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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A.NO.17 OF 2010**

Cuttack this the 17<sup>th</sup> day of April, 2013

M. Punayya ... Applicant

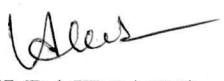
Vs

Union of India & Others ... Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

  
( R.C.MISRA)  
MEMBER (A)

  
(A.K.PATNAIK)  
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.NO.17 OF 2010

Cuttack this the 17<sup>th</sup> day of April, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)  
HON'BLE SHRI R.C.MISRA, MEMBER(A)

M.Punnaya, S/o. late Appalaswami, aged 55 years, at present working as a Sr.Technician (Fitter) in the office of SSE (CNW), E.Co.Railway, Puri

...Applicant

By the Advocates: M/s.N.R.Routray  
S.Mishra

-VERSUS-

Union of India represented through

1. The General Manaer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manage, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda
3. Sr.Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda
4. Sr.D.F.M., East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda
5. Divisional Mechanical Engineer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocates:Mr.M.K.Das

**ORDER**

**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

Applicant in this case is working as Sr.Technician (Fitter) in the East Coast Railways and has come up with a prayer to give direction to the Respondents, i.e., Railway Department, to grant actual financial benefits in the promotion grade, i.e., Grade-II with effect from 19.1.1993 and in Grade



– I with effect from 25.4.2000 as per the orders issued by the East Coast Railways dated 20.10.2003, which is annexed to the O.A. as Annexure-A/4.

2. Facts which have been stated by the applicant in the O.A. are stated in brief as follows.

3. When he was working as Fitter, Gr.III at Bhadrak, a disciplinary proceedings was started against him on 18.8.1989. Earlier, he was placed under suspension on 6.4.1989. As a result of the disciplinary proceedings the punishment of removal from service was imposed on him. Aggrieved with this, he approached this Tribunal challenging the order of punishment in O.A.No.169/90. The Tribunal, after hearing the matter, allowed his Original Application, quashed the order of punishment and directed the Respondents to have de novo proceedings against the applicant and to complete the disciplinary proceedings within three months from the date of order. The Respondents, however, took seven years for completion of the disciplinary proceedings. The applicant again approached this Tribunal in CP. 50/03 praying for implementation of the orders of this Tribunal and this Tribunal disposed of the said Contempt Petition by giving a further direction to the Respondents to complete the proceedings within three months. Thereafter, the proceedings were completed and the applicant received the orders dated 4.11.1998 conveying the decision that the order of suspension was revoked with effect from 22.9.1998 and the applicant was to resume duties with punishment of reduction to a lower grade for a period of one year. The applicant again approached the Tribunal challenging that order in O.A.No.156/99. This Original Application was allowed by the Tribunal and the order of punishment was quashed vide order dated 9.8.2000. The Railway Department filed a Writ Petition before the Hon'ble High



Court of Orissa in O.J.C.No.2926/01 challenging the orders of this Tribunal.

In their order dated 4.10.2001, the Hon'ble High Court dismissed the said Writ Petition and upheld the order passed by the Tribunal. Subsequent to this, the Respondents in their order dated 13/14.2.2002 treated the suspension period of the applicant from 31.3.1989 to 4.11.1998 as on duty and paid him the salaries for this period. This order is annexed as Annexure-A/3 to this O.A. Subsequently, the Respondents brought out another order dated 20.10.2003 (Annexure-A/4 of the O.A.) in which they decided to give the consequential service benefits to the applicant. By this order the applicant was promoted as Technical Gr.II (Fitter) with effect from 19.1.1993 on pro forma basis whereas the actual monetary benefits were paid to him with effect from 19.11.2001, which is the date of his shouldering the higher responsibilities, as per the extant rules. Further, the applicant was promoted as Technician Grade-I (Fitter) with effect from 25.4.2000 on pro forma basis whereas actual monetary benefits were paid from the date of his shouldering the higher responsibilities as per the extant rules. Thereafter, the applicant made a representation to the Respondents praying that the actual financial benefits should be paid to him from the date of granting of the pro forma promotion. Since his representations and appeals to the departmental authorities did not yield any results, he has approached this Tribunal in the present O.A. seeking relief as referred to above.

4. His contention in the O.A. is that the orders of punishment have been quashed by the Tribunal and the Writ Petition made by the Respondents has been rejected by the Hon'ble High Court. The Tribunal granted only three months time to the Respondents to complete the de novo proceedings whereas a long period of seven years was taken by the



Respondents to complete the departmental proceedings. Since deliberate harassment has been caused by the Respondents to the applicant in this process, he should be paid all the back wages on the basis of pro forma promotion in the higher grades as incorporated in the orders of the Respondents annexed as A/4 to this O.A.

