

Date of order : 9.11.1998.

O.A.NO. 176/1996

Nachiketa S/o Bhanwar Lal Age 43 years, Working as ESM Khallasi under Signal Inspector, Degana R/o Keshav Kunj, Plot No. 11/231, Maderna Colony, Jodhpur.

..... APPLICANT.

VERSUS

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Assistant Personnel Officer, Northern Railway, Jodhpur.
5. Divisional Signal and Telecommunication Engineer, Northern Railway, Jodhpur.

..... RESPONDENTS.

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

Mr. Y.K. Sharma, for the applicant.

Mr. S.S. Vyas, for the respondents.

ORDER

PER MR. A.K.MISRA :

The applicant has filed this O.A. in which he has prayed for the relief as follows :-

"That this hon'ble Tribunal may graciously be pleased to direct the respondents to implement the directions given in RA No. 33 of 1992 by which the past services of the applicant rendered as Khallasi is counted "for all purposes". Accordingly, the respondents may be directed to refix the pay of the applicant from the date on which he was removed from the service - first in grade Rs. 196-232(RS) and then in grade Rs. 750-940 by giving increments, promotion, etc. etc. including three sets of previlage passes."

In this case, almost all the facts are admitted and the only question which is involved is whether "for all purposes" incorporated in order rendered by the Bench would mean proforma fixation of pay, consequent promotion and other service benefits. For appreciation of the present controversy in question, facts are required to be narrated in brief which are as follows :-

2. The applicant was removed from service by the respondents. The order of removal was challenged by the applicant in the High Court of Judicature for Rajasthan at Jodhpur, by filing a Writ Petition. The Writ Petition was eventually transferred to this Bench of the Central Administrative Tribunal and was registered at T.A.No. 46/1986. After hearing the parties, the T.A. was disposed of with the following observation :

"In the circumstances of the case, we are of the opinion that it will meet the ends of justice if applicant is issued a fresh appointment letter as substitute gangman/khalasi within six weeks of the receipt of the copy of this order. He will not be entitled to any back wages, but his services rendered prior to removal from service will be counted for the purposes of continuity and pensionary benefits. The applicant shall report to the Divisional Personnel Officer, Northern Railway, Jodhpur with a copy of this order within four weeks. The T.A. stands disposed of with the above directions. Parties to bear their own costs."

3. The applicant moved a Review Petition against the above said order which was registered as RP No. 33/1992 with a prayer that the applicant may be awarded back wages during the period of removal and the word "gangman" be removed from the operating portion of the order. The applicant be directed to be reinstated as Khalasi. This Review Petition was disposed of on 9.2.1993 with the following observation:-

"Mr.D.M.Lodha, Counsel for the respondents submits that previous service rendered by the petitioner should be treated as that of Khalasi for all the purposes. Mr. R.K.Soni, counsel for the petitioner having no objection, the position as submitted by the counsel for respondents is accepted. Following may be added at the end of para 3 of the order dated 23rd July, 1992 'The service rendered by the petitioner prior to removal shall be treated as that of Khalasi for all purposes.'"

*[Handwritten signature]*

4. It is alleged by the applicant that after the decision of the Review Petition the applicant moved a representation before the authorities for payment of arrears and re-fixation of his pay. The representation of the applicant was not decided by the authorities. The applicant moved another O.A. for implementation of the earlier orders passed by the Tribunal in the T.A. and the R.P. which was registered as O.A.No. 195/1994. This O.A. was disposed of by the Bench of the Tribunal on 16.8.1994 with the following observation:

"We, therefore, disposed of this O.A. by giving a direction to the respondents that they shall dispose of the above representation dated 3.9.1993 (Annexure A/3) within a period of 4 months of the date of this order and the intimation to this effect shall be given to the applicant."

