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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Date of order : 09.03.1998.

O.A.NO. 24/1996.

Fatu Khan S/o Shri Alim Khan, aged about 63 years, R/o Kanasar Road, Gali No. 2, I/F of Hussain Khan Chakhi, Rampura Basti, Lalgarh, Bikaner, last employed on the post of Shunting Master Grade-II, in the office of S.S. Bikaner.

..... Applicant.

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, Bikaner Division,
Bikaner.
3. Sh. Ashu Ram (Ex. Shunting Master Grade-I),
Mohalla Hanuman Hatha, Behind Siwaji Mandir,
Bikaner.

..... Respondents.

Present :

Shri J.K. Kaushik, Advocate, for the Applicant.
Shri Anil Mehta, Advocate, for Respondents No. 1 and 2.
None present for the Respondent No. 3.

GRAM :

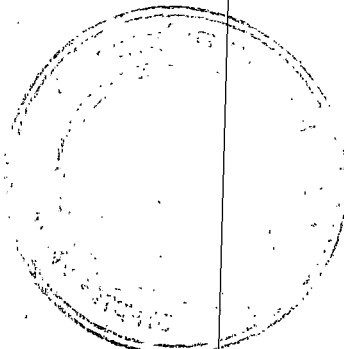
HONOURABLE MR. A.K. MISRA, JUDICIAL MEMBER
HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HONOURABLE MR. A.K.MISRA :

The applicant has filed this O.A. with the prayer that the respondents be directed to consider the case of the applicant for promotion to the post of Shunting Master Grade-I with notional fixation of pay and revision of pensionary benefits accordingly with all consequential benefits. The applicant has further prayed that the respondents be directed to allow the applicant to commute the pension as per rules and pay to the applicant salary for the period 16.2.1981 to 1.8.1981 alongwith the interest at market rate. He has also prayed for awarding of interest on delayed payment by the respondents.



2. Notice of this O.A. was given to the respondents. The official respondents have filed their reply whereas the private respondent Shri Ashu Ram has not filed any reply inspite of service of notice. The official respondents have stated in their reply that as per the direction of the Tribunal the pay of the applicant was fixed notionally and he was paid retiral benefits accordingly. Interest on delayed payment was also made to the applicant as per Calculation Sheet (Annex.R/1) and subsequently on discovery of mistake of calculation of interest, further payment was made towards interest to the applicant. The respondents have also stated in their reply that the commutation of pension was sanctioned to the applicant vide order dated 9th April, 1997 (Annex.R/3). The respondents have disputed the claim of the applicant in respect of his promotion to the next higher grade on

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the ground that the applicant was not in service at the crucial time.

3. We have heard the learned counsel for the parties and gone through the record.

4. From the facts as pleaded in the application, it appears that the applicant while he was Shunting Master Grade-II had participated in a strike and in consequent thereto the applicant was removed from service vide an order dated 16.2.1981 with immediate effect. The applicant challenged the order by filing a Writ before the Hon'ble High Court who was pleased to stay the operation of removal order and directed the Railway authorities to pay to the applicant salary at the rate of last drawn. Thereafter, the Writ Petition of the applicant was transferred to this Tribunal. The Writ Petition/Transferred Application of the applicant was decided by the Tribunal on 4.9.1992. By its order, the Tribunal quashed the dismissal/removal order of the applicant and directed the respondents to pay pensionary benefits to the applicant within a period of three months with further direction that if the payment is not made within the stipulated period interest at the rate of 12% would be payable thereafter on the arrears. It was also directed by the Tribunal that the applicant shall not be entitled to salary for the period of his removal till superannuation apart from the amount which has been paid or was payable to him according to the interim order of the Hon'ble High Court. This is an admitted position that applicant had superannuated in the meantime on 30th April, 1990. It is alleged by the applicant that while he was

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fighting for his rights in the Court one Shri Ashu Ram, respondent NO. 3, who was junior to the applicant, was promoted to the higher grade of Shunting Master Grade-I in the scale of Rs. 1400-2300 w.e.f. 1.1.1987. The applicant has claimed that since his removal order was stayed he was also eligible for being considered for the promotional post. Since he was not considered, therefore, he is entitled to promotion from the date his junior has been promoted. Therefore, he has claimed the benefit of promotion and consequent pay fixation accordingly and enhanced pensionary benefits as described above.