5. The Respondents, i.e., the Railway Department have filed their counter affidavit in this case. The contention made by the Respondents is that in O.A.No.156/99, this Tribunal in order dated 8.8.2000 had quashed the punishment of reduction to a lower stage. The Hon'ble High Court of Orissa by their order dated 4.10.2001 upheld the orders of this Tribunal. Thereafter the orders have been implemented and what is incorporated in Annexure-A/4 i.e., order dated 20.10.2003 is the decision of the Respondents by way of implementation of the orders of the Court. However, the most important thing in the counter is that the Respondents have mentioned a fact which has not been mentioned by the applicant in the O.A. This fact is that the applicant subsequent to passing of the order at Annexure-A/4 dated 20.10.2003 had approached this Tribunal in O.A.No.442/04 claiming monetary benefits in the promotional post for the period from 13.2.2002 to 22.8.2003 and differential arrears on account of his promotion. This O.A. was allowed by the Tribunal in their order dated 24.2.2006. This order of the Tribunal was challenged by the Railway Authorities before the Hon'ble High Court of Orissa in W.P.(C) No.14804/06 and this Writ Petition has been dismissed by an order dated 29.7.2009. It is the case of the Respondents in the counter affidavit that the orders of the Tribunal as upheld by the Hon'ble High Court of Orissa were



implemented with the approval of the competent authority in the Railway Department on 24.8.2009 and accordingly, differential arrears on account of promotion for the period from 13.2.2002 to 22.8.2003 have been drawn and paid to the applicant. In the present O.A. the applicant without mentioning about the previous relief granted to him on the same subject has made a prayer for financial benefits in the promotional grade, i.e., Grade-II with effect from 19.1.1993 and Grade-I with effect from 25.4.2000. Therefore, the Respondents have mentioned in the counter that the present Original Application of the applicant has no merit and should be dismissed.

6. We have heard Shri N.R.Routray, learned counsel for the applicant and Shri M.K.Das, learned Panel Counsel for the Railways on this matter. The learned counsel for both the sides have also filed their respective written note of arguments.

7. In the written note of arguments filed by the applicant, it has been admitted that the applicant had filed O.A.No.442/04 praying for a specific relief to release financial benefits for the period from 13.2.2002 to 22.8.2003. However, he says that that has no nexus with Annexure-A/4 to the present O.A. He, therefore, has mentioned that the decision in the O.A.442/04 will not prevent him from making this fresh Original Application for payment of actual financial benefits with effect from the date on which pro forma promotions in the higher grades have been given. It is important to note that in the O.A. the applicant has not mentioned about his filing of O.A.No.442/04, but has admitted this fact in course of hearing and mentioned this fact in the written note of argument.



8. Based on the written note of arguments filed on behalf of the Respondents, learned counsel for the Respondents has urged that the applicant has suppressed his filing of O.A.No.442/04 deliberately with an attempt to get undue relief from the Tribunal. He has also alleged that the prayer in the present O.A. and the prayer in the O.A.No.442/04 are the same. Therefore, the principle of res judi cata would apply since similar prayer was made in the earlier O.A. which has already been decided. The applicant should not be allowed to raise this claim further in the Tribunal. Another point that he has argued is that this Original Application is barred by limitation. Annexure-A/4 on the basis of which the applicant is making the claim was issued on 20.10.2003 and the present O.A. has been filed on 13.10.1010, i.e., after a long lapse of seven years, without explaining the delay in approaching the Tribunal.

9. A very important point which has been mentioned in the note of argument by the learned counsel for the Respondents is that O.A.No.442/2004 was filed by the applicant in June, 2004 which was after the orders dated 20.10.2003 of the Railway Authorities issued by way of implementation of the orders of the Court. This order was annexed as Annexure-A/5 to the O.A. 442/04 and the same order is annexed as Annexure-A/4 to the present O.A. This clearly establishes that the order dated 20.10.2003 of the Railway Authorities was the subject matter of challenge and decision in O.A.No.442/04. In O.A.No.442/04, his prayer was for allowing him financial benefits for the period from 13.2.2002 to 22.8.2003 arising out of promotion. The learned counsel for the Respondents, therefore, has strongly pleaded that the present O.A. is hit by



the principles of res judi cata as well as limitation and the applicant has also suppressed the relevant fact of filing O.A.No.442/04 from the Tribunal which is highly inappropriate.

