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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1085 OF 2004

Cuttack this the 16th day of February, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Sri Padmanav Dash, S/o.late Upendra Nath Dash, aged about 61 years, Retired Sr.Passenger Driver/Safety Counciller, Office of the East Coast Railway, Khurda, At/PO-Jatni, Dist-Khurda at present C/o.Tritha Mohan Satpathy, At-Chanaghara, PO-Kasumati, PS-Jatni, Dist-Khurda

...Applicant

By the Advocates:M/s.S.K.Nayak-I

B.K.Sahoo

M.S.Sahoo

Mrs.D.Nayak

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Bihar, Bhubaneswar
2. General Manager, East Coast Railway, Chandrasekharpur, At/PO/PS-Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager
4. Senior Divisional Personal Officer
5. Senior Divisional Finance Manager
6. Senior Divisional Mechanical Engineer

Respondent Nos. 3 to 6: All are of East Coast Railway, Khurda Road, At/PO/PS-Jatni, Dist-Khurda

...Respondents

By the Advocates: Mr.T.Rath

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ORDER


HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Applicant, a retired Sr.Passenger Driver/Safety Counselor under the East Coast Railways, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

- i) To allow this application.
- ii) To quash the impugned order under Annexure-A/7 series
- iii) To grant any of the relief/reliefs as admissible and permissible under law taking into account the fact and circumstances of the case
- iv) To direct the Respondents to include the period from 20.2.1982 to 9.11.1989 to his service period and calculate his pensionary benefits accordingly.

2. The brief facts of the case are that while working as Diesel Driver Assistant under the S.E.Railway at Khurda Road, the applicant had been charge-sheeted for having un-authorizedly occupied the Railway quarters and having been found guilty, he was imposed with punishment of removal from service as per order dated 4.4.1983. Against the said removal order, he had approached this Tribunal in O.A.No.4/87, which was disposed of on 29.3.1989 by quashing the order of removal from service with direction to the Respondents to reinstate the applicant in service. The Tribunal further directed as under:

“We would direct that the applicant shall file a representation before the disciplinary authority stating all these facts which have been stated before us and the disciplinary authority should take a decision as to whether there has been a discriminatory treatment between the applicant vis-à-vis other noticees in Annexure-3 and he should consider the entitlement of the applicant to his back wages with effect from the date on which the applicant was ordered



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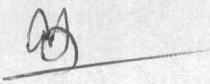
to be removed from service. We hope the disciplinary authority shall pass a reasoned order so that it would be the subject matter of judicial review, if the applicant is so advised to move this Bench”.

3. In pursuance of the above direction of the Tribunal the applicant filed a representation and thereafter the matter having been considered by the authority Annexure-A/4 series have been issued. It is the case of the applicant that the Respondent-Railways notwithstanding his representation regarding his back wages for the period from 20.2.1982 to 9.11.1989 or at least from 4.4.1983 to 9.11.1989, did not pass any order and although he had in the meantime retired from service, the Respondents are yet to settle the interregnum period as indicated above, besides the pensionary benefits, etc., which is the subject matter of challenge herein.

4. This O.A. had once been dismissed for default. However, by the order dated 6.5.2008, passed in M.A.337/07, the O.A. has been restored.

5. Respondent-Railways have filed their counter reply resisting the claim of the applicant to which applicant has also filed a rejoinder reiterating the grounds urged in the O.A. It is stated in the rejoinder that similarly situated employees like the applicant though were issued with notices for vacating the quarters and disciplinary actions were contemplated against them, but they were not imposed with punishment as in the case of the applicant and thereby, the applicant has been discriminated against.

6. We have heard the learned counsel for the parties and considered the grounds urged.




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7. The question to be considered, in the light of the above contentions, is:
Whether the applicant is entitled to any relief as claimed in this O.A. or not?

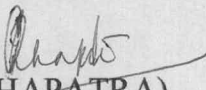
8. It is the case of the Respondents that the intervening period from 4.4.1983 to 9.11.1989 has been treated as dies non, but this intervening period would be available for the pensionary benefits.

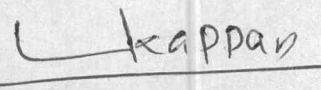
9. It is the case of the applicant as narrated in the O.A. that since this Tribunal had directed to consider the representation for treating the intervening period for two purposes, i.e., as duty for pensionary benefits and also for back wages, now as per the order passed by the Respondents as evidenced from Annexures-R/6, R/7 and R/8, it would reveal that the authorities have not considered the directions issued by this Tribunal inasmuch as they have not treated the said period as duty for all purposes. As we have already gone through the order, this Tribunal had not stated anything about the power of the authorities to treat the period from 1983 to 1989 either as duty for all purposes or the applicant is entitled to back wages or even the period in question to be treated as duty only for the purpose of pension. Keeping in view the directions issued by this Tribunal as well as the charge leveled against the applicant and on considering the fact that the applicant has already retired from service, we are of the view that the discretion exercised by the authorities to the effect that the intervening period would be available for pensionary benefits to applicant is wholly justified inasmuch as although the applicant was kept out of service without his fault, he had also not worked during that period. We are also of the



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view that in the absence of any specific direction to that effect issued by the Tribunal as per Annexure-A/1, at this stage, we would only hold that ^{to gating} ~~treatment~~ of the intervening period only for the purpose of pensionary benefits as per Annexure-R/8 dated 6.6.1991 would meet the ends of justice in the instant case. With the above observation, we dispose of this O.A. and direct the Respondents to release the pensionary benefits and pension in favour of the applicant within a period of sixty(60) days from the date of receipt of this order.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER