARNE PAR WAHI BETAN PAYANGE JO  
SEWA SAMAPTI KE SAMAY PA RAHE THE. INKI INTERVENING  
AVADHI KA NIYAMAUKULAN KA NIRNAY ALAG SE KIYA JAYEGA.  
(Para 2 of the order) is without jurisdiction and to circumbent the order passed by this Tribunal itself.

10. It is further worth mentioning that the respondents have not taken any decision in compliance of the Annexure-A2 so far, except to comply the order for payment of salary at the same rate.

11. In the result, O.A. deserves to be allowed and is allowed. The respondents' order passed <sup>wide annexure-A2</sup> <sub>stated above in para 9 of this O.A.</sub> which is as ~~under~~, is quashed. The respondents are ordered to pay the entire arrears of salary between the period 18.2.82 to 8.6.92 along with all consequential benefits with interest @ 12% per annum and refix the salary ~~in~~ of the applicant in accordance with law and pay cost of the litigation amounting to Rs.650/- (Legal practitioner's fee Rs.500/- plus other expenses Rs.150/-) within a period of three months from the date of the receipt of the order.

  
MEMBER (A)

  
MEMBER (J)