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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Dated : 19th July, 1995.

Contempt Application No. 44 of 1995
in

Review Application No. 21/4 of 1994
in

Original Application No. 1550 of 1993

Hon'ble Mr. B. C. Saksena, V.C.
Hon'ble Mr. S. Dayal, Member-A.

R. S. Ojha C/o. Sri A. K. Sinha,
Advocate, 35/15A, Stanley Road,
Allahabad. applicant.
(By Advocate Shri

Versus

Shri R. K. Singh,
Divisional Railway Manager,
N.Rly, Lucknow..... Opposite party/
Contemner.
(By Advocate Shri A. K. Gaur)

(By Hon'ble Mr. S. Dayal, Member-A)

O _ R _ D _ E _ R _

1. This is an application for contempt of Court under Rule 17 of the Administrative Tribunals Act, 1985.

2. The petition for contempt has been moved by the applicant against the alleged contemner for non-compliance of the orders issued by the Tribunal on 19-4-1994 in Review Application No.21/94 of 1994 for review of the order passed in Original Application No.1550 of 1993.

3. The case of the applicant is that the relief of parity of pay was sought by him through writ petition No.7946 of 1980. The writ petition stood transferred to the Central Administrative Tribunal, Allahabad and numbered as Transfer Application No.578 of 1987 and was finally decided through Review Petition No.46-A of 1989 dated 8.1.1991. However, only part compliance of the judgement dated 8.1.1991 was made by the respondents. The pay of the applicant was fixed pursuant to the judgement without considering Rule 2018 FR 22 (C) which provided that pay fixation should be done at all the promotional stages with one increment in the lower stage of pay alongwith fixation of pay under next below Rule in the promotional stages with protection to the emoluments and increments till the date of petitioner's retirement on 30-6-1987 so that the consequential benefits are not affected adversely.

4. The applicant had moved Original Application No.1550 of 1993 which was dismissed as non-maintainable on the same cause of action and the remedy lay in Contempt Petition, which could have been filed. Review Petition No.21/4 of 1994 filed against the dismissal of O.A. No.1550 of 1993 led to a direction for

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compliance within three months vide orders dated 19.5.1994 which was stated to be received on 31.6.1994(?). Pursuant to the order, the applicant submitted his representation and requested for fixation of pay without loss of increment, at all the stages of promotion, observing Rule 2018(b) FR 22(C) as admissible under the extant rules, on 7.7.1994. The applicant has received a reply on 19.12.1994 from the contemner showing the details of increments w.e.f. 1.3.68 to 1.3.72 only and it was stated that the pay of the applicant on 1.1.73 was calculated to be Rs. 200/- p.m. instead of Rs.210/- per month without loss of increments hence the pay was required to be fixed with basic pay at Rs. 210/- plus D.A. Rs. 135/- plus I.R. Rs.45/- and on the gross amount of Rs. 390/- after addition of 5% of the basic pay., which should have been fixed at Rs. 410/- p.m. and not Rs. 380/- per month as on 1.1.1973. It was also stated that Sri Piara Singh was drawing higher pay and he was also entitled to stepping up of his pay equal to his junior Sri Piara Singh. The applicant claimed that on his promotion as Guard 'B' he was paid Rs. 440/- per month instead of Rs. 476/- on 31.3.77 and on promotion to Guard 'A' on 1.6.81, he was entitled to one increment in the lower grade and similarly on promotion to Guard 'A' Special w.e.f. 1.1.84 he was entitled to similar fixation. The fixation of his pay w.e.f. 1.1.86 on the basis of the recommendation of the IV Pay Commission was done at Rs. 2150/- p.m. while his junior Sri Piara Singh was getting Rs. 2250/- p.m., the applicant thus, received less DAetc.

