

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 143 OF 2000

Cuttack, this the 28th day of December, 2001

Sri Bhikari Charan Nath Applicant

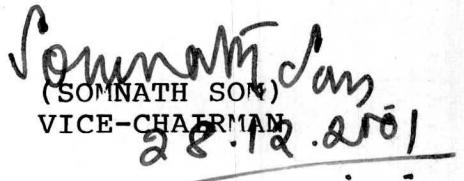
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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


(N. PRUSTY)
MEMBER (JUDICIAL)


(SOMNATH SONI)
VICE-CHAIRMAN
28.12.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 143 OF 2000
Cuttack, this the 28th day of December, 2001

CORAM:

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

.....
Shri Bhikari Charan Nath, aged about 62 years, son of late
Nanda Nath, At-Bidyadhpur, P.O-Chhatia, P.S-Barchana,
District-Jajpur
Applicant

Advocates for applicant - M/s B.K.Patnaik
P.K.Mohanty-6
A.C.Gahana

Vrs.

1. Union of India, represented by the General Manager,
South Eastern Railway, Garden Reach, Calcutta-1.
2. Senior Divisional Commercial Superintendent,
S.E.Railway, At/PO-Chakradhpur, Dist.Singhbhum.
3. Chief Commercial Superintendent
14, Stand Road, 9th Floor, Calcutta-1.

.....
Respondents

Advocate for respondents - Mr.C.R.Mishra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to give him the promotional benefits of the admitted amount as per Annexure-7, amounting to Rs.35,759/- with 18% interest.

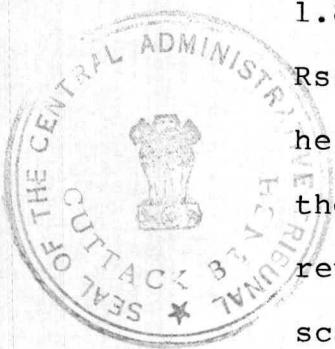
2. The case of the applicant is that he initially joined Railways on 8.4.1956 and ultimately retired on superannuation on 31.1.1996 as Cook in the scale of Rs.800-1150/- with his pay at Rs.1010/-. From 6.9.1978

S.Som.



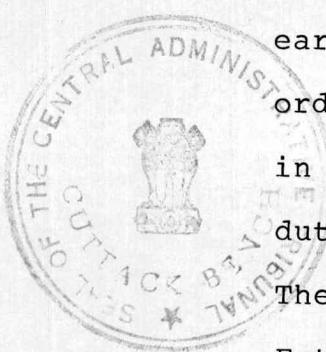
to 27.11.1990 he was placed under suspension on the allegation that he had misbehaved with a superior officer and a complaint was filed in the criminal court. The applicant had earlier come up before the Tribunal in OA No. 488 of 1989 which was disposed of in order dated 19.10.1990. The applicant has stated that the Tribunal quashed the order of suspension and directed that the applicant should be taken back in service. It was also directed that the subsistence allowance should be paid from the date of suspension till 20.3.1985 and thereafter duty pay as he was not allowed to join his duty. In the year 1982 the applicant had been promoted from Group-D to Group-C category as Cook under restructuring of the cadre as per Establishment Serial No.160 of 1983 with effect from 1.8.1982 by raising his scale of pay from Rs.210-270/- to Rs.260-400/-, but he was not actually given promotion. Had he been given promotion on 1.8.1982, then he would have got the higher scale of pay of Rs.260-400/- which was later on revised to Rs.950-1500/- and would have retired in that scale. The applicant has stated that he retired in the scale of Rs.800-1150/- and did not get the benefit of the scale of Rs.950-1500/-. The applicant has enclosed at Annexure-5 the instructions of the Department as to how the case of promotion of Railway employees would be decided and how benefits would be given especially when the employee is under suspension. The applicant filed a representation on 31.12.1995 to get the promotional benefits and he was informed in letter dated 19.9.1997 that active steps are being taken for fixation of his pay on

J. Jom



promotion. Thereafter on 12.2.1998 departmental authorities decided that an amount of Rs.35,759.00 is required to be paid to the applicant. When the amount was not paid, the applicant made a further representation. It is stated that the applicant has been paid all his dues except the above amount of Rs.35,759/- for which he has made several representations but without any result. In the context of the above, he has come up in this petition with the prayers referred to earlier.

