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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 36 OF 1993
Cuttack this the 9th day of August, 1999

Rabinarayan Das

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.8.99

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)
9.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 36 OF 1993
Cuttack this the 9th day of August, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...Rabinarayan Das, aged about 44 years,
Son of Late Udayanath Das,
at present working as Junior Telecom
Officer, Khurda Telephone Bhavan
At/PO: Khurda, District: Puri

...

Applicant

By the Advocates : M/s.P.V.Ramdas
B.S.Tripathy

-Versus-

1. Union of India represented by its
Chairman, Telecom Commission
Sanchar Bhavan, New Delhi-11
2. Chief General Telecommunications,
Orissa Circle, At/PO: Bhubaneswar
District: Puri
3. Director, Telecommunication
Office of the Chief General
Manager, Telecommunication, Orissa Circle
At/PO: Bhubaneswar, District-Puri
4. Telephone District Manager,
At/PO: Bhubaneswar, Dist: Puri

...

Respondents

By the Advocates : Mr.U.B.Mohapatra,
Addl.Standing Counsel
(Central)

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, a Junior Telecom Officer, in this application filed in January, 1993, seeks a direction on the Department for payment of full backwages from 11.8.1986 to 21.3.1991, for revision of his pay with effect from 1.1.1986 as in case of other employees and for promotion to T.E.S. Group B from 1989 with the scale of pay along with fixation of inter se seniority as per his entitlement and other consequential benefits.

2. Owing to his conviction on 11.8.1986 in a C.B.I. case in respect of offences under Sections 420/468/471 of I.P.C. he was placed under suspension with effect from 11.8.1986 and ultimately dismissed from service with effect from 11.12.1986. This conviction imposed by learned Trial Court was ultimately set aside by the learned Appellate Court in his judgment dated 24.11.1987, acquitting the applicant. On his acquittal, the applicant was reinstated with an order of suspension to run retrospectively from 11.12.1986, on the ground that further enquiry would be held under the provisions of CCA(CCS) Rules, 1965. This order of placing him under suspension retrospectively from 11.12.1986 on the ground that further enquiry would be held was challenged by the applicant before this Tribunal in Original Application No.153/88. This application was allowed and consequently the order of suspension in contemplation of enquiry was quashed. Thereafter the applicant was reinstated on 21.3.1991 as Junior Telecom Officer. Since the initial post of Jr.Telecom Engineer held by him has been

re-designated as Junior Telecom Officer. These facts are not in controversy.

3. The case of the applicant is that while he was out of service, the Government introduced revision of pay scales with effect from 1.1.1986 and the Department granted the revised pay scale of Rs.1640-2900/- to other employees by letter dated 22.6.1997 (Annexure-2). As in the year 1987 he was not in service this revision of pay was not granted and after he was reinstated in service ~~and~~ though he is entitled to get the said benefit, yet in spite of repeated demand and representations, the Department have not yet revised his pay scale.

Further in view of the acquittal order passed by the learned Appellate Court and in view of the judgment passed in O.A.153/88, quashing the order of suspension and proposed enquiry, it is to be deemed that he has been in service through out, and as such he is entitled to get full salary with effect from 11.8.1986 to 21.3.1991, i.e., the date of reinstatement. But the Department have not granted this salary.

It is further stated by the applicant that the Department had introduced a scheme that the employees completing 12 years of service would be entitled to be promoted to the next higher post of T.E.S. Group B having the scale of Rs.2000-Rs.3500/-. As he had already completed 12 years of service and as the employees belonging to his recruitment year of 1971 have already been given the said promotion in the year 1989, he is also entitled to get that promotion, at least with effect from 1989.

