

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A. 10/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. M.P. Singh, Administrative Member

Rasaraj Karmakar, son of Late Kanailal Karmakar, residing at P.O. & Vill: Chowkibera, P.S. Jhalda, District - Purulia. Employed as Pipe-line Fitter in the Office of District Project Manager(Construction), S.E.Railway, Bokaro Steel City, Distt. Bokaro.

... Applicant

-Versus-

1. Union of India service through the General Manager, South Eastern Railway, Garden Reach, Calcutta - 700 043.
2. Chief Project Manager(Construction/Chief Engineer(Construction), South Eastern Railway, Garden Reach, Calcutta - 700 043.
3. Senior Project Manager (Construction)/Deputy Chief Engineer(Construction) at Bokaro, South Eastern Railway, Adra, Distt. Purulia.
4. District Project Manager(Construction)/District Engineer(Construction), South Eastern Railway, Bokaro Steel City, Distt. Bokaro.
5. Senior Personnel Officer(Construction), South Eastern Railway, Garden Reach, Calcutta - 700 043.

... Respondents

For the applicant(s) : Mr. B.R. Das, counsel

For the respondents : Mr. P. Chatterjee, counsel

Heard on: 15.1.2001

Order on: 15.1.2001

ORDER

D. Purkayastha, J.M.:-

The applicant Rasaraj Karmakar has sought the following declarations before this Tribunal:-

* i) Declare the petitioner as a substitute as against a Permanent Construction Reserve post with effect from 1.4.1973 in regular pay scales that is Rs.196/- ... Rs.232/- (RS) and in the grade of pay of Rs.260/- ... Rs.400/- (RS) with effect from 1.2.1978 that is Rs.950/- ... Rs.1500/- (RP) with all allowances and/or consequential benefits including arrears in differences of pay and allowances till 11.9.1978.

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ii) Declare the petitioner as under suspension with effect from 12.9.1978(A/N) till 26.7.87 entitling him for all the subsistence and other allowances in accordance with the Rules and pay all the arrears thereof forthwith on the basis of his pay at Rs.260/- in the scale of Rs.260/- ... Rs.400/-(RS) or Rs.950/- in the scale of pay of Rs.950/- ... Rs.1500/-(RP).

iii) Declare the petitioner as a Permanent Pipe-line Fitter as against a permanent construction reserve post in Group 'C'(Technical) cadre in the pay scale of Rs.950/- ... Rs.1500/-(RP) immediately after he is reinstated and appointed with effect from 27.7.1987 as a temporary Pipe-line Fitter as per order being Annexure 'E', as against a Permanent Construction Reserve post carrying the same scale of pay."

2. According to the applicant, he entered in the Department as Casual Labour in the year 1968 at Dhanbad under South Eastern Railway and continued in that capacity without any break till 12.9.1978. While he was working as Pipe-line Fitter under the control of respondent No.4, a criminal case U/s. 3(a) of the Railway Properties (Unlawful Possession) Act, 1966 was initiated against him and he was arrested by the R.P. F. on 12.9.1978. In that criminal proceedings applicant was found guilty by the Trial Court and ultimately on an appeal filed by the applicant before the Hon'ble High Court against the order of conviction passed by the Lower Criminal Court, applicant was acquitted. After having been acquitted from the criminal case by the Hon'ble High Court he made representation to the Authorities for reinstatement; but respondents did not act on the said representation. Thereafter, he filed an application before this Tribunal bearing No.O.A. 18 of 1989 alleging that in the matter of reinstatement respondents acted with a discrimination by denying the reinstatement of the applicant though another accused person has been reinstated by them and he sought for a direction to the respondents to treat the period from 13.9.1988 till he is allowed to resume duties as period spent on duty for all purposes including payment of wages and to quash Annexure 'A' i.e. the order refusing reinstatement on the ground of non-availability of vacancy. According to the applicant, he was reinstated with effect from 27.7.1987. Now, the applicant claims the aforesaid

reliefs on the basis of the reinstatement since the said benefit was not granted to the applicant by the Tribunal by its earlier judgement dated 27.8.1991.

3. Respondents filed reply to the O.A. denying the claim of the applicant. Respondents made various statements in the written reply stating inter alia that the applicant was not in service on 1.1.1981 as he was reinstated w.e.f. 27.7.1987 and he was not in service from 13.9.1978 to 26.7.1987. Respondents also raised other points regarding absorption of the applicant as PCR Artisan in the Department and they denied the claim of the applicant in this regard since he is not entitled to get this under the rules. So, application is devoid of merit and liable to be dismissed.

4. Mr. B.R. Das, 1d. counsel appearing on behalf of the applicant strongly argued that the applicant is entitled to get all the service benefits w.e.f. 12.9.1978 till the date he was reinstated since he was reinstated on the basis of the direction given by the Tribunal on acquittal from the criminal case and that benefit cannot be denied to the applicant. So, applicant is entitled to get all consequential benefits from 12.9.1978 till the date he was reinstated.

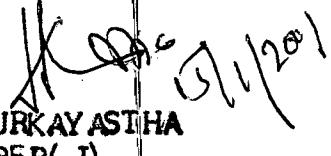
5. On the other hand, Mr. P. Chatterjee, 1d. counsel appearing on behalf of the respondents contended that the applicant was a casual labour and he was not regularised in the Group 'D' Post since he was not paid any salary during the period from 12.9.1978 till the date he was reinstated. So, applicant is not entitled to get any relief as claimed in this application. Mr. Chatterjee further contended that since the applicant was not in service from 12.9.78 till 26.7.1987; therefore the question of giving subsistence allowance to the applicant does not arise. So, application is devoid of merit and liable to be dismissed.

6. We have considered the submissions of 1d. counsel of both the parties and we have gone through the records available with us.

We have gone through the Order passed by this Tribunal earlier on 27.8.1991 in O.A.No. 18 of 1989 filed by the applicant himself. Now, the applicant has come before this Tribunal with the claims and benefits which were not granted by the Tribunal earlier. The applicant has sought the relief of getting all service benefits with effect from 12.9.1978 till he was reinstated on 27.7.1987 on the ground that he has been reinstated on the basis of the order of acquittal. We have perused the judgement of the Tribunal dated 27.8.1991 and we find that the applicant was a Casual Labour in the year 1978 and he was not regularised and he remained absent from duty without intimation to the Authorities from 13.9.1978 and that fact is found admitted by the applicant in Para 7 of the earlier judgement. Admittedly, the applicant did not dispute this fact. Since the applicant was a casual labour and did not get any temporary status before 13.9.1978 from which date he was found absent from duties without intimation to the Authorities; therefore, he cannot claim to be in service from 13.9.1978 to 26.7.1987 and that has been decided by the Tribunal and adjudicated upon.

7. In view of what is stated above and since the matter has already been decided by the Tribunal; therefore, the applicant cannot reagitate the matter by filing this present application seeking the reliefs as claimed this application on the basis of the reinstatement and we are of the considered view that this application is hit by the principle of res judicata and applicant is not entitled to get any relief as sought in the application in view of the earlier judgement dated 27.8.1991 (Annexure 'R-1' to the reply). With this observation, we dismiss this application awarding no costs.


M.P. SINGH
MEMBER(A)


D.PURKAYASTHA
MEMBER (J)