5. It is further alleged by the applicant that when the direction of the Tribunal given in OA No. 195/1994 was not complied with within the stipulated time, the applicant was obliged to move a Contempt Petition which was registered at 34/1995. In this C.P. the respondents filed a copy of order dated 28.11.1994 (Annex.A/1) indicating that the representation of the applicant was disposed of within the stipulated time. In view of the defence taken by the contemnors, the C.P. moved by the applicant was disposed of by the Tribunal with the observation that no case of contempt is made out against the respondents.

6. All the aforesaid facts are almost admitted by the respondents.

7. We have heard the learned counsels for the parties and perused the record.

8. It was argued by the learned counsel for the applicant that the words "for all purposes", in the order mean that the applicant is entitled to regular grade increments, promotion and other

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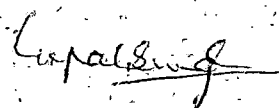
service benefits pertaining to the period of removal but the respondents have not granted the benefits as claimed by the applicant. The order passed by the respondents in favour of the applicant by fixing his pay at the minimum stage of the pay scale is patently wrong and deserves to be interfered with. On the other hand, it was argued by the learned counsel for the respondents that the applicant was directed to be given a fresh appointment on the post of Gangman/Khalasi and the period of his past services rendered by the applicant was required to be taken into consideration for pensionary benefits. This has been done by the respondents while passing the order Annex.A./1. There is no illegality in the said order. The O.A. deserves to be dismissed.


9. We have considered the rival arguments and come to the conclusion that there is no infirmity in the order dated 28.11.1994 (Annex.A/1) passed by the respondents. In the order dated 23.7.1992, the respondents were directed to give fresh appointment to the applicant as a substitute Gangman/Khalasi. It was further ordered that the applicant would not be entitled to any back wages but his services rendered prior to removal from service will be counted for the purpose of continuity and pensionary benefits. This order was not disturbed while accepting the R.P. moved by the applicant. The Tribunal has very clearly observed in the order dated 9.2.1993 that there is no error apparent on the face of record which may justify re-opening the matter and deleting the sentence that "he will not be entitled to any back wages". From this observation it is clear that applicant is not entitled to any back wages. In fact the applicant was given a fresh appointment under the direction of the Tribunal and, therefore, neither his earlier pay was required to be protected nor any increments were required to be incorporated in the pay fixation

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order relating to the period of removal of the applicant. Had the Tribunal intended that all benefits should be given to the applicant then instead of directing the respondents to give to the applicant fresh appointment on the post of Gangman/Khalasi, the Tribunal could have directed the respondents to re-instate the applicant with full back wages <sup>and</sup> with all consequential benefits but the Tribunal has not done so. The relief which was not specifically granted can be interpreted to have been refused to the applicant. When the applicant was not reinstated on his past post, when the applicant was not allowed the benefit of back wages and when the applicant was directed to be appointed afresh on the post of Khalasi we do not see that the observation in the order "for all purposes" would mean consequent pay fixation and promotion as claimed by the applicant. During the course of arguments, we had specifically asked the learned counsel for the applicant that for which service benefits he would interpret the word "for all purposes", but the learned counsel for applicant could not explain about the benefits which the applicant claims under Clause "for all purposes". The length of past services has been ordered to be taken into consideration for pensionary benefits that means the period of earlier service would be added to the subsequent period of service rendered on fresh appointment. In a matter of fresh appointment, the pay of the applicant was required to be fixed at the minimum of the scale which has been done in the instant case. It was not a case of re-instatement of the applicant on the previous post and thus, the question of re-calculation of pay does not arise at all. Therefore, no direction can be issued to the respondents as prayed by the applicant. The O.A. in our opinion bears no merits and deserves to be dismissed.

10. The O.A. is, therefore, dismissed with no orders as to cost.

  
(GOPAL SINGH)  
Adm. Member

  
(A.K. MISRA)  
Judl. Member

3/1/89  
2/1/90  
17/10/90

Recd  
25  
15/11

Part II and III destroyed  
in my presence on 2-5-4-206  
under the supervision of  
section officer (1) as per  
order dated 20/12/2006

Section officer (Record)