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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.25/2005
alongwith
M.A.No. 50/2010 & M.A. No..../2010 (Diary No.401/2010)

Date of Order : 30.11.2011

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

S.B. Chatterji S/o Shri L.N.Chatterji, Signal Inspector Tech. (Retired), N. Railway, D.R.M. Office, Jodhpur, R/o Plot No. 2, Man Mahal Colony, Air Force Road, Jodhpur.

.....Applicant.

By Mr. O.P.Mehta, Advocate.

Versus

1. The Union of India through the General Manager, Northern Western Railway, N.B.C. Road, Jamalpura, Jaipur.
2. Chief Signal and Telecommunication Engineer, North-Western Railway, N.B.C. Road, Jamalpura, Jaipur.
3. Divisional Railway Manager, North-Western Railway, Jodhpur.
4. Senior Divisional Personnel Officer, North-Western Railway, Divisional Railway Manager's Office, Jodhpur.
5. The Divisional Signal and Telecommunication Engineer, North-Western Railway, Divisional Railway Manager's Office, Jodhpur C/o DRM/Ju, North-Western Railway, Jodhpur.

..... Respondents

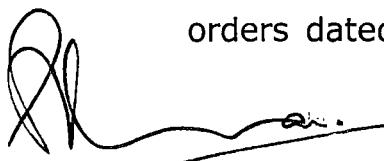
By Mr. Manoj Bhandari, Advocate.

ORDER

[PER SUDHIR KUMAR, ADMINISTRATIVE MEMBER]

The applicant of this case is a retired person now, but was a fiery trade union leader during his service. He has also been a compulsive litigant, and, as we could find-out from the records of the present case, he has filed numerous proceedings earlier before this Bench of the Tribunal.

2. O.A. No. 246/1990 was filed by him for seeking regularization of his period of absence from 20.06.1988 to 09.08.1990 to be treated as duty or LAP or HLAP or leave Extra-ordinary. It is seen that in compliance of the orders dated 04.09.1996 passed in O.A. No. 246/1990, the respondents



examined the case of the applicant on their file, and an internal note-sheet was prepared by the DSTE on 17.04.1997 and submitted to the Divisional Personnel Officer, Jodhpur. The applicant has somehow filed a photo copy of that note-sheet and a typed copy thereof in the present O.A. as Annex.A/3. The respondents have in their reply submitted that this was only an internal noting, which the applicant has obtained apparently unauthorisedly, by mis-using his capacity of being a union leader. They have submitted that further information was sought from the applicant through letter dated 24.06.1997 (Annex.A/5) in which he was asked to establish his claim of being present on duty in the period of March 1989 to 09.08.1990 with un-impeachable evidence so as to decide his case at the earliest.

3- It was only thereafter that the Annex.A/4 was issued as per Divisional Railway Manager's order, passed in compliance of the Tribunal's order, but, in that also, it was held that the applicant was absent from 20.06.1988 to 28.02.1989, but the period from March 1989 to 09.08.1990 was allowed to be treated as LAP, if such leave was due, and if the applicant applies for it. Apparently, the applicant submitted a reply to that through his letter dated 20.06.1997, which he has not brought on record and thereafter a reply dated 31.03.1998 (Annex.A/6) was issued to him from the office of Divisional Railway Manager, stating that since his earlier representation dated 21.02.1997 has already been decided in compliance of this Tribunal's judgment dated 04.09.1996 in OA No. 246/1990, and that since he had been given all opportunities to establish his claim as detailed in his representation, there is nothing further to add beyond the reply sent to him through Annex.A/4 dated 17.09.1997.

4- Thereafter, the applicant approached this Tribunal in O.A. No.256/1998, praying for quashing the order dated 17.09.1997 (Annexure-A/4 of the present O.A.), and praying for enhancement of his

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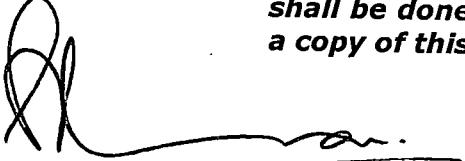
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pension. In between, during the pendency of the OA No.256/1998 itself, in another parallel proceedings, the applicant had approached this Tribunal on 31.10.1995 in O.A. No.20/1996 praying for proforma promotion and seniority as a Signal Inspector. The final order in that case came to be passed on 16.02.1996, imposing the cost of Rs.1000/- on the applicant for vexatious litigation, because the matter had already been agitated by the applicant earlier also in O.A. No.440/1987 before this Tribunal, and he had even gone in S.L.P. before the Supreme Court thereafter, which S.L.P. was not granted. He had thereafter filed a Review Petition before this Tribunal, which was also rejected on 12.07.1990. The applicant had then again gone to the Supreme Court, but again the SLP was not allowed/granted. After rejection of his SLP twice by the Hon'ble Supreme Court, he had ultimately filed a petition before the General Manager, Northern Railway, on 09.09.1993, and that request had been rejected by the order dated 27.10.1994 impugned in that OA No. 20/1996. The fact that the Tribunal had at that time felt that the applicant had been indulging in vexatious litigation, and had imposed a cost of Rs. 1,000/- upon him, has been mentioned by the respondents in their reply in the present O.A..