5. We have considered the rival arguments of the parties. The respondents order dated 16.2.1981 removing the applicant was stayed by the Hon'ble High Court and as per the direction of Hon'ble the High Court, the respondents continued to pay the applicant salary at the rate last drawn, but he was not taken on duty. There is no dispute in this respect between the parties. The post of Shunting Master Grade-I in the scale of Rs. 1400-2300 is a selection post and there is no dispute in this respect also. Only question which remains to be adjudicated upon is, whether the applicant can claim to be promoted on the post in question long after he had retired from the service. In our opinion, the applicant is not entitled to the promotion on the higher post which is a selection post; and promotion on that post is made as per the selection process, on the ground that applicant's junior who was in active service was promoted on that post. This conclusion is drawn

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on this ground that even if the applicant had participated in the selection process he could not say with certainty that he would have been successful. In our opinion, there were chances both way. Thus, the applicant cannot claim to be promoted on the higher post.

6. The respondents have produced before us the Circular dated 24.1.1996/1.2.1996 (Annex.R/2), issued by the General Manager, Northern Railway, in which it has been clearly stated that if Railway employees have been removed from service on account of Trade Union activities, their length of service in the Grade in which they were working at the time of removal is to be taken into account for purpose of seniority and the intervening period between their removal to their reinstatement excluded. Thereby, the service put in by them in the relevant grade minus the period they were out of service on account of removal/dismissal has to be taken into account for reckoning and interpolating their names in the seniority list. Thus, as per this Circular the applicant has lost seniority from the date of his removal since the applicant has not been reinstated in service by the respondents. Therefore, he cannot claim to be senior to Shri Ashu Ram. Even otherwise, as described above the applicant cannot say with certainty that on facing the selection process he would have come-out as a successful candidate. Therefore, in our opinion, the applicant is not entitled to get promotion on the next higher grade of Shunting Master Grade-I as claimed by him. Arguments of learned counsel for the applicant in this respect are rejected.

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7. The Tribunal while disposing of the earlier O.A. of the applicant on 4.9.1992 had not directed the respondent authorities to consider the case of the applicant for promotion. Even payment of salary was also restricted to only what was paid to him or was payable to him as per the orders of the Hon'ble High Court. Consequential benefit of promotion to the higher post could be said to have been refused. Therefore, in our opinion, the applicant cannot now come round and say that he should be notionally promoted on the higher post from the date his junior was promoted, his pay on the promotional post should be fixed accordingly, and his pensionary benefits be revised in terms of actual benefits. In our opinion, as per the discussions made above, the applicant is not entitled ^{to} ~~for~~ the benefit of notional promotion. The prayer in this respect is liable to be rejected.

8. The applicant had sought direction to the respondents for allowing him commutation of his pension. The respondents vide their order dated 9.4.1997 (Annex.R/3) have sanctioned commutation of 1/3rd pension and consequent benefit of commutation of pension. Therefore, no further directions in this respect are required to be given. Before the order Annex. R/3 was passed, the applicant was drawing full pension as per the P.P.O. (Annex.A/2). Therefore, the prayer relating to interest on commuted part of pension and delayed payment thereof, is in our view not maintainable.

9. The applicant has claimed pay relating to the period starting from 16.2.1981 to 1.8.1981 in this O.A.

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But in our view the claim relating to the pay for this period is quite belated. The claim relating to salary should have been agitated by the applicant in the previous O.A. because during this period his previous O.A. was pending at the first stage in the shape of a Writ before the Hon'ble High Court and subsequently as Transferred Application before this Tribunal. The applicant has not pressed his claim in respect of pay for the said period at the appropriate time, therefore, he cannot be allowed to claim the same after almost a lapse of fifteen years. Therefore, the prayer in respect of this too, is liable to be rejected.

10. The applicant was paid interest on the delayed payment of pension as per the Calculation Sheet (Annex. R/1) and was subsequently paid second instalment of interest as per the reply of the respondents. The applicant has not challenged the correctness of the amount of interest paid to him. Neither, he has put on record any calculation showing that more amount of interest was due to him than actually paid to him by the respondents. Therefore, the applicant is not entitled to claim additional interest as prayed by him.

11. From the foregoing discussion, we come to the conclusion that the Original Application of the applicant has no merits and the same deserves to be dismissed.

12. The Original Application is, therefore, dismissed with no order as to costs

Gopal Singh
 (GOPAL SINGH)
 Administrative Member

A.K. Misra
 (A.K.MISRA)
 Judicial Member

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Recd

Mcarr

AD

11/3/98

Copy of order
sent to Phil Mehta


by Regd AD

vide No. 115

dt 10-3-98

re
18/3/98

Part II and III destroyed
in my presence on ... 6-4-2004,
under the supervision of
section officer () as per
order dated ... 22/1/2003


Section officer (Record)

AD filed
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