

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.111 OF 1998

Cuttack, this the 10th day of Sept.', 1999

Syed Manawar Sayeed Applicant

Vrs.

Union of India and 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*.

←
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
10.9.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 111 OF 1998
Cuttack this the 10th day of Sept., 1999

CORAM:

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

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Syed Manawar Sayeed,
aged about 61 years, son of late
Sayed Abu Sayeed,
Retired Shop Superintendent,
PCO/MCs,
At-Sailashree Vihar, MIG,
Qr.No.VII-H/58, Bhubaneswar-16 Applicant

Advocates for applicant - M/s S.S.Rao
B.K.Nayak.

Vrs.

1. Union of India, represented by General Manager,
Indian Railways, South Eastern Railway, Garden Reach,
Calcutta-43, West Bengal.
2. Chief Workshop Manager,
Carriage Repair Workshop, South Eastern Railway,
Mancheswar District-Khurda.
3. Chief Mechanical Engineer,
South Eastern Railway,
Garden Reach, Calcutta-43,
West Bengal.
4. Asst. Personnel Officer,
Carriage Repair Workshop,
South Eastern Railway,
Mancheswar Respondents

Advocate for respondents - Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed
for quashing the order dated 17.6.1994 sanctioning final
pension to the applicant in place of provisional pension.

The second prayer is for a direction to allow the benefits of stagnation allowance as per the order dated 1.9.1987 at Annexure-1 with effect from 15.1.1991 and to pay the arrear differential allowance from 15.1.1991 till his retirement with 18% interest. The next prayer is to recalculate the gratuity, leave salary and pension taking the retiring pay of the applicant as Rs.3700/- and to work out the commutation amount accordingly and pay 18% interest on the differential retiral benefits.

2. The applicant's case is that he retired as Shop Superintendent from Carriage Repair Workshop, Mancheswar, S.E.Railway, Mancheswar, on superannuation on 31.7.1995. He joined the Railways in 1956 and had continued in Railway service in various capacities and finally joined as Shop Superintendent in Carriage Repair Workshop in November 1982 in the scale of pay of Rs.2375-3500/-. He continued as such till 14.1.1987. On 1.3.1986 his pay was fixed at Rs.3125/-. He was promoted to the post of Assistant Works Manager on ad hoc basis on 15.1.1987 in the scale of Rs.2000-3500/-. On promotion his pay was fixed at Rs.3300/- on 15.1.1987 and after getting one increment his pay became Rs.3400/- on 15.1.1988 and again Rs.3500/- on 15.1.1989. At that stage he reached the maximum of pay scale of Rs.2000-3500/-. The applicant has stated that Government of India accepting the recommendation of the Fourth Pay Commission, decided that in respect of employees having less than Rs.6700/- pay scale to grant one stagnation increment on completion of every two years on reaching the maximum. The applicant's case is that according to the circumar dated 3.8.1987 which is at Annexure-1 he should have got one stagnation increment of Rs.100/- raising his pay to Rs.3600/- with effect from 15.1.1991 and another stagnation increment increasing his pay to Rs.3700/- two years

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thereafter on 15.1.1993. The circular also provided that in respect of employees against whom departmental proceedings are pending at the time of issue of the above circular, direction was issued to keep the grant of increment under abeyance. The applicant has stated that at the relevant time a disciplinary proceeding was pending against the applicant and therefore the benefit of stagnation increment was withheld even though the applicant was entitled to get Rs.3600/- on 15.1.1991 and Rs.3700/- on 15.1.1993. The disciplinary proceedings ended with the applicant being given the punishment to the effect that his pay shall be reduced to lower stage by one stage from Rs.3500/- to Rs.3400/- in the scale of Rs.2000-3500/- for a period of one year from the date of acknowledgement of the order. It was also stipulated that on expiry of period of one year the reduction will not have the effect of postponement of the future increment of his pay. The order of punishment was received by the applicant on 2.4.1993 and his pay was reduced to Rs.3400/- with effect from 2.4.1993. On 19.5.1993 the applicant was reverted from the post of Assistant Works Manager which he was holding on ad hoc basis to his substantive post of Shop Superintendent in the scale of Rs.2375-3500/-. After expiry of one year, on 2.4.1994 the applicant's pay was restored to Rs.3500/-. The applicant continued as Shop Superintendent till his superannuation on 31.7.1995, but he was arbitrarily deprived of stagnation increment and his pensionary benefit was calculated taking his pay as Rs.3500/-. The applicant has further stated that according to paragraph 3 of the circular dated 3.8.1987 at Annexure-3, the cases of granting of stagnation increment to the employees against whom disciplinary cases were pending, were ordered to be held up till the