5- However, the present case has been filed regarding regularization of the period of his absence from duty, since the period from March 1989 to 09.08.1990 had still been left open, when the O.A. No. 256/1998 was allowed on 31.01.2001, and by a common order along with CP 06/1998 in OA No. 246/1990 with MA No. 200/2000 in CP No. 06/1998, it was ordered as follows :

"15. For the above reasons, we pass the order as under :-

"The O.A. No. 256/98, C.P. No. 6/98 and the M.A. No. 200/2000, are hereby dismissed. However, on the basis of the impugned order at Annexure A/4 dated 17.09.97 and Annexure A/9 dated 17.04.97, if the pension of the applicant requires to be modified and revised, the same shall be done within a period of three months from the date of receipt of a copy of this order. No costs."

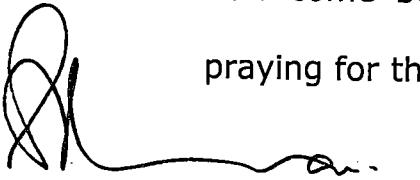


6- The case of the applicant was thereafter considered by the authorities, and they came to the conclusion that no modification / revision in his pension is payable, and an intimation in this regard was issued to the applicant through Annex.A/8 dated 29.03.2001 of the present O.A.

7- The applicant once again came before this Tribunal in OA No. 120/2002, praying for quashing of this order dated 29th March, 2001 (Annex.A/8 of the present OA), which O.A. was decided on 03.12.2003, and orders of the Tribunal were communicated to the applicant through this Tribunal's letter dated 05.01.2004 (Annex.A/9). It is seen from para 7 of that order of the Tribunal that after examining each point, the applicant had himself submitted before the Bench (which had perused the applicant's concerned service records in detail) that his pensionary benefits cannot be revised upwards, and the Bench had then come to the conclusion that it did not find anything wrong on the part of the respondents in implementing the directions given earlier by the Tribunal. The applicant's O.A. No. 120/2002 had, therefore, been dismissed with no order as to costs.

8- The applicant had thereafter also filed another M.A. No. 283/1993 in O.A. No. 246/1990, praying for the respondents being asked to produce the documents as prayed for by him, but since sufficient documents required for the purpose of consideration of O.A No. 120/2002 had been already produced by the authorities, and were perused by the Bench, his M.A. No. 283/1993 in O.A. No. 246/1990 was also rejected.

9- Thereafter, the applicant had filed another petition before the CSTE (M), North Western Railway, Jaipur, through Annex. A/12-A dated 14.10.2004, which also came to be disposed off, and the applicant has now come before this Tribunal once again in the present proceedings, praying for the following reliefs :-



"(A) The order dated 25.7.1997 made by Shri Tarun Prakash, DSTE, Jodhpur and DRM, Jodhpur on the file No. 893 E/P/LC/246/90/226 as conveyed by Senior DPO, Jodhpur through an affidavit before CAT, Jodhpur in OA No. 120/2000.

(B) The period from 20.6.88 to 9.8.90 may be regularized as duty as per Annex. A/3 order dated 17.4.97 and payment of salary with interest @ 18% may be granted with order for revision of pension as the petitioner has retired since 28.2.1991.

(C) In the alternative the period may be treated as leave due from 20.6.88 in the order of L.A.P. H.L.A.P. and leave Extra ordinary in that order and grant payment of higher salary by granting increments. Also interest @ 18% may be granted with effect from 20.6.88 as the matter has been delayed intentionally by the respondents in not granting higher pension despite order by the Hon'ble Tribunal. The judgment dated 4.9.1996 may kindly be operated correctly.

(D) Any other relief which the Hon'ble Tribunal feels appropriate may be granted as per judgment order dated 4.9.1996 and judgment order dated 31.1.2001."

