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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.599 OF 1993

Cuttack this the 28th day of May, 1998

Kartic Chandra Mishra

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 25.5.98

25.5.98
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.599 OF 1993
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CORAM

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

...

Kartic Chandra Mishra
Son of Late DhaneswarMishra
Retd. O.S.(I), A.E.N. Office,
S.E.Railway, At/Po:Jharsuguda
District:Sambalpur - at present
of Village Bodhasara, PO:Mounda
P.S.Salipur, District:Cuttack

...

Applicant

By the Advocate:

M/s.S.K.Das
B.Mohapatra

-Versus-

1. Union of India
represented by the General Manager
South Eastern Railway,
Garden Reach, Calcutta-43
2. Chief Personnel Officer
South Eastern Railway,
Garden Reach, Calcutta-43
3. Sr.Divisional Personnel Officer
South Eastern Railway,
Chakradharpur Division,
Chakradhapur, District:Singhbhum
Bihar

... Respondents

Respondents

By the Advocate:

M/s.B.Pal
A.Kr.Mishra

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): The applicant, while working as Office Superintendent Gr.I in the Civil Engineering Department under the Assistant Engineer in Chakradharpur Division of South Eastern Railway, retired on superannuation on 30.9.1990.

Much prior to his retirement restructuring of the clerical cadre of the Civil Engineering Department was to have been taken up as per direction by the railway administration. However, in the S.E.Railway, this restructuring was held up because of pendency of cases in Court. After disposal of these cases, restructuring was effected. By then the applicant had already retired on superannuation. Though his pay was notionally fixed under Annexure-2 and he was allowed pensionary benefits, his arrears during the service period were denied to him. Hence this application.

2. These facts are not in dispute. However, the respondents have pointed out that in accordance with the Railway Board's circular, i.e., Estt. SRLS.No.183 dated 17.9.1986(Annexure-R/3) the benefit of restructuring would be only in the form of notional or proforma fixation of pay for the purpose of calculation of retirement benefits in respect of staffs who have since retired/expired. On the basis of this Board's instructions of 1986 ^{the} S.E.Railway in the circular dated 19.2.1992(Annexure-R/2) had allowed the benefit of restructuring to the staffs who have since

retired/expired in the form of proforma fixation of pay for the purpose of consequential retirement benefits. In other words the contention of the respondents-railways is that the staffs who have since retired/expired would not be eligible to claim the differential pay arising out of this restructuring during the period of service.

3. There is no dispute that the restructuring benefit was allowed by the Railway Board long prior to the retirement of the applicant on superannuation. Had restructuring been implemented prior to his retirement he would have definitely drawn the benefit of differential pay. But the actual restructuring in the S.E. Railway was held up because of pendency of cases. It comes to this though the employees of the same cadre as that of the applicant who are still in service, at the time of implementation of restructuring of cadre derived the benefit of re-fixation of pay of the period prior to retirement of the applicant, but the applicant has been denied this benefit for no fault of his.

4. At this stage it is useful to quote the following observation of the Apex Court in the case of K.V. Janaki Raman reported in AIR 1991 SC 2010 (page-2017) " the normal rule of 'No Work No Pay' is not applicable in cases where the employee although he is willing to work is kept away from the work by the authorities for no fault of his. This is not a case where the employee remained away from work for own reasons although the work is offered to him".

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5. In view of the aforesaid principle laid down by the Apex Court, we have no hesitation to hold Annexure-R/3 dated 17.9.1986 and Annexure-R/2 dated 19.2.1992 disallowing the benefit of pay on account of restructuring of the employees who have since retired/expired during the period of service and consequential denial of differential of pay for that period being discriminatory offends the Constitutional guarantee preserved in Article 14 of the Constitution of India.

6. In the result we quash Estt. letter dated 17.9.1986(Annexure-R/3) and S.E.Railway's letter dated 19.2.1992(Annexure-R/2) so far as these disentitle the benefit of differential pay for the period of their services to the employees who have since retired/expired. The respondents are accordingly directed to pay the arrears of pay to the applicant in terms of restructuring within a period of 60 days from the date of receipt of the order. In the circumstances, there shall be no order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN

28.5.98

(G.NARASIMHAM)
 MEMBER(JUDICIAL)

B.K.Sahoo,C.M.