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disciplinary proceedings were concluded. Subsequently, in order dated 21.10.1993 at Annexure-2, paragraph 3 of the earlier order dated 3.8.1987 was withdrawn. In this circular dated 21.10.1993 it has been mentioned that in consultation with the Department of Personnel & Training and Ministry of Finance, it has been decided that the provision of paragraph 3 of Board's letter dated 3.8.1987 will be withdrawn and stagnation increment may be allowed to those persons in the same manner as annual increment. It is also mentioned specifically that this order dated 21.10.1993 will take effect from 30.8.1983. The applicant has stated that accordingly he was entitled to two stagnation increments, but in spite of his representations no action was taken and that is how he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the order at Annexure-2 came into force from 30.9.1993 after passing of the punishment order against the applicant. It is necessary to quote the relevant sentence from the counter of the respondents:

"It is further clarified that Annexure-2 to the OA, i.e., Establishment Serial No.143/93 came into force with effect from 30.9.93, i.e., after passing of the punishment order by the disciplinary authority and prior to punishment order the applicant was not considered for stagnation increment because of pendency of the disciplinary proceedings in view of paragraph 3 of the Annexure-1 to the OA."

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The respondents have stated that after the punishment period of one year was over, his pay was rightly fixed at Rs.3500/- after 2.4.1994 and the applicant retired on superannuation on 31.7.1995 without completing two years to be entitled to stagnation increment. On the above grounds, the respondents have opposed the prayers

of the applicant.

4. The applicant in his rejoinder has reiterated the submissions made in the OA and it is not necessary to cover the same once again.

5. We have heard Shri S.S.Rao, the learned counsel for the petitioner and Shri R.C.Rath, the learned counsel for the respondents and have also perused the records.

6. As earlier noted the respondents in their counter have stated that the circular at Annexure-2 came into force with effect from 30.9.1993. But the circular at Annexure-2 specifically provides that Annexure-2 will take effect from 30.8.1983. As there was doubt about the correctness of the date mentioned at Annexure-2 the matter was brought up under the heading "To Be Mentioned" and on the direction of the Tribunal the learned counsel for the respondents filed an attested copy of the Establishment Serial No. 143/93 which is at Annexure-2 of the OA and in this attested copy it is clearly written that this order will take effect from 30.8.1983. In view of the above, it has to be considered whether the applicant was entitled to get stagnation increment. The applicant was entitled to get stagnation increment raising his pay to Rs.3600/- from 15.1.1991 and to Rs.3700/- from 15.1.1993. The order of punishment imposed on the applicant which is at Annexure-R/1 is dated 24.3.1993. Therefore, prior to 24.3.1993 the departmental proceedings were pending against the applicant. In the original circular sanctioning stagnation increment it was provided that in cases of employees against whom departmental proceedings are pending stagnation increment can be sanctioned only after the proceedings are finalised. This condition was withdrawn in

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Establishment Serial No. 143/93 and it was specifically provided therein that this order will take effect from 30.8.1983. The respondents have stated that even though this order was to have come into force from 30.8.1983, this was issued only on 30.9.1993 by which time the punishment had already been imposed on the applicant in order dated 24.3.1993 reducing his pay from Rs.3500/- to Rs.3400/- for a period of one year with the effect of postponing future increments. The respondents have stated that because of this, even after coming into force of the circular at Annexure-2 the applicant was not allowed the stagnation increment. We are unable to accept the above stand of the respondents because the Railway Board in their circular at Annexure-2 issued on 30.9.1993 specifically provided that this will come into force from 30.8.1983. This would obviously mean that the direction was to sanction stagnation increment to the persons against whom departmental proceedings were pending in accordance with the circular at Annexure-1 ignoring paragraph 3 of that circular which was withdrawn in the circular at Annexure-2. Therefore, it is clear that after receipt of the circular at Annexure-2 the respondents should have allowed the stagnation increment to the applicant on 15.1.1991 and 15.1.1993 raising his pay to Rs.3600/- and Rs.3700/- respectively and thereafter his pay could have been ordered to be reduced by one stage from Rs.3700/- to Rs.3600/- for a period of one year and on expiry of the punishment period of one year his pay would have been restored to Rs.3700/-. This is clearly the mandate in the circular at Annexure-2 and the respondents have misinterpreted the circular and denied the applicant his due. In consideration of the above, it is directed that the applicant should be allowed the stagnation

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increment from 15.1.1991 raising his pay to Rs.3600/- and again on 15.1.1993 raising his pay to Rs.3700/-. It is also ordered that on expiry of the punishment period the applicant's pay would be restored to Rs.3700/- and his pensionary benefits should be worked out accordingly. All this should be done within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order. One further point remains to be considered, i.e., the effect of the punishment order at Annexure-R/1. As on the date the punishment order came into force the pay of the applicant would stand increased to Rs.3700/-, it would stand reduced to Rs.3600/- for one year during the period of currency of the punishment and while paying the applicant his arrears this also should be worked out.

7. In the result, therefore, the Original Application is allowed but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
10.9.99
VICE-CHAIRMAN