10. The learned counsel for both sides have cited two important case laws in support of their respective contentions. The learned counsel for the applicant has cited the judgment of the Hon'ble Apex Court passed in the case of **State of Kerala & Ors. vs. E.K.Bhaskaran Pillai reported in 2007(2) SCC(L&S) 487** in which the Hon'ble Supreme Court has decided that in so far as the situation with regard to monetary benefits with retrospective promotion is concerned that depends upon case to case. There are various facets which have to be considered. It has also been decided that the principle of No Work No Pay cannot be accepted as a rule of thumb. There are exceptions where Courts have granted monetary benefits also.

11. Learned counsel for the Respondent-Railways has cited the judgment of the Hon'ble Apex Court in **Virendra Kumar G.M. Northern Railways, New Delhi vs. Avinash Chandra Chhada (1990) 3 SCC 472** in which the principle of No Work No Pay has been clearly established. The relevant portion of this judgment is quoted below.

“xx xx xx This Court, in that case held on principle of “no work no pay” that the respondents will not be entitled to the higher salary as they have not actually worked in that post. The clause, which has been directed to be deleted by the Tribunal being in consonance with the ruling of this Court, we are of the opinion that the Tribunal was not right in directing the deletion of that clause. Accordingly, to that extent this appeal is allowed. Xx xx xx”

12. The learned counsel for the applicant has, on the basis of case laws that he has given, submitted that here is a case where the actual financial benefits of pro forma promotion should be paid because the applicant was denied his promotional opportunities on account of the fact that the Department took an unusually long time to take a decision on the pending departmental proceedings. On the other hand, the learned counsel for the Respondents has submitted that the judgment of the Hon'ble Apex Court in the case of **State of Kerala & Ors. vs. E.K.Bhaskaran Pillai** (supra) is not applicable to the present case. In that case promotion was not given wrongly, but in the present case, because of the departmental proceedings and punishment imposed, the applicant had not been promoted. So, it cannot be said that the present applicant had not been given promotion wrongly or due to an administrative error. It is the strong plea of the learned counsel for the Respondents that the facts being different the applicant cannot claim relief from the Tribunal citing the decision of the Hon'ble Apex Court in the case of **State of Kerala & Ors. vs. E.K.Bhaskaran Pillai**.

13. We have considered the submissions made by the learned counsel for both the sides and perused the materials on record and gone through the case laws cited. It is quite evident that in the O.A. the applicant has not mentioned about his filing earlier O.A.No.442/04 before this Tribunal in which he had made a specific claim for financial benefits in respect of a particular period and to that extent he withheld that material information from the Tribunal at the time of filing this Original Application. Subsequently, however, in course of arguments, the learned counsel for the applicant admitted that he had filed O.A.No.442/04 which, as already



discussed, is subsequent to the order of the Railway Authorities which has been filed as Annexure-A/4 to the present O.A. In this connection, it will be appropriate to quote hereunder the relevant portion of the order passed by this Tribunal in O.A.No.442/04.

“In the above view of the matter, there is no escape from the conclusion that the Applicant was illegally denied the benefits (including salary) in the promotional post. He is, therefore, entitled to the differential arrear salary in the promotional post for the period from 13-02-2002 to 22-08-2003; which should be calculated and paid to the Applicant within a period of three months from the date of receipt of a copy of this order.”

14. After the order of this Tribunal, the Railway Authorities challenged the same before the Hon’ble High Court in W.P(C).No. 14804 of 2006. The Hon’ble High Court of Orissa has upheld the findings of this Tribunal in their order dated 29.07.2009. Subsequently, the respondents, i.e. the Railway authorities have implemented the orders and paid the dues as directed to the applicant. Therefore, there is nothing further to be adjudicated about the claim of the applicant. We, therefore, consider that the present Original Applicant made by the applicant is misconceived and he cannot claim further relief before this Tribunal since on his specific prayer made in the earlier O.A. No.442/04 his claim has been adjudicated and decided by this Tribunal, and also subsequently upheld by the Judgment of the Hon’ble High Court of Orissa.

In the result, the O.A. being devoid of merit is dismissed.

No costs.

  
(R.C.MISRA)  
MEMBER(A)

BKS

  
(A.K.PATNAIK)  
MEMBER(J)