

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 20th day of November, 2003.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 302 of 2000

Prabhu Narain Chaubey S/O Sri Awadh Narain Chaubey, Gateman
in North Eastern Railway at Manduadih, Varanasi R/O Village
& Post Murdaha, Varanasi.....

..... Applicant.

Counsel for applicant : Sri Sajnu Ram.

Versus

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

2. Divisional Railway Manager, North Eastern Railway,
Varanasi.....

..... Respondents.

Counsel for respondents : Sri A.K. Gaur.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

While the applicant was working as substitute (Waiting Prahari) in the scale of Rs.750-940/-, his services were terminated by order dated 1.8.1988. The validity of the said order was challenged in O.A.No.870/88 Prabhu Narain Chaubey Vs. Divisional Railway Manager, North Eastern Railway & another. The O.A. was allowed vide judgment and order dated 23.1.1996 and notice of termination of service was set aside and the respondents were directed to treat the termination of the applicant's services as having come to an end automatically. A copy of the judgment has been annexed as Annexure A-2 to the O.A. It appears that consequent upon the judgment of the Tribunal, the applicant was reinstated though after one year on 8.4.1997. He was, however, not paid his back wages. The applicant, therefore, filed a contempt petition it being Contempt Application No. 109/96. The said contempt application came to be dismissed and notices were discharged vide order dated 15.12.1998

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on the premise that O.A. was filed for declaration of notice of termination as illegal and there was no direction by the Tribunal for payment of arrears of salary. Applicant, however, preferred a representation dated 20.7.1987 for assigning seniority w.e.f. 20.7.1987 and also for payment of back wages. The said representation has been rejected by impugned order dated 1.10.1999 being Annexure A-I to the O.A. The instant O.A. which seeks declaration that the said order dated 1.10.1999 is illegal and a direction to the respondents to pay arrears of salary and other allowances and to reckon his seniority from 20.7.1987 and also to give promotion to the applicant from the date when his juniors to him were promoted.

2. The relief sought in the case is opposed by the respondents on the ground that the applicant ^{was} ~~is~~ not entitled to the back wages particularly in view of the order passed by the Tribunal in the contempt petition. As regards the applicant's claim for seniority, it has been submitted by counsel for respondents that since arrears of salary were not paid to the applicant, he is not entitled to count the period to reckon his seniority for which no salary was paid to the applicant.

3. Paragraph 1343 of I.E.R.M. Vol.II which corresponds to F.R.54 provides that :

"When a railway servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order--

(a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

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(b) whether or not the said period shall be treated as a period spent on duty."

Sub-para 2 of paragraph 1343 provides that --

"Where the authority competent to order re-instatement is of opinion that the railway servant who has been dismissed, removed or compulsorily retired has been fully exonerated, the railway servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances 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."

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

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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 with effect from the date his juniors were considered for promotion.

No order as to costs.

Adia
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V.C.
V.C.

Asthana/