5. Annexure-1 is the judgement in Review Application No.21/4 of 1994. This judgement rejected the application for review of the order passed in Original Application No.1550 of 1993 and a direction was given in this order rejecting the review application to the effect that the respondents should comply with the Tribunal's order dated 8.1.1991 and pass a reasoned order after considering the version of applicant as to how his pay should be fixed and what arrears are actually due to him regarding fixation of his pay and payment of his arrears within three months. Annexure-2 is the representation of the applicant dated 7.7.1994 in which it has been mentioned that increments for the years 1962 and 1963 were withheld with cumulative effect and it has been averred that the subsequent fixation of pay did not negative the cumulative withholding of two increments although the Tribunal had passed orders on 8.1.1991 quashing the penalty of withholding increments in terms of salary arrears as if the impugned orders had not been passed, alongwith simple interest of 10% per annum. Annexure-3 is the reply of the respondents to the representation in which it has been mentioned that the difference in pay of the applicant and Sri Piara Singh was due to the leave without pay which was taken by the applicant from 4-10-1956 onwards thereby resulting in post-ponement of his increments. This reply also gives statement of pay and increments alongwith leave without pay from 1.9.1956

onwards, and upto the fixation of pay on 1.1.1973. The representation of the applicant dated 22.12.1994 alleges that with-holding of increments have been confined upto 1.3.72 whereas the effect of with-held payment has continued to effect the increments/pay upto 30.6.1987 and his junior Sri Piara Singh was given Rs.390/- p.m. on 1.1.1973 while he was fixed at Rs.380/- p.m. Similarly he was getting Rs.2150/- p.m. on 1.1.86 and Piara Singh was getting Rs.2250/- p.m. However, the applicant has not established that the difference in pay was because of the punishment and not because of his going on leave without pay etc.

6. Counter Affidavit filed by the respondents states that the applicant was paid arrears alongwith 10% simple interest per annum, the arrears as per the judgement of this Tribunal dated 8.1.1991. It is stated that the applicant did not raise any objection to compliance of the judgement of the Tribunal dated 8.1.1991 but referred in O.A. No.1550 of 1993 and Review Petition No.21/4 of 1994 after the dismissal of the Original Application at the admission stage itself. The review petition was decided by the Tribunal again at the admission stage without issuance of the notice to the respondents. The order of the Tribunal in Review Petition has been fully complied with as the reasoned order has been passed and communicated to the applicant through letter dated 14.12.1994. It has been mentioned that the applicant is raising issues in Paragraphs 4 to 10

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in his contempt application which were not raised by him before it. It has also been mentioned that the judgement of the Tribunal referred to by the applicant in his Contempt Application were not mentioned in his representation and they were not considered at that time when the representation was decided. It is seen from Annexures 2 and Annexure-3 to the reply that the effect of withholding of increments have been nullified in the refixation of pay.

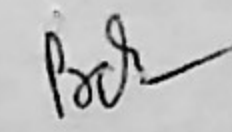
7. The applicant has given his Rejoinder Affidavit and Annexure-2 to the affidavit dated 30-1-1993 gives his claim for revision of pay year-wise from 1960 onwards.

8. The only issue required to be considered here is whether the respondent has wilfully committed the contempt of the judgement of the Tribunal dated 8.1.1991 which is Annexure-R-1 to the counter affidavit. The order of Tribunal dated 8.1.1991 quashing the impugned orders dated 8-6-62 and 15.1.63 and required the respondents to give the benefit of promotion, salary arrears or other entitlements with interest at a rate of 10% per annum. We have to see whether or not such orders have been passed. The respondent has come up with a detailed order dated 14.12.1994 and has held that no claims of the applicant remain to be paid. Under the circumstances the applicant cannot move an application under the Contempt of Court against the respondent merely on the ground that his expectation

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contained in Annexure-RA-1 were not satisfied by the respondents. The contempt petition is therefore, misconceived and has to be dismissed. The notices issued to the respondent are discharged. There will be no order as to costs.


A.M.


V.C.

VKP/-