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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 1283 OF 2006.

ALLAHABAD THIS THE 04TH DAY OF APRIL 2008.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman,

Chandi Prasad Chakroborty son of late Srinath Chakroborty, resident of Quarter No. 341/D, Diesel Colony, Post office Chopan, District Sonebhadra, Uttar Pradesh 231 205.

.....Applicant

(By Advocate: Shri S. Dwivedi)

Versus.

1. Union of India through the General Manager, East Central Railway, Hajipur, Bihar.
2. The General Manager, East Central Railway, Hajipur, Bihar.
3. The Divisional Railway Manager, East Central Railway, Dhanbad Division, Dhanbad.
4. The Sr. Divisional Personnel Officer, East Central Railway, Dhanbad Division, Dhanbad.

.....Respondents

(By Advocate: Shri K.P Singh)

O R D E R

Applicant has prayed for the following relief(s):-

"(a) That the respondents be directed to release the pension and other retiral benefits of applicant including arrears thereof with interest @ 18% per annum within the period which may be fixed by this Hon'ble Court.

(b) That the respondents be directed to provide compensation to applicant within the period which may be fixed by this Hon'ble Tribunal.

(c) Any other and further relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also awarded to the applicant.

(d) Cost of proceeding be awarded to the applicant".

2. Undisputedly after having been subjected to formal disciplinary proceedings, applicant was removed from service vide order dated 19.3.1977 and that removal was substituted with reduction by five stages in the time scale of pay for the period of

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five years vide order dated 21.10.1988, by the Patna Bench of this Tribunal in T.A. No. 55/1988 arising out of title suit NO. 28 of 1977. The relevant portion of the above order of the Tribunal is as under:-

"The punishment of removal from service is accordingly reduced to that of reduction by five stages in the time scale of pay for a period of five years, the reduction not having the effect of postponing future increments of pay. The plaintiff shall also be deemed to have been reinstated in service from the date of his removal, the period of his absence from duty being regularized in accordance with the provisions of Rule 2044-A, corresponding to F.R. 54-A of the Indian Railway Establishment Code, Volume II. This exercise shall be completed by the defendants within a period of six months from the date of this order. Title Suit NO. 28 of 1977 is accordingly decreed in part. The parties will, however, bear their own costs".

3. Aggrieved of the order dated 21.10.1988, the respondents in the O.A. went to Hon'ble Supreme Court ~~under Article 133 of the Constitution of India~~ and that Court disposed of Civil Appeal 3670 of 1989 in the following manner:-

"The notice in the appeal is confined to the question of back wages only. According to this Court's interim order dated 13.3.1989, the respondents was required to be paid 50% of the back wages, while payment of the remaining half amount of back wages was stayed. Learned counsel for the appellants submits that the payment of half amount of back wages has been made.

In our opinion, in the facts and circumstances of this case, it is appropriate to confine the direction for payment of back wages only to one-half of the amount of total back wages required to be paid to the respondents. Accordingly, the impugned order of the Tribunal is modified to this extent only requiring the appellants to pay to the respondents 50% of the total back wages only in terms of the interim order dated 13.3.1989, which has already been paid.

The appeal is disposed of in the above terms".

4. It appears that the respondents did not release the retiral benefits etc. under the impression that the applicant stood removed



from service. It may be mentioned that while the O.A. was pending before Patna Bench of this Tribunal, applicant reached the age of superannuation on 31.3.1985. Applicant has said that after the verdict of the Tribunal and Apex Court, the applicant was entitled to all retiral benefits as if he was in service on 31.3.1985 and by not releasing those benefits, the respondents have unnecessary forced him to come to this Tribunal.

5. In their reply, the respondents have tried to say that pension was not sanctioned to the applicant as appeal was pending before the Hon'ble Supreme Court. It has also been said that in terms of para 309 of MOPR-1950, no pensionary benefit ought to be granted to the servant, who have been removed from the Railway Service. They say that in compliance of the order of the Court, amount of Rs.8999/- has already been paid and his Provident Fund to Rs.8572 has already been released vide CO6 NO.PF/81 dated 13.12.2007 pay order NO.950807 and nothing remains to be paid to him.

6. After having heard to the parties counsel, I am of the view that the respondents have entertained certain misconception about the effect of the judicial verdict, rendered by this Tribunal and the Apex Court. They appear to be of the view that the removal from service as ordered by the Disciplinary Authority remained intact after the decision of appeal by the Apex Court. The relevant portions of the orders of Patna Bench as well as Apex Court have already been reproduced above and that leave no room for any such misconception as has been entertained by the respondents. Removal was set aside and substituted with the punishment of reduction for the period of five years and that portion of the decision of the Patna Bench was not within the scope of the appeal so entertained by the Apex Court as is evident from the order passed by the Hon'ble Supreme Court, that appeal was limited to the question as to whether the ^{applicant} ~~appeal~~ was entitled to full wages or only 50% of the wages. The question of 50% of wages will be

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became relevant only if one is in service and one who is out of job on account of removal, ^{not} will be entitled to ~~get~~ back wages. So the order of the Hon'ble Supreme Court itself makes it clear that the decision of the Patna Bench setting aside the removal and substituting the reduction was intact and if that was intact, the applicant was entitled to all retiral benefits as might have been admissible to him as per Rules. So O.A. has to be allowed and respondents have to be directed to release the pensionary benefits as per Rules as if the applicant was in service on the date he attained the age of superannuation.

7. So the O.A. is allowed and respondent NO.3 is directed to ensure that all retiral benefits as may be admissible under the Rules, which has not been paid so far, are paid to him together with arrear, if any, and ~~paid~~ interest at the rate of 9% per annum, within a period of four months from the date, a certified copy of the order is produced before him.

No costs.

C. J. D. M.
7.4.08

Manish/-

Vice-Chairman