10- It may be mentioned here that the applicant had filed RA No. 05/2005 in OA No. 120/2002, along with MA No. 15/2005, M.A.No.146/2006, M.A.No. 134/2010, and MA No. 114/2011, which cases were also heard together with the present case in great detail, and the entire gamut of the applicant's cases right from 1989 to 2011 was examined. After completing of the hearing, the learned counsel for the applicant had rightly come to a conclusion that it is better for the applicant to withdraw that R.A. The matter was heard in the presence of the applicant himself and he had also assisted his counsel vehemently and significantly. The learned counsel for the respondents had no objection for the R.A. to be withdrawn, and, therefore, during the hearing, the request of the learned counsel for the applicant was accepted, and the RA was allowed to be withdrawn, and was dismissed as withdrawn, and the MA No. 114/2011 was also dismissed as it did not survive. With this, the proceedings in OA No. 120/2002 had attained finality as of the applicant's own volition and submissions, and need not be discussed here once again.

11- Heard both the learned counsels, and the applicant also, in great detail in the present O.A. It is seen that the order of this Tribunal dated

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04.09.1996 in O.A. No. 246/1990 had been implemented by the respondent – authorities through Annex. A/4, in which they had broken-up the periods of absence of the applicant into two portions, one consisting of the period from 20.06.1988 to 28.02.1989, during which the applicant was absent as per office records, specifically the attendance register being maintained by the public officer, the DSTE, Jodhpur, and the second portion from 01.03.1989 to 09.08.1990 was allowed to be treated as LAP, if any such leave was due, and if the applicant applies for it. This order had attained finality once it was up-held in the proceedings in OA No. 256/1998, by order dated 31.01.2001, and further in O.A. No. 120/2002, by order dated 03.12.2003. It, therefore, appears that the prayers at paragraphs 8-'B' and 8-'C' made in this OA, as cited above, are hit by the principles of constructive res judicata, as was submitted/prayed for by the respondents in their pleadings in the present case.

12- In regard to the prayer at paragraph 8 'A' as made above (which is an incomplete sentence), in which the applicant has mentioned about the so called order dated 25.07.1997 made by Shri Tarun Prakash, D.S.T.E., Jodhpur, and also by the Divisional Railway Manager, Jodhpur, it appears that the prayer which the applicant was trying to make refers to the file noting in continuance of the file noting produced by the applicant at Annex.A/3, which the respondents have alleged to have been obtained by the applicant un-authorisedly.

13- In any case a noting on a file is an internal communication from one officer to another, recorded in the process of decision-making, and is not meant to be, and does not get communicated, and is not even required to be communicated to the applicant, and therefore any such file noting cannot give rise to any cause of action for the applicant. Once the authorities concerned have reached at a final conclusion, and they then issue an intimation of the conclusion so arrived at to the person

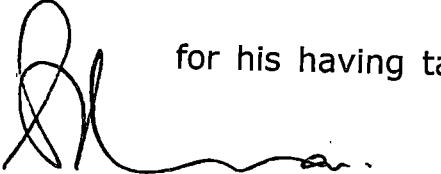


concerned, then only a cause of action can be said to have arisen in favour of that person. Therefore, the cause of action for the applicant to agitate matters had arisen only subsequently, by the issuance of Annex A/4 dated 17.09.1997, which was a letter specifically addressed to him, containing the details of the final decision of the authorities concerned, taken in implementation of this Tribunal's order dated 04.09.1996 in O.A.No. 246/1990.

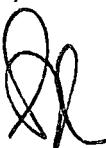
14- Any internal noting or notings made on the file, before the decision to issue the communication to the applicant regarding the final decision of the respondents was arrived at, can never be stated, or claimed to have given rise to any cause of action for the applicant. Therefore, the (incomplete sentence) prayer made at para 8-'A' of the present O.A. also does not survive.

15- Since the final communication of the decision of the respondent authorities dated 17.09.1997, issued to the applicant, has already been considered many times (& at least twice) by this Tribunal earlier also, in his O.A. No. 256/1998, and in the Review Application filed thereafter, and after the orders dated 31.01.2001 were passed in O.A. No. 256/1998, and once the order dated 29.03.2001 was passed in O.A. No. 120/2002, in which, as already cited above, the applicant had himself conceded and admitted before the Bench that his pensionary benefits cannot stand revised or modified upwards, he is now precluded from reopening that issue once again.

16- In fact, reliefs prayed at paragraphs 8 'B', 8 'C' and 8 'D' of the present OA are exactly the same as they were in the relief portion paragraphs para 8 'A', 8 'B' and 8 'C' of OA No. 120/2002. Therefore, it appears that the applicant has only been indulging once again in vexatious litigation, and we are actually inclined to impose a cost upon the applicant for his having taken up valuable judicial time and having prevented the



Tribunal from devoting time for the consideration of other worthy cases. But a lenient view is being taken only because the applicant is a retired person, who has retired from service in 1991, about 20 years back. In the result, the O.A. is dismissed with no order as to costs.



(Sudhir Kumar)
Administrative Member



(Dr. K.B. Suresh)
Judicial Member

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