

3 7

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 151 OF 1995
Cuttack, this the 30th day of April, 1997

Jagannath Panda

....

Applicant

Vrs.

Union of India and two others

Respondents

(FOR INSTRUCTIONS)

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

Jagannath Panda
(S.SOM)
VICE-CHAIRMAN 30.4.97

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

9

ORIGINAL APPLICATION NO. 151 OF 1995
Cuttack, this the 30th day of April, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

....

Jagannath Panda,
aged about 60 years,
son of late Lokanath Panda,
At-Kudiary,
P.O.-Jatni, District-Khurda

....

Applicant

-versus-

1. Union of India, represented by the
General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.
2. Divisional Railway Manager,
South Eastern Railway, Khurda Road,
P.O.-Jatni, District-Khurda.
3. Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road, P.O.-Jatni,
District-Khurda

.....

Respondents

Advocates for applicant -

M/s R.N.Naik,
A.Deo, B.S.Tripathy,
P.Panda, R.Rath & P.K.Misra

Advocate for respondents -

Mr.L.Mohapatra.

O R D E R

S.SOM, VICE-CHAIRMAN

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant, who was a
Goods Train Driver under South Eastern Railway, has prayed

Somnath Som
30.4.97

for the following reliefs:

- (i) to declare the calculation of pensionary benefits in order dated 29.4.1992 (Annexure-3) as illegal and to quash the same, and direct the respondents to re-calculate the pensionary benefits as per the orders passed in 'O.A.No.261/90 and O.A.No.580/93' (sic) taking into account the period from 26.2.1981 to 6.3.1991 towards future increment;
- (ii) to direct the respondents to pay him the revised pay scales of 1986 and 1989 and accordingly fix his pay;
- (iii) to direct the respondents to recalculate the D.C.R.G and encashed value of leave;
- (iv) to direct the respondents to give him two sets of First Class All India Railway Pass allowable to retired employees; and
- (v) to direct the respondents to pay him the bonus from 1981 to 1991.

The applicant has been coming to the Tribunal in several cases, and for appreciating the issues raised in this matter, some of the facts of this case will have to be noted.

2. The applicant, as already mentioned, was a Goods Train Driver. He was removed from service by order dated 26.2.1981 by Divisional Railway Manager. He approached the Tribunal in O.A.No.61 of 1989, decided on 27.7.1990. The Tribunal while disposing of the above O.A. noted that the matter had come up

9
Jomnath Jim
30.4.97

11

before the Tribunal earlier and while disposing of the earlier O.A., the Tribunal directed for holding of an enquiry. In O.A.No.61/89 the order of removal from service was challenged and on 27.7.1990 the following order was passed:

"....The order of removal is quashed and the applicant be reinstated in service if in the meantime he has not attained the age of superannuation. Since from the record it may be found that there was a strike and from what we have stated it may be said that the participation of the applicant in the strike had not been properly proved, in these circumstances, and having regard to the fact that the applicant did not render any service to the Railways, from the date he was removed from service, till he would be reinstated, we would direct the period to be treated as 'dies non'. However, that would count towards his pensionary and other benefits. No costs."

Against the above order, the respondents filed S.L.P. before the Hon'ble Supreme Court and extension was given by the Tribunal to comply with the above order by 31.1.1991. The S.L.P. was dismissed and in order dated 7.3.1991 passed by the respondents the order of removal dated 26.2.1981 was cancelled and the applicant was reinstated as Driver 'C' with effect from 6.3.1991 and the intervening period from the date of removal to the date of reinstatement was treated as 'dies non' in terms of the order of the Tribunal in OA No.61/89. In the same order dated 7.3.1991 the applicant was ordered to be sent for prescribed medical examination and it was further ordered that on passing the medical examination, he was to be sent for refresher course/ conversional course as decided by the departmental authorities. As a result of the medical examination, the applicant was medically decategorised. But as he was found suitable for clerical job, viz., Booking Clerk in Locoshed, he was transferred and posted as Head Booking Clerk under Sr.DME/DME, Nagpur.

Jammam 10m
30.4.97

12

He did not join the post of Head Book Clerk at Nagpur and remained on leave. He also applied for voluntary retirement. His application for voluntary retirement was not disposed of and the applicant came up before the Tribunal again in O.A.No.296 of 1991 which was disposed of in order dated 29.5.1992. In the above order the Tribunal noted that the applicant was allowed to voluntarily retire on 1.10.1991. It was held that from the date of his reinstatement, i.e., 6.3.1991 till 1.10.1991 he would be entitled to pay scale of Rs.1350-2200/- and his pay should be fixed at which he was drawing as Goods Train Driver on the date of his removal from service. The Tribunal directed that the respondents should allow the applicant to draw the pay which he was drawing on the date of removal from service and in case he was entitled to any increment from 6.3.1991 to 1.10.1991, i.e., during the period he remained on leave, the same should be allowed to the applicant and accordingly his pension was to be calculated and paid to him within 90 (ninety) days from the date of receipt of copy of the judgment dated 29.5.1992. The applicant again came up before the Tribunal in O.A.No.580/92 which was disposed of in order dated 10.3.1993 and the following order was passed:

"....Therefore, it is directed that the pay scale of the applicant be fixed according to the revised scale of pay and all increments due to the applicant be fixed with effect from 1.1.1986 to 1.10.1991 though the applicant would not be entitled to arrear amount from 1.1.1986 to 6.3.1991. The arrear increment, if any, from 6.3.1991 to 1.10.1991 be paid to the applicant within 60(sixty) days from the date of receipt of a copy of this judgment. Death-cum-retirement gratuity, as per rules be paid to the applicant within 60(sixty) days from the date of receipt of a copy of this judgment, less the amount already drawn. It is further directed that the dues to which the applicant is entitled to as per rules be paid to the applicant within

Journal
30.4.97

12

13

the period as indicated above. The increments due to the applicant during the period from 26.2.1981 to 31.12.1985 be calculated though the applicant would not be paid any amount on that account but such fixation will go to the credit of the applicant for his future increments as directed above."

