

15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.321 of 2006
Cuttack, this the 06th day of August, 2009

Jagannath Panda Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

(C.R.MOHAPATRA)
MEMBER (ADMN.)

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.321 of 2006
Cuttack, this the 06th day of August, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

Jagannath Panda, aged about 71 years, son of Late Lokanath
Panda, At-Kudiary, PO. Jatni, Dist. Khurda.
.....Applicant

Advocate for Applicant: M/s.P.Mohanty, G.S.Satpathy,
J.Mohanty,D.N.Mohapatra,
P.K.Nayak.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road, PO.Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, PO. Jatni, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.R.N.Pal

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER (A):-

It has been a long-drawn battle in the court corridors causing lot of expense and suffering even to both sides. In this Original Application, the Applicant who retired from Railway service w.e.f. 01.10.1991 voluntarily prayed for the following reliefs:-

- "(i) Admit this application;
- (ii) Direct the respondents to grant and pay pension on the basis of the scale drawn by the applicant as to the date of removal from service as Goods Driver and subsequent revision of pay in the year 1986, 1989 and 1991 scale of pay as the same has been paid to other similarly placed employees;
- (iii) To quash the order vide Annexure-2 and direct the respondents to pay the amount of DCRG along with the interest accrued thereon within a particular time;

(iv) Pass any other appropriate order and/or orders as deems fit and proper;
(v) Allow this application with costs."

2. The Respondents by giving details of the events which took place in regard to the applicant have stated that it is incorrect to say that the applicant has not been paid his pay pension on the basis of the scale drawn by him as Goods Guard, at the time of removal from service and on the basis of the revision of pay which took place in the year 1986, 1989 and 1991 as has been paid to other similarly situated employees. However, it has been admitted by the Respondents that as there was excess drawal of the amount beyond the entitlement of the Applicant, the said amount was withheld from the DCRG payable to the applicant after his voluntary retirement and rest of the amount was paid to him. Accordingly, it has been stated by the Respondents that since the first prayer of the applicant has already been met and the second prayer of the applicant does not survive in view of the fact that the authority has every right to recover any excess payment made through inadvertence, this OA is liable to be dismissed.

3. No rejoinder has been preferred by the Applicant disputing the stand of the Respondents taken in their counter in regard to the fixation of pension etc not even in course of hearing. However, it has been stated that order recovery of an amount of Rs.53, 551.65 from the DCRG and pension of the Applicant stating to be the wages paid to the Applicant during the strike period from March, 1981 to June, 1985 under Annexure-2; though according to him the deduction/recovery of such amount has been overruled by this Tribunal while adjudicating the grievance of similarly situated

employees in OA No.333/93 (B.J.Henry v Union of India and others) and in other similar matters (Annexure-3) is illegal, arbitrary and contrary to the above decision of this Tribunal. In this context, we have perused the order under Annexure-2 vis-à-vis the aforesaid order of this Tribunal under Annexure-3. On perusal of the order under Annexure-2 it is revealed that the Respondents ordered for recovery based on the ground that earlier decision of this Tribunal under Annexure-3 overruling recovery of any amount paid to the employees towards wages, during the alleged strike is in *personem* and as such is not applicable to the Applicant. In this context, after giving extensive hearing to the respective counsel, perused the materials placed on record. It is not in dispute as also borne out from record that the facts and issues involved in the case of Henry (supra) are in no way different or distinct. Denial of benefits to similarly situated employees came up for consideration in this Tribunal in OA No.O.A.No. 89 of 2008 filed by P.K.Acharya v Union of India and others. The Division Bench of this Tribunal taking recourse of the decision of other Bench and the Hon'ble Supreme Court disposed of the matter on 30.07.2009 holding as under:

