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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 857 OF 1996
Cuttack this the 9th day of August/2000

A.Gopal Rao

...

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

(G. NARASIMHAM)
MEMBER (JUDICIAL)

V. Somnath Som
V. SOMNATH SOM
VICE-CHAIRMAN
of 812 orb

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 857 OF 1996
Cuttack this the 9th day of August/2000

CORAM:

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

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Mr.A. Gopal Rao, Rtd.Driver
At : Gajapati Nagar
PO : Jatni - 752 050
DT : Khurda - Orissa

...

Applicant

By the Advocates:

M/s.V. Prithviraj
S.V.R.Murty

-VERSUS-

1. Union of India represented through
the Chairman,
Railway Board, Rail Bhawan,
New Delhi
2. The General Manager,
South Eastern Railway,
Garden Reach
Calcutta-43
3. The Sr.Divisional Mechanical Engineer
South Eastern Railway
Khurda Road
4. The Sr.Divisional Personnel Officer,
South Eastern Railway
Khurda Road

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Respondents

By the Advocates

Mr.R.C.Rath
Addl.Standing Counsel
(Central)

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O R D E R

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing order dated 19.2.1996 rejecting his prayer for refixation of pay and pensionary benefits (Annexure-3). He has also prayed for directing respondents to pay his pay and other financial entitlements, viz., Productivity-Linked-Bonus (P.L.B.), National Holiday Allowance and increments during the period of suspension from 1983-84. The third prayer is for direction to respondents to recast his salary and promotional scale and pay the differential amounts he is entitled including the periodical increments. His next prayer is for directing respondents to recast the pension and to pay the differential amount with interest. Last prayer is for restoring three sets of passes and six sets of Privileged Ticket Offers (P.T.O) which were withheld from the year 1983 during his suspension. Respondents have filed their counter opposing the prayer of the applicant, who in turn has filed rejoinder, more or less reiterating his prayer as made in the Original Application.

2. For the purpose of considering this Application it is not necessary to go into too many facts of this case. The averments made by both sides would be referred to at the time of our discussion in respect of different prayers made by the petitioner.

3. Admitted facts of this case can however, be briefly stated. While the petitioner was working as a Driver in Khurda Road in 1981 he was transferred to Talcher. He was relieved from Khurda Road on 16.6.1981 and joined at Talcher. But he retained the Railway quarters at Khurda Road from the date of relief, i.e., 16.6.1981 till March, 1988. Respondents have stated

9

that the applicant did not even apply for retention of the quarters. For his alleged unauthorised occupation of quarters he was placed under suspension and departmental proceedings were initiated against him which ended in imposition of punishment of stoppage of one increment. Respondents have stated that stoppage of one increment was with cumulative effect. Applicant has pointed out that in order dated 13.1.1992 it has been clearly mentioned that stoppage of increment was non-cumulative effect. At the conclusion of the proceedings the period of suspension was also treated as duty. The applicant retired from service on superannuation on 1.9.1992. He has stated that as the period of suspension was treated as duty he is entitled to full salary for the above period. He has also asked for : (a) running allowance, (b) Productivity-Linked-Bonus, (c) National Holidays Allowance, and (d) differential amount of pay on refixation of his seniority along with his juniors which has been allowed in order dated 13.1.1992. The departmental respondents in Para-5 of their counter have stated that after the period of suspension was treated as duty, his entire service-sheet from 1982 was recast and the differential amount of Rs.10, 166.00 has been worked out and drawn vide supplementary bill dated 3.3.1994 and the Divisional Accounts Officer has been directed for making payment. From this averment it does not appear if payment of this amount has actually been made to the applicant. Applicant, in his rejoinder has contested this averment stating that it is not supported by any documentary evidence. Without going into this matter any further, this prayer is disposed of with a direction to respondents that in case payment of the above amount of Rs.10, 166.00 has not been paid to the applicant so far, then

9

the same amount shall be paid within a period of 30 (Thirty) days from to-day. The applicant has asked for interest on this amount. In consideration of this we also direct that in case payment of this amount has not been made to the applicant and if payment is made in pursuance of our above order, then interest at the rate of 12% per annum shall be paid to the applicant on the above amount w.e.f. 17.9.1997, i.e. the date of filing of counter till the date of actual payment. Thus, amount of interest payment, if payable in terms of our above order shall be paid within a period of Sixty(60) after the expiry of first period of 30 (Thirty) days, as ordered above.

4. As regards payment of P.L.B., respondents in their counter have stated that as the applicant was under suspension during the above period, P.L.B. has not been paid to him, but as subsequently the period of suspension has been treated as duty, the question of payment of P.L.B. to the applicant is under consideration. This counter, as we have noted above, has been filed in 1997. The learned Addl. Standing Counsel Shri R.C. Rath has no instruction if in the meantime P.L.B. has been paid to the applicant. In consideration of the above, we direct the respondents that P.L.B., if not paid to the applicant already, shall be paid within a period of 30 (Thirty) days from the date of ~~receipt~~ of this order and in case it is paid within 30 days, then the respondents will pay interest at the rate of 15% p.a. on P.L.B. amount from the date of filing of counter on 17.9.1997 till the date of actual payment and this amount of interest shall be paid within a period of 60 (Sixty) days from the date of payment of P.L.B., if it has been paid within a period of 30 (Thirty) days from to-day.