In accordance with the above orders passed by Tribunal from time to time, the respondents have fixed the pay of the applicant and have paid the pensionary and other benefits to him. The applicant's contention in this application is that such fixation and payment have not been done in accordance with the orders passed by the Tribunal in the above cases.

3. The respondents in their counter have asserted that the calculations have been made strictly in accordance with the orders of the Tribunal passed from time to time and the applicant has no cause of action.

Journal 30.4.97

4. In the light of the above facts, the various prayers of the applicant can be taken up for consideration. The first three prayers can be taken up together. These essentially relate to correct fixation of his pay allowing him notional increments as also revised pay scales of 1986 and 1989 and accordingly fix his pre-retirement pay and his pension based on that. The prayer for payment of D.C.R.G. and encashed value of leave are connected with the above fixation of pay. Along with the counter, the respondents have enclosed an order dated 19.7.1993 (Annexure-R/2) in which the stage by stage fixation of notional pay from 26.2.1981 till 6.3.1991 has been shown. From this it is seen that prior to his removal, which was subsequently quashed, he was drawing basic pay of Rs.340/-. In the order at Annexure-R/2 his pay has been

fixed on different dates of increment giving him notional increments and accordingly on 1.1.1986 his pay has been fixed at Rs.1380/-. Admittedly there has been no revision of pay scales in 1989. Subsequent increments have been also notionally granted and his pay has been shown on 6.3.1991, the date of his reinstatement, as Rs.1560/-. As the applicant retired on 1.10.1991, he did not earn any further increment on pay fixed at Rs.1560/- on 6.3.1991 because twelve months period was not over from 6.3.1991, when he took voluntary retirement. Thus basing on his pre-retirement pay at Rs.1560/- his pensionary benefits have been worked out. Therefore, it is clear that the respondents have correctly fixed the pre-retirement pay of the applicant in terms of the different orders of the Tribunal passed in the Original Applications referred to earlier. On that basis, his pension has also been correctly fixed and differential amount for the period from 6.3.1991 to 30.9.1991 of Rs.1027/- has also been drawn by granting him leave. As regards the gratuity, the applicant has already been paid Rs.53,551.65 as against his entitlement of Rs.39,897/- and accordingly the respondents are taking steps to recover the excess amount paid to the applicant from him. As regards sanction of differential amount of encashed value of leave, the respondents have made no submission regarding payment of differential amount on encashed value of leave. In the last part of the order dated 19.7.1993 (Annexure R/2) it has been mentioned that differences of pensionary and other settlement benefits should be paid to the applicant on the basis of recasting of his pay. The applicant is obviously entitled to get the differential amount on the encashment of his leave. The respondents are directed to pay the differential amount to the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order, in the event the same has not already

13
14
J. N. M. Jm
30.4.97

been paid to him. If any dues of the Department are outstanding against the applicant, the respondents are free to adjust the same from such amount.

6. The fourth prayer of the applicant is for a direction to the respondents to give him retirement benefit of two sets of First Class All India Railway Pass. The respondents in their counter have submitted in paragraph 13 that as per Pass Rules and the entitlement, the applicant shall be given complimentary passes. In view of this admission, the applicant may approach the departmental authorities for issue of complimentary passes.

7. The last prayer of the applicant is for payment of bonus from 1981 to 1991. The respondents in paragraph 13 of the counter have asserted that as according to the order of the Tribunal, the period from the date of removal till 6.3.1991 was treated as dies non, the applicant is not entitled to bonus for the period. As according to the order of the Tribunal, the period has been treated as dies non and only for the purpose of pension the period has been counted, the applicant also not having worked during the period, no bonus is payable to him. But the position will be different for the period from 6.3.1991 to 30.9.1991. This period falls within two bonus years. The first period from 6.3.1991 to 31.3.1991 consists of twenty-six days and as such under Section 8 of Payment of Bonus Act, 1965, he would not be entitled to any bonus for this period because, according to this Section, eligibility will arise if the employee has worked in the establishment for not less than thirty working days in that

14
15
Omran Jm.
30.4.97

15

year. As regards the next year, i.e., from 1.4.1991 to 30.9.1991, the period is six months. It is to be noted that during this period the applicant did not work. He was on leave and it appears from page 6 of the counter filed by the respondents that he was sanctioned leave from 6.3.1991 to 30.9.1991. Under Section 14 of Payment of Bonus Act, 1965, dealing with computation of number of working days for payment of bonus, it is provided that the period an employee has been on leave with salary or wage during the bonus year will be counted towards his bonus entitlement. Therefore, as the applicant was admittedly on leave with wage from 1.4.1991 to 30.9.1991, he would be entitled to bonus under Sections 8 and 14 of Payment of Bonus Act, 1965. The respondents are directed to calculate and pay the applicant the amount of bonus due to him under the Act, rules and instructions within a period of 90 (ninety) days from the date of receipt of copy of this order.

8. In the result, therefore, the application is allowed in part. There shall, however, be no order as to costs.

S. Somasundaram
(S.SOM)
VICE-CHAIRMAN
30.4.97