

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.341 of 2009
Cuttack, this the ~~29th~~ day of March, 2011

Chintamani Mohanty Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yy*.
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yy*

A.K.
(A.K.PATNAIK)
Member(Judl)

C.R.
(C. R. MOHAPATRA)
Member (Admn.)

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 341 of 2009

Cuttack, this the 29th day of March, 2011

CORAM:

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

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

1. Chintamani Mohanty, aged about 56 years, Son of Late Kartik Mohanty, at present working as Head Clerk, O/O XEN/C/Gen/ECorailway, Railvihar, Bhubaneswar, permanent resident of Village-Sasilo, Po-Samsarpur, Ps-Mahanga, Dist. Cuttack.
2. Dasharathi Sahoo, aged about 56 years, S/o.Late Batakrushna Sahoo at present working as Head Clerk, O/O Dy./C/TP/BBSR/E.CoRailway Railvihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Applicants

By legal practitioner: M/s.N.R.Routray, S.Mishra, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. FA & CAO/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Senior Personnel Officer/Con/Coordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.T.Rath, Counsel.

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The case of the Applicants is that the order of reversion issued in terms of the order of the Respondent No.4 dated 13-12-1999 & 13-11-2001 was challenged by them in OA No. 509 of 2001. Similar OAs were also filed by other employees who had faced the order of reversion like the present Applicants. All such similar matters were heard analogously and disposed of in a

L

common order dated 21-03-2002 by this Tribunal. The Respondents impugned the order of this Tribunal dated 21-03-2002 in OJC Nos. 5477/2002 and 5459/2002, filed before the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa upheld the order of this Tribunal and dismissed the OJCs filed by the Respondents on 02-03-2006.

Another set of employees having faced similar order of reversion approached this Tribunal in OA Nos. 569/2001, 561/2001, 5763/2001 and 569/2001. This Tribunal dismissed the aforesaid OAs. Being aggrieved by the said order of this Tribunal, Applicants therein approached before the Hon'ble High Court of Orissa in WP (C) Nos.3198/2002, 3199/2002, 3451/2002 & 4149/2002. The Hon'ble High Court of Orissa, by applying the ratio of the decision rendered in OJC Nos. 5477/2002 and 5459/2002 dated 02-03-2006, vide order dated 08-03-2006, also set aside the order of reversion of the Petitioners in WP (C) Nos.3198/2002, 3199/2002, 3451/2002 & 4149/2002. In compliance of the orders of the Hon'ble High Court, in WP (C) Nos.3198/2002, 3199/2002, 3451/2002 & 4149/2002, the adhoc promotions of the petitioners were restored and their differential salary for the interregnum period were sanctioned and paid. But though the adhoc promotion of the present Applicants were

L

restored by the Respondents their pay for the interregnum period was fixed on notional basis without any differential arrears of pay and allowances arising out of the restoration (Annexure-A/6). It is the contention of the Applicants that there was no reason not to pay the applicants differential arrear salary from the date of reversion till the date of restoration especially when such differential arrear salary have been paid to other similarly situated employees whose orders of reversion were set aside based on the orders of the Tribunal dated 21-03-2002 in OA No. 509 of 2001 and upheld by the Hon'ble High Court of Orissa on 2-03-2006 in OJC Nos. 5477/2002 and 5459/2002. Being aggrieved by the action of the Respondents, the Applicants, taking strength from the order of this Tribunal dated 20.04.2004 in CP No. 20 of 2007, have approached this Tribunal in the present OA with prayer to quash the order dated 26.06.2008 in Annexure-A/6 in so far fixation of the pay of the applicant on notional basis is concerned and to direct the Respondents to pay them the differential arrear salary for the period from 15-10-2001 till 26.6.2008. In support of his contention that application of the principle of no work no pay in the present case is bad in law, Learned Counsel for the Applicant has also relied on the decision of the Hon'ble Apex Court in the



case of **State of Kerala and others v E.K.Bhaskaran Pillai**, (2007) 2 SCC (L&S) 487.