5. The next prayer is with regard to running allowance.

On this point we have heard the learned counsel for the petitioner Dr.V.Prithiviraj and Shri R.C.Rath, learned Addl.Standing Counsel for the Respondents at length. Shri Rath submitted that in accordance with Establishment Sl. No.85/82, when running staffs are engaged or employed in duties other than the running duties ^{present} they are at/ paid mileage allowance in lieu of/allowance. In this Establishment Sl. it has been provided that they will be paid allowance in kilometerage as indicated therein for every kilometer for such duty as required to be performed. In view of this it has been submitted by Shri Rath that the applicant is not entitled to running allowance, but only entitled to kilometerage which is pay element, i.e. headquarters mileage at the rate 13%. It is further stated that while recasting pay of the applicant the same benefit has been extended to him while drawing differential pay and allowance. Learned counsel for the petitioner on the other hand relied on Establishment Sl. No.9/74 issued on 11.1.1974, which provides that in case the period of suspension has been ultimately treated as duty for all purposes, running staff should be paid running allowance at the rate of 120 kms. per day, for the period of suspension excepting Shunter, Fireman and Shunting Engines would not be entitled to 120 kms. per day. Heard both sides with regard to applicability of Annexure-1 to the rejoinder and/or Annexure-6 to the counter to the case of the applicant. It has been submitted by the learned Addl.Standing Counsel that with effect from the date of coming into force of the Establishment Sl. 85/82, the earlier instructions issued on 11.1.1974 is no longer in force and the applicant will be entitled to only mileage allowance at the rate of 30% as pay element and this has already been worked out and ordered to be paid to him. On a careful reading of these two circulars we find that circular

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at Annexure-6 provides for payment of mileage allowance to the running staff when they are engaged on non-running duty. This is not the case here. Here the applicant was a passenger driver, who would have been on running duty had he not been placed under suspension. In view of the above this is not a case where a staff with running duty has been engaged on non-running duty. In view of this the earlier circular dated 11.1.1974 which deals with entitlement for payment of running allowance in case of ^{is applicable and} running staff/when his period of suspension is ultimately treated as duty, and in accordance with this circular the applicant is entitled to running allowance. This contention of the learned Addl. Standing Counsel is therefore rejected and respondents are directed to work out and pay running allowance to the applicant in accordance with circular dated 11.1.1974 within a period of 120 (One Hundred & Twenty) days after deducting the amount which might have already been paid to him as mileage allowance. As payment of running allowance has been withheld and in lieu thereof mileage allowance has been paid on a genuine misconception of the respondents with regard to entitlement of the petitioner to get running allowance, we do not think that on this amount the petitioner will be entitled to payment of interest. This part of the claim is accordingly rejected.

6. Applicant has stated that his pension should be recalculated considering the fact that in order dated 13.1.1992 it has been mentioned that punishment of stoppage of one increment ^{with} has been passed/non-cumulative effect. Respondents in their counter have stated that punishment of stoppage of one increment was imposed on the applicant with cumulative effect. Had it been imposed with cumulative effect then it would have affected

13

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ultimately his pay which the applicant had got at the time of superannuation. But we find from the order dated 13.1.1992 in which the question of refixing seniority of the applicant along with his juniors has been dealt and incidentally it has been mentioned in that order that punishment imposed is ^{with} non-cumulative effect. In any case, respondents are directed to check up this with reference to relevant original records. If ultimately the punishment imposed is found to be non-cumulative effect and if his pension has been worked out taking into account the punishment with cumulative effect, then the petitioner will be entitled to have his pay and pension refixed. In this view of the matter, such refixation of pay and pension shall be done within a period of 120 (One Hundred & Twenty) days from the date of receipt of this order.

7. The last prayer of the applicant is with regard to giving him passes and Privileged Ticket Offers (P.T.O.) during the period of suspension. The applicant was placed under suspension from 1983 to 88 and the said period is over long in the O.A. since. There is no averment that during the period of suspension the applicant had asked the departmental authorities for such passes and P.T.O. and these were denied to him. Respondents have pointed out that he vacated the quarters in 1988 and because of unauthorised occupation of quarters passes were withheld. As the period for which the applicant has prayed for restoring passes and P.T.O.s is already over and the validity of passes is only for one year the applicant is not entitled to get any relief in this regard. We however, direct that in accordance with the rules the applicant shall be entitled to passes and P.T.O.s in future and for this purpose the applicant shall abide by all the formalities which are required for issuance of passes.

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8. In the result, Original Application is allowed in terms of observations and directions given above, but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20/00

B.K.SAHOO//