"3. Upon hearing the Learned Counsel for the parties on the above aspect, we have perused the materials placed on record. In view of the decision of the Hon'ble High Court of Orissa that the Railway Board's instruction based on which the applicant faced the reversion having no retrospective implication, and the promotion of the applicant being prior to the Railway Board instruction, we do not have any doubt to hold that the reversion of the applicant was unjustified. Now question for consideration whether hyper-technicality rule of limitation, in view of the facts narrated above, will stand on the way of dispensation of justice. In this connection we may state that in very many cases, it has been consciously held by the Division Bench of this Tribunal that hypertechicality law of limitation should not

19

stand on the way of dispensation of justice where glaring omission is tale-tell on the face of the order causing miscarriage of justice in the decision making process of passing the order denying the benefits. Admittedly, in the present case, order of reversion of the applicant was passed under Annexure-A/3 dated 30.11.2001 against which he made representation under Annexure-A/4 dated 20.02.2002. As it appears from the record, no consideration was given by the Respondents on the said representation of the applicant. Meanwhile, decisions of this Tribunal as well as Hon'ble High Court of Orissa, on similar cases came into effect. Thereafter, by making representation under Annexure-A/7 dated 11.7.2006, applicant prayed for extension of the benefits granted to others. Non-consideration of such grievance, forced him to approach this Tribunal in OA No.113 of 2007 and on the direction of this Tribunal, the Respondents disposed of the representation and communicated the result thereof to the Applicant under Annexure-A/9 dated 21.5.2007. On perusal of the aforesaid order of rejection, it reveals that the Respondents rejected claim of the applicant without appreciating the true merit of the order of the Hon'ble High Court of Orissa whether the adhoc promotion of the applicant was prior to the order of Railway Board based on which reversion of applicant took place. Besides the above, it is seen that the delay, if any, occasioned is also attributable to the Respondents for not timely replying the representation submitted by the applicant against the order of reversion. When the delay is not fully attributable to the applicant, law of limitation as pleaded by the Respondents cannot be a ground for dismissal of this OA. **Also it is trite law that benefit once granted by court of law should be extended to the similarly situated person** (Maharaj Krishan Bhatt & Anr v State of Jammu & Kashmir & Ors, (2008) 2 SCC (L&S) 783). Co-ordinate Bench of this Tribunal in the case of Nem Singh v Union of India and others, 10/04 Swamysnews 68 (Jodhpur) OA No. 273 of 2002, January 2004 that when benefit of earlier judgment is prayed by similarly placed persons, the bar of limitation would not be attracted. **Government should give the benefit of a final decision to all similarly placed persons and should not unnecessarily send people to Court.** In view of the above, the law of limitation raised by the Respondents does not persuade us to take a view that there has been no injustice in the decision making process of denying the benefit of the decision of the Hon'ble High Court of Orissa in OJC Nos.5477 and 5459 of 2002 disposed of on 07.03.2006. Hence, the order under Annexure-A/3 so far as the Applicant is concerned and the order under Annexure-A/9 dated 21.05.2007 is hereby quashed. The Respondents are directed to bring back the applicant to his position prior to issuance of

Annexure-A/3 without any back wages, except notional fixation of pay, within a period of 30 days from the date of this order." (Emphasis supplied)

4. Recovery of the amount paid not for any misrepresentation by the employee concerned is not recoverable is the consistent view of the Hon'ble Apex Court and needs no repetition. Also it is trite law in the case of **SI Roopal and others vrs. Lt. Governor through Chief Secretary Delhi and others**, (2000) 1 SCC 644 that the precedents are to be followed by the Tribunal and, therefore, we are in agreement with the decisions rendered in the case of Henry(supra). Accordingly, the order under Annexure-2 is hereby quashed. The Respondents are directed to release the withheld amount of Rs.53, 551.65 in favour of the Applicant forthwith in any event within a period of thirty days hence.

5. Accordingly this OA stands disposed of in the afore-stated term. No costs.

Kappan
 (JUSTICE K. THANKAPPAN)
 MEMBER (JUDICIAL)

Chakraborty
 (C.R. MOHAPATRA)
 MEMBER (ADMN.)