

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 288 OF 2003.

ALLAHABAD THIS THE 6 July, 2007.

Hon'ble Mr. Justice Khem Karan, V.C.

Uma Shanker Rai, aged about 60 years, son of late Ram Prasad Rai, R/o Qr. No. 538/G- Type II, D.L.W. Colony, Varanasi-221004.

.....Applicant.

(By Advocate: Sri A.K. Rai/Sri R.P. Srivastava/Sri S.K. Mishra)

Versus.

1. Union of India,
through General Manager,
D.L.W. Varanasi 221004.
2. The General Manager, D.L.W.
P.O. DLW, Varanasi-221004.
3. The Chief Mechanical Engr. (P)
D.L.W Varanasi 221004.

.....Respondents.

(By Advocate: Sri K.P Singh)

O R D E R

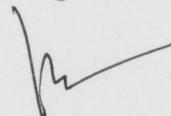
The applicant has prayed for following reliefs:

- "(a) To issue order or direction in the nature of certiorari quashing the order dated 21.8.2002 (Annexure A/1 of compilation No.1).
- (b) To issue order or direction in the nature of mandamus commanding the respondents to declare the applicant entitled for the P1B Bonus, indirect Incentives Bonus and Overtime allowance during the removal period and thereafter alongwith interest @ 12% upto the date of payment as per rules stated in the application.
- (c) To issue order or direction in the nature of mandamus commanding the respondents and directing them to make payment to the applicant the PLB Bonus as not paid, Indirect Incentive Bonus and Overtime allowance during the removal period and some time thereafter alongwith the interest upto the date of payment.
- (d) To issue order or direction in the nature of mandamus commanding the respondents to declare the applicant eligible for interest on the amount that had been paid towards salary and allowances for the removal period till payment and also interest on the payment made towards stepping up for 1.1.1991 to 30.6.2001.
- (e) To issue order or direction directing the respondents to make payment of interest for delayed payments made by the respondents towards salary and allowances for the removal period till payment and also interest on the payment made towards stepping up for 1.1.1991 to 30.6.2001 till payment thereof both at 12% p.a



(f) To grant any other reliefs which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case".

2. There is no dispute between the parties that while working as Electrician Grade III in Diesel Locomotive Works, Varanasi under the Railways, applicant was removed from service, vide order dated 31.12.2002, without holding enquiry in accordance with Railway Servants (Discipline and Appeal) Rules, 1968, which he challenged by way of filing writ petition No.6301/1983 before the Hon'ble High Court of Judicature at Allahabad. On the basis of interim order passed by Hon'ble High Court, he was paid salaries and allowances for the period commencing from 1.8.1983 to 23.7.1986. On constitution of Tribunal at Allahabad under Administrative Tribunals Act, 1985, the said matter was transferred and was registered here as T.A. No.18 of 1988. After hearing the parties, this Tribunal quashed the removal order vide its order dated 15.2.1990, with a liberty to the respondents to enquire into the matter in accordance with Rules. It appears that the Disciplinary Authority initiated the enquiry and vide order dated 22.2.1990 placed the applicant under suspension w.e.f. 31.12.1982, the date of removal from service. There is no dispute that this subsequent enquiry was dropped and period of suspension/removal i.e. 31.12.1982 to 28.10.1990 was treated as on duty for all purposes, vide order dated 8.9.1992. Thereafter the applicant was promoted to Highly Skilled Grade II w.e.f. 1.1.1984. He was paid salary and allowances for the suspension period in January 1993. There is further no dispute that the applicant was allowed stepping up since 1.1.1973 but was not paid arrears of pay for a period from 1.1.1973 to 31.12.1990. Likewise arrears of salary due on account of promotion as Highly Skilled grade II were paid from 30.9.92 onwards but were not paid for the period from 1.1.1984 to 29.9.1992. It appears, he gave various representations demanding payment of productivity Link Bonus, Overtime allowances, incentive bonus, arrears of pay for a period from 1.1.1984 to 29.9.1992, that became due on promotion and arrears of pay for a period from 1.1.1973 to 31.12.1990 that become due on stepping up together with interest thereon and other benefits. By the impugned order dated 31.8.2002 (Annexure A-1), his claim for overtime allowance, incentive, bonus, productivity link bonus for the period of suspension as mentioned above, was refused on the ground that he did not actually work during the said period, so was not entitled to all these benefits. As regards, arrears of pay on account of promotion and stepping up, it has been said that the same have been cleared and are in the process of being paid. He is assailing the said refusal mainly on the ground that once the



period from of removal/suspension has been treated as on duty for all purposes, he becomes entitled to all the aforesaid benefits, as if he was wrongly denied the same for the said period.

3. The respondents have contested the claim by filing the written reply. According to them, claim for interest on amount of salary and allowances for the suspension period is time barred. They say the salary and allowances for suspension were paid on 16.4.1999, without any interest thereon, so cause of action for the same arose in 1993, itself. According to them, besides O.A. in question, applicant filed two more O.As namely OA. No. 399/03 and O.A No.480/03 and all such O.As, annexing thereto impugned order dated 21.8.2002. They say while O.A No.480/03 was dismissed on 6.5.2003, O.A. No.399/03 was disposed of vide order dated 20.1.2004, directing the General Manager (P), Diesel Locomotive Works, Varanasi to consider and decide the representation of the applicant by a reasoned and speaking order in compliance of these directions, applicant's representations dated 17.8.1999 and 12.12.2002 were disposed of vide order dated 13/23.3.2004. They contend present O.A. against order dated 21.8.2002 has become non-maintainable, on passing of order dated 13/23.3.2004 (A-2 to the reply).