3. Departmental respondents in their counter have opposed the prayers of the applicant. They have stated that while the applicant was working as Cook, he was placed under suspension on 6.9.1978 for misbehaviour with an official supervisor. He was further convicted in a criminal case and was fined by the criminal court. The respondents have referred to the earlier OA No.488 of 1989 filed by the applicant and the order of the Tribunal dated 19.10.1990. It is stated that in pursuance of the said order, the applicant joined his duties on 19.10.1990 as a Cook and retired on 31.1.1996. The respondents have further stated that in accordance with Establishment Serial No.160 of 1983, the posts of Cook, Khalasi, Peon and Safaiwala of the Catering Branch of the S.E.Railway were restructured and as a result some posts were upgraded and promotional avenues were created. Accordingly, the applicant was promoted with the same designation as Cook in the scale of Rs.260-400/- with effect from 1.8.1983 on ad hoc basis subject to vigilance clearance. The order dated 24.11.1984 of promotion of the applicant along with others is at Annexure-R/l. Vigilance clearance was sought for. But as the applicant was convicted in criminal case and was fined and as he was



180m.

placed under suspension, his promotion as Cook in the scale of Rs.260-400/- could not be considered and he could not join the post and yet the higher scale of Rs.260-400/-. The applicant joined as Cook on 19.10.1990 in the scale of Rs.260-400/- and retired on 31.1.1996. The respondents have stated that from 21.3.1985 to 27.11.1990 the applicant was paid his salary in the scale of Rs.210-270/- as his promotion was not given effect to. The applicant made a representation and his arrear claim bill for Rs.35,750/- for the period from March 1985 to January 1996 was prepared. This was subject to investigation and internal check in course of which it was found that as he joined the post on 27.11.1990 he was not entitled to the monetary benefit from 21.3.1985 to 27.11.1990 except the notional fixation of pay. Accordingly, from 27.11.1990 to 31.1.1996 arrear claim of Rs.19,616/- was calculated and ordered to be paid. In the context of the above, the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has made more or less the same averments as in the O.A. and reiterated his prayers. It is not necessary therefore to refer to the averments made in the rejoinder.

5. We have heard Shri B.K.Patnaik, the learned counsel for the petitioner and Shri C.R.Mishra, the learned Additional Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has filed a memo which is in the nature of a written note of submission. He has cited the decision

of the Hon'ble Delhi High Court in the case of Iqbal Singh v. Inspector General of Police and others, AIR 1970 Delhi 240.

6. We have called for the record of OA No. 488 of 1989 and perused the same. In that case the Tribunal in their order dated 19.10.1990 noted in paragraph 3 of the order that in pursuance of the order dated 5.3.1985 at Annexure-6(a) in that OA the applicant was directed to report for duty on or before 20.3.1985. The applicant reported for duty but he was not allowed to join. The Tribunal in their order issued the following direction:

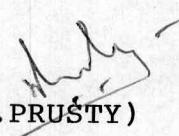
"....Therefore, we have absolutely no doubt that the suspension order should not be allowed to continue and accordingly we quash the order of suspension and direct the applicant to be reinstated within a month from the date of receipt of a copy of the judgment. So we would direct payment the subsistence allowance from the date of suspension till 20th March, 1985 and thereafter duty pay as he was not allowed to join his duty....."



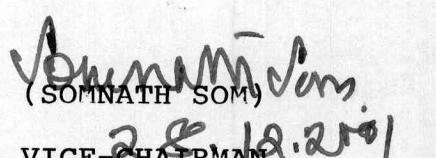
From the above it is clear that the Tribunal directed payment of duty pay to the applicant from 21.3.1985 on the ground that even though he was asked to join his duties he was not allowed to join. There is no averment in the counter that this order has been challenged by the respondents before any higher forum. Therefore, this order is binding on the Railways. As the applicant has been allowed duty pay from 21.3.1985, the fact that he joined on a later date and after the order of the Tribunal on 19.10.1990 can have no bearing on his entitlement to get the duty pay. It is necessary to note that the respondents in paragraph 2 of the counter have mentioned that the applicant joined his duty on 19.10.1990. In page 3 of the counter the respondents have mentioned that he has joined his duties on 27.11.1990. Be that as it may, as the

applicant was directed to be given duty pay from 21.3.1985, the respondents are clearly in the wrong to deny him the monetary benefit from 21.3.1985 to 27.11.1990 or 19.10.1990, as the case may be. It is also to be noted that the order of promotion of the applicant was issued on 24.11.1984. As by order of the Tribunal, dated 19.10.1990, the applicant is deemed to be on duty from 21.3.1985, he is entitled to get the benefit of higher scale of pay from 21.3.1985 as his duty pay ordered to be paid to him by the Tribunal. We, therefore, direct that the applicant be allowed the scale of Rs.260-400/- from 21.3.1985 and the arrears be worked out and after deducting the amount already paid, the balance be paid to him within a period of 60 (sixty) days from the date of receipt of copy of this order. We also direct that his retiral benefits should also be worked out accordingly within a period of 90 (ninety) days.

7. In the result, therefore, the O.A. is allowed but without any order as to costs.


(N. PRUSTY)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN

AN/PS