4. Respondents(Department) without in general

denying the facts as averred above, in their counter filed on 31.3.1994, take the stand that the applicant is not entitled to payment of backwages and on the principle of **No Work No Pay**. This apart, this Tribunal in O.A.153/88, nowhere directed the Department for payment of ~~the~~ backwages. As to the claim of promotion to the cadre of T.E.S. Group B, the version of the Department is that such promotion is given to only those J.T.Os, who passed the written, qualifying/competitive examination which are pre-conditions for their eligibility and after they are declared selected by the D.P.C. and cleared by the Vigilance Cell, the eligibility for sitting in the qualifying/competitive examination is five years of service in the cadre of J.T.O. Since the applicant has not been able to qualify in the written examination for the the purpose, he is not eligible for such promotion. However, the benefit arising out of revised pay scale with effect from 1.1.1986 in the pay scale of Rs.1400-Rs.2600/- has since been given and his pay has been fixed at Rs.1800/-. Subsequently, the said pay scale has been revised to Rs.1640-Rs.2900/- consequent upon upgradation of the cadre of Jr.Engineer to Junior Telecom Officer with effect from 1.1.1986. In the case of the applicant this revised upgraded scale has not been considered in view of his dismissal and that this upgraded scale was ordered only in favour of erstwhile Junior Engineers, who were upgraded to the extent of 65% of the total posts against the apportioned posts of J.T.O.

On these grounds the respondents oppose the relief prayed by the applicant.

No rejoinder has been filed by the applicant.

5. This case was heard along with O.A.244/94 preferred by this applicant. Hence, besides hearing Shri P.V.Ramdas, learned counsel for the applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel for the respondents, we have also perused the records of O.A. 244/94 and O.A.153/88. O.A. 244/94 has been filed with a prayer to quash the departmental charges framed against the applicant in Memo dated 1.2.1994.

There is no dispute that owing to his conviction by the learned Trial Court under Sections 420/468/471 the applicant was first placed under suspension on 11.8.1986 and thereafter dismissed from service under Rule-19 of CCA(CCS) Rules, 1965 on 11.12.1986. This conviction was set aside by the learned Appellate Court and as such the Department reinstated him with an order of suspension to run retrospectively from 11.12.1986 on the ground that further enquiry would be held under the provisionf of C.C.A. Rules. This order having been challenged in O.A.153/88, was quashed and thereafter the applicant was reinstated on 21.3.1991. But for the conviction by the learned Trial Court, the applicant would not have been placed under suspension and consequently, ^{not} dismissed and would have continued in service by discharging his normal duties. This conviction having been set aside by the learned Appellate Court with a clear order of acquittal, the order of conviction is non est under law. This aspect of law has been taken note ^{by} by the then Division Bench in para-3 of their judgment in O.A.153/88 with the following observations :

"From the averments in the application and in the counter and the recitals in the Annexures to the application, it would be clear that the order of dismissal was passed on the ground of

conviction of the appellant in a criminal case, to put it in other words, the foundation of the order of dismissal was the conviction of the applicant on criminal charges and this foundation vanished as soon as the order of acquittal is passed by the learned Appellate Court and the order of dismissal was rendered void".

Even the Hon'ble Supreme Court in **Union of India vs. Baburam** reported in **AIR 1988 SC 344** held that when order of termination of service is found to be null and void, concerned employee is entitled to salary as the order would be deemed to be never in existence.

It comes to this that the applicant could not attend and perform duties from 11.8.1986 to 21.3.1991 because of the earlier order of suspension and dismissal order which had been set aside by the Department itself in order dated 6.11.1988 through which he was reinstated with retrospective suspension order with effect from 11.12.1986, which order in turn was ultimately quashed by this Tribunal in the judgment passed in O.A.153/88. Thus it is a case where the applicant though willing to work could not work because of various orders passed by the department. The Hon'ble Supreme Court in the case of **K.V. Janakiraman** reported in **AIR 1991 SC 2010** clearly held that normal rule of **No Work No Pay** is not applicable to such case where the employee, although is willing to work is kept away from the work by the authorities for no fault of his. This has also been reiterated by the Apex Court in the case of **J.N. Sribastava** reported in 1998 SC (L&S) 1251. In view of this legal position the applicant, under law, is entitled to full back wages from 11.8.1986 to 21.3.1991 and the same cannot be denied because of initiation of departmental proceeding through Memo dated 1.2.1994, which is the subject matter of challenge in O.A. Nos. 244/94 and 153/88, and this proceeding has been

initiated much after the period for which the backwages are claimed.