4. In his rejoinder, applicant has tried to meet the plea of bar of limitation by saying that cause of action for filing the O.A. arose on 21.8.2002, when the claims were refused. According to him, O.As No. 480/2003 and 399/2003 were based on different cause of action. Nothing specific has been said in this rejoinder as to how in absence of challenge to subsequent order dated 13/23.3.2004, the O.A. was maintainable against order dated 21.8.2002.

5. The learned counsel for the applicant has placed on record his written arguments. Learned counsel for the respondents was not able to file his written arguments, inspite of opportunity having been given to him.

6. I have carefully gone through the entire material on record and also through the written arguments, filed by the learned counsel for the applicant.

7. I think, plea that the O.A is barred by law of limitation is not sustainable for the simple reason that the claim of the applicant as regards overtime allowance, incentive, bonus, productivity link bonus was rejected; for the first time on 21.08.2002 and claim for interest on payment of salary and



allowances for the period of suspension/removal and claim for interest on the payment of amount that become due on account of promotion and stepping up were not refused expressly even upto 21.8.2002. It is true that applicant started making representation for payment of all this, much earlier but the respondents chose to keep all those matters with them upto 21.8.2002, so in the circumstances, it is difficult to say that O.A. in hand filed within a period of one year from the date of communication of impugned order dated 21.8.2002, is time barred.

8. This much is not in dispute that applicant filed O.A. No.399/03 claiming the following reliefs and annexing thereto order dated 21.8.02, which this Tribunal finally disposed of vide order dated 20.1.2004 (Annexure 1):-

- "(i) To issue order or direction in the nature of mandamus commanding the respondents to pay (i) arrears of salary and allowances for the period of promotion since 1.1.1984 with interest thereon so far & (ii) arrears of salary and allowances of stepping up since 1.1.1973 to 31.12.1990 with interest thereon ill payment.
- (ii) To issue order or direction in the nature of mandamus commanding the respondents to pay Rs.38562 plus interest thereon at the rate of 12% and damage as compensation for the passes/ PTOs and medical facilities/benefits not provided during the said illegal removal and/or suspension period and for which the applicant had to spend monthly as detailed in Annexure A/16.
- (iii) To grant any other reliefs which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.
- (iv) To grant cost of the petition".

The Tribunal directed the Authority concerned to dispose of, applicant's representation dated 12.12.2002 by passing a reasoned and speaking order. Copy of representation dated 12.12.2002 is Annexure A-28, its perusal would reveal that it demanded dues shown at Sl. No.1, 3, 4, 5, 6 and 7 in earlier application dated 17.8.1999. Copy of representation dated 17.8.1999 is, however, not on record. But order dated 13/23.3.2004 (Annexure A-2 to the reply) reveals that claims No. 1, 3, 4, 5, 6 and 7 in representation dated 17.8.1999, included productivity link bonus, overtime allowance, incentive bonus, interest on payment of salary that became on



account of stepping up etc. It was open to the applicant to have filed the copy of such representation dated 17.8.1999, so as to show that the claims which he is making in the O.A. in hand, were not covered by Claims No.1, 3, 4, 5, 6 and 7 of representation dated 17.8.1999. It is also not the contention of the applicant that the copy of that order dated 21.8.2002, which is being challenged in the O.A. in hand, was not annexed to O.A. No.399/03. In other words inspite of copy of order dated 21.8.2002, the Tribunal thought it fit to direct the Authorities concerned to consider and dispose of the applicant's representations dated 12.12.2002 and 17.8.1999 which the Authority did. It is vehemently averred in para 5 (6) of the reply that in absence of any challenge to order dated 13/23.3.2004, this O.A. against order dated 21.8.2002 is not maintainable. Surprisingly enough, nothing satisfactory has been said in the rejoinder or in the written arguments, in the context of said plea of the respondents in para 5 (6) of the reply. Even if order dated 21.8.2002 is quashed, there will be order dated 13/23.3.2004, refusing the said claims. Inspite of specific plea taken by the respondents in para 5 (6) of the reply, the applicant chooses not to challenge this subsequent order dated 13/23.3.2004. I have grave doubt whether the present O.A is maintainable, in absence of any challenge to order dated 13/23.3.2004, by which the matter was reconsidered by the Authority concerned in compliance of Tribunal's order dated 20.1.2004 passed in applicant's O.A. No.399/03. I find substance in the submission of the respondents that in absence of any challenge to subsequent order dated 13/23.3.2004, this O.A. against the order dated 21.8.2002 in respect of overtime allowance, productivity link bonus, incentive bonus etc. is not maintainable. The O.A. is liable to be dismissed in view of what has been said above. The applicant is free to challenge the said order of 2004 in accordance with law. There is no need for entering into the merits and demerits of the case, as that has to be gone into, only if there is a proper action challenging the order dated 13/23.3.2004.

9. So the O.A. is dismissed but without prejudice to the right of the applicant to challenge the order dated 13/23.3.2004, in accordance with law.

No order as to costs.

Vice-Chairman

Manish/-