2. Respondents filed their counter in which it has been stated that though in the OA No. 509 of 2001 the applicants specifically prayed for direction for payment of financial benefits yet while disposing of the said OA, this Hon'ble Tribunal consciously did not grant the said prayer. The order of this Tribunal was also upheld by the Hon'ble High Court without any direction that the applicants are entitled to the differential arrears for the interregnum period. Whereas while disposing of the other Writ Petition, the Hon'ble High Court while quashing the order of reversion have made it specifically clear that the petitioners therein shall be reinstated with the same terms and conditions which were fixed by the opposite parties at the time of their adhoc promotions. In other words, on their reinstatement they shall be treated as continuing on adhoc basis in the respective posts held by them and they shall be given consequential benefits accordingly. On their reinstatement they were paid the arrear salary during the interregnum period which in absence of any such direction, was not paid to the Applicants in the present case. Besides the above, it was stated that Rule 228 of the IREM specifically provides not to pay any salary to an employee for the



period during which he/she has not performed any duty. In the above circumstances, Respondents have prayed for dismissal of this OA.

3. By placing reliance on the decision of the Hon'ble Apex Court, in the case of **State of Kerala and others v E.K.Bhaskaran Pillai**, (2007) 2 SCC (L&S) 487. Learned Counsel for the Applicant has reiterated his stand taken in the pleadings and on the other hand it was contended by the Learned Counsel for the Respondents that admittedly in the present case no direction was issued by this Tribunal or by the Hon'ble High Court that in the event of restoration of the applicants to their ad-hoc promotional posts, they would be entitled to the differential amounts from the date of reversion till the date of reinstatement. Alleging non-payment of such differential amount the applicant approached this Tribunal in CP No. 21 of 2007 and this Tribunal made it clear that in absence of specific direction from this Tribunal or from the Hon'ble High Court of Orissa, the Applicants in the present case are not entitled to the said benefit but however, liberty was granted to the applicants, if they so wish they may agitate the same in fresh Original Application. Others have been paid the differential amount on the specific direction of the Hon'ble High Court of Orissa in WP (C) No. 3198 of 2002 but no



such direction was issued in the case of the Applicants. According to the Respondents' counsel that the Applicants are estopped to reopen the issue by filing the present Original Application. In this context, reliance has been placed on the decisions of the Hon'ble Apex Court reported in AIR 1967, SC page-1, AIR 1983 SC 1272, AIR 1988 SC 1531 and AIR 1993 SC 1407. Further it was contended by the Respondents' Counsel that in terms of the provisions of Rule 228 of the Indian Railway Establishment Manual the Applicants having not worked in the higher posts are not entitled to the salary in the higher posts. In this connection Respondents' counsel has relied on the decision of the Hon'ble Apex Court reported in 2007 SCC (L&S) 63. That the applicant is not entitled to get the salary as claimed by them merely because some others have been paid on the ground of equity, Respondents' counsel has relied on the decision of the Hon'ble Apex Court in the cases reported in AIR 1995 SC 94, AIR 1994 SC 169, (1997) 7 SCC 650 and AIR 1966 SC 489 and accordingly has prayed to dismiss this OA.


4. Having considered the aforesaid submissions of the parties we have gone through the decisions [to the extent available] relied on by respective parties. Admittedly, the order of this Tribunal passed in the case of the applicants has been upheld




by the Hon'ble High Court of Orissa. The Tribunal as also the Hon'ble High Court of Orissa, while passing the orders did not order grant of the differential amount although prayed for by the Applicant in the OA filed before this Tribunal. This Tribunal while dismissing the CP filed by the Applicants had also made it clear that direction to grant consequential benefit does not include financial benefit. The said order of this Tribunal has not been challenged by the Applicants before the higher forum. Be that as it may, once the order of this Tribunal has been upheld, this Tribunal lacks jurisdiction to make any injury or give any interpretation other than expressly provided therein. This apart, fact remains that the applicants had not shouldered higher duty and responsibility during currency of the order of reversion. Law is well settled that one cannot claim the salary as a matter of right when he/she had not worked in the post. Equally we find no force in the submissions of the Applicants that merely because others were allowed the back wages they are entitled to the same; especially when others were allowed the back wages by the orders of the Hon'ble High Court. For the above reasons and the reason that the facts of the case relied on by the Applicant are different, the said decision is held to be inapplicable to the present case.

L

Hence, this OA is held to be without any merit and is accordingly dismissed by leaving the parties to bear their own costs.


(A.R. PATNAIK)
Member (Judl.)


(C.R. MOHAPATRA)
Member (Admn.)