During hearing a question was raised by this Bench as to whether this relief for payment of back wages made in this application is barred under Order-2, Rule-2 of C.P.C., because the applicant could have asked for this relief in O.A. 153/88, but he did not do so. Shri P.V.Ramdas, learned counsel for the applicant submitted that bar under Order-2, Rule-2 of C.P.C. would not apply to proceeding of this nature before the Tribunal. Reliance was placed on the decision in the case of **Debendra Pratap Narayan Rai Sharma vs. State of U.P.**, reported in AIR 1962 SC 1334. In this case a departmental punishment imposed against a public servant was ultimately quashed in a suit filed by the applicant before the Civil Court. In that suit there was no prayer of consequential relief in regard to payment of salary. Subsequently in a Writ Petition when such a relief was claimed, the High Court of Allahabad disallowed the same on the ground that as he had not claimed the salary for the relevant period in the suit filed by him, he should be deemed to have relinquished that part of the claim. The Hon'ble Supreme Court in the above said decision held that bar under Order-2, Rule-2, C.P.C. would not apply to a petition for a high prerogative Writ under Article 226 of the Constitution.

During the year 1993 when this Original Application was filed, position of law as enunciated by the Hon'ble Apex Court in Sampat Kumar case was that Administrative Tribunals were substitutes of High Courts

and exclude the jurisdiction of High Courts under Articles 226 and 227 of the Constitution in regard to service matters. Hence this application is more or less in the nature of Writ Proceeding. Moreover, under Section 22 of the Administrative Tribunals Act, this Tribunal shall not be bound by the procedure laid down in the C.P.C., but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure. Under Sub-section 3 of that Section it has been clarified that provisions of C.P.C. can be made use of for certain limited purposes, like, summoning and enforcing attendance of any person, examining him on oath, discovery and production of documents, receiving evidence on affidavits, reviewing decisions and so on. We ~~are~~ ^{therefore} agree with the submission of Shri Ramdas that the relief for payment of full backwages should not be disallowed in view of bar under Order-2 Rule-2 of C.P.C.

In regard to fixation of pay of the applicant under revised pay scale introduced with effect from 1.1.1986, the respondents in their counter have clearly stated that the pay of the applicant has been so fixed at Rs.1800/- in the scale of Rs.1400-Rs.2600/-. This is not denied by the applicant either through rejoinder or during hearing. Therefore, it is not necessary for us to pass any orders in respect of this particular relief as to the revision of pay with effect from 1.1.1986. As to the claim of promotion to T.E.S. Group B from the year 1989, as earlier mentioned, the case of the respondents

is that such promotion is not automatic and it is subjected to passing of qualifying/competitive examination for recruitment to that cadre and recommendation thereof by the D.P.C. and after clearance from the Vigilance Cell. This has also not been refuted through any rejoinder or disputed by the applicant during hearing. Hence this prayer for promotion with effect from 1989 on the ground of promotion of his junior cannot be allowed.

In view of our discussion above, we hold that the applicant is entitled to normal salary for the period from 11.8.1986 to 21.3.1991, and the respondents are directed to pay the same to the applicant within a period of 60 (sixty days) from the date of receipt of this order, if not already paid. Since the respondents had already refixed the pay of the applicant in the revised pay scale as on 1.1.1986, the relief claimed in this regard has become infructuous. Relief as regards promotion of the applicant to the post of T.E.S. Group B with effect from 1989 is, however, disallowed.

In the result the application is allowed in part. In the circumstances there shall however, be no order as to costs.

(Signature)
(SOMNATH SOM)

9.8.99
VICE-CHAIRMAN

B.K.SAHOO

(Signature)
(G.NARASIMHAM)

MEMBER (JUDICIAL)