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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENCH AT
JODHPUR.

Date of Order: 23/8/95.

O.A.No.201/95.

Govinda

...Applicant.

Versus.

Union of India & Others.

...Respondents.

Mr. Mahesh Kumar, Brief holder for

Mr. Bharat Singh, Counsel for the applicant.

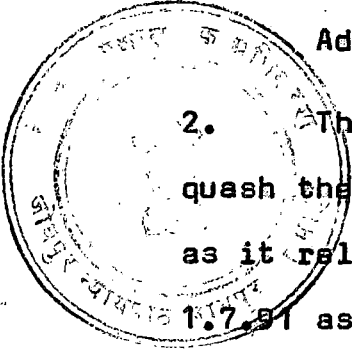
Mr. R.K.Soni, Counsel for the respondents.

CORAM:

Hon'ble Ms Usha Sen, Administrative Member.

BY THE COURT:

Admit.



2. The prayer of the applicant in this O.A. is to quash the order dated 9.11.92 at Annexure A/1 in so far as it relates to & regulates the period from 26.9.87 to 1.7.91 as leave without pay and treat this period or in the alternative the period from 6.1.88 to 1.7.91 as on duty entitling him to full back wages for the post of Pointsman 'A' with all consequential benefits.

3. The applicant was appointed as Gangman on 10.2.1955. He was promoted as Pointsman 'B' and then Pointsmen 'A' and confirmed in the ^{latter} ~~later~~ post. With effect from 1.1.86 his pay as Pointsman 'A' was fixed in the revised pay scale of Rs. 950-1500. He was compulsorily retired from Railway service w.e.f. 30.12.86 by the Office Order of 3.12.86. On appeal by the applicant the General Manager

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modified the order of compulsory retirement by stating that he may be used as a Pointsman in the lower Class-IV grade. The order to this effect was passed by him on 6.1.1988. The applicant filed an O.A. in this bench which was registered as No.417/88. This O.A. was decided on 25.4.1991 in which the respondents were directed to take him back on duty without insisting on refund of the retirement benefits drawn by him prior to his re-joining duty. It was also directed that " the period between retirement and the order of the General Manager re-instating him will be treated as leave of the kind due or as leave without pay if no leave is due. The applicant would be free to make a representation for the wages for the period between the date of order of re-instatement and the date on which he is allowed to resume duty after re-joining the duty." The applicant was ordered to be taken back on duty vide an order dated 1.7.1991 and ^{he} resumed duties on 22.7.1991. In purported compliance of the said judgement of 25.4.91 the Assistant Personnel Officer in the office of the D.R.M., Bikaner, issued a letter dated 9.11.1992 (Annexure A/1) by which the period between 30.12.86 to 25.9.87 was regularised as Half Average Pay (HAP) and between 26.9.87 to 1.7.91 as leave without pay. The applicant is aggrieved by this letter in so far as he claims that in terms of the judgment dated 25.4.91 ibid only the period upto the order of the General Manager re-instating him in service was to be regularised by grant of leave as due or leave without

pay if no leave was due; whereas the respondents have regularised even the period intervening between the order of the General Manager and the order permitting him to rejoin duty viz. 6.1.88 and 1.7.91 as leave without pay ~~which~~ and stated that this is in compliance of the judgment of 25.4.1991 *ibid*.

4. The respondents have not filed any reply so far although notices were issued vide the order of 24.5.95 of this Bench. ^A further ~~we~~ four weeks' time was allowed for filing a reply by the order of 5.7.95. The request of the counsel on 17.8.95 for adjournment of the case and giving further time to file a reply was not acceded to. However, during the course of hearing he stated that there would be no objection if a suitable direction is given to the respondents to comply with the orders of this bench dated 25.4.91 in O.A. No.417/88 *supra* by giving it the correct interpretation.

5. Now, the relevant operative portion of the judgment of 25.4.91 has already been reproduced hereinabove ~~in~~ in inverted commas. A copy of this judgment is also annexed as Annexure A/4. The judgment leaves no scope for ambiguity in its operative portion in the last para. It very clearly states that it is only the period intervening between 30.12.86 and 6.1.88, i.e. between his retirement and "the order" (emphasis added) of the General Manager re-instating him which was to be regularised by grant of leave as due or leave without pay if no leave was due. The judgment further

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thereof

clearly states in para 6/that "so far as the question of wages for the period after the order (emphasis added) of reinstatement by the General Manager till the date on which the applicant is allowed to resume duty is concerned, it will be appropriate if the applicant makes a suitable representation to the competent authority after re-joining the duty so that the matter can be decided by it after considering all relevant facts". Hence by no stretch of imagination can this judgment be interpreted to mean that even the period intervening between 6.1.88, the date of the order of the General Manager reinstating the applicant, and 1.7.91, the date of the order of the respondents permitting him to resume duty was ordered by this bench to be regularised by grant of leave as due or leave without pay if no leave was due. The respondents have clearly erred in so interpreting the judgment and regularising even the period between 6.1.88 and 1.7.91 by grant of leave vide their impugned order of 9.11.92 and ^{by} further stating in this order that such regularisation was being done in compliance of the said judgment of 25.4.91.

6. In the light of the discussion of the case the respondents are hereby directed to modify the impugned order of 9.11.92 (Annexure A/1) by excluding the period between 6.1.88 and 1.7.91 from the period which has been regularised as leave without pay. As regards this period they have already been directed by this Bench vide the judgment of 25.4.91 supra to decide the question of

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payment of wages "after considering all relevant facts" (emphasis added). The respondents shall, therefore, pass a separate order with regard to payment of wages for this period after considering all relevant facts including the applicant's contention that he was unjustly prevented from resuming duty after the order of the General Manager and upto the order of 1.7.91 *ibid*. Their decision in this regard shall be taken after giving due consideration to the points that the applicant might have raised in his representations stated to have been submitted by him. The decision shall be communicated to the applicant within three months from the date of receipt of this order by a speaking order containing clear reasons for the decision arrived at. With the directions given in this para the O.A. is disposed of with no order as to costs.

Under Sec
(USHA SEN)
Member (Adm.)