

2/11

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No.99/2007**

Date of decision: 24-12-2007.

**Hon'ble Mr. R.R. Bhandari, Administrative Member.**

Mool Chand Yadav, S/o Shri Panna Lal yadav aged about 62 years, retired booking clerk, N.W. Rly, Nashirabad, presently resident of Kistoor Bhawan Adjacent to Shri Girdhar Gopal Goyal, Gole Building Chodraya, Sardapura, Jodhpur.

: applicant.

Rep. By Mr. N.K. Khandelwal : Counsel for the applicant.

**Versus**

1. Union of India through General Manager, North Western Railway, Headquarters Office, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Divisional Personnel Officer, North Western Railway, Ajmer.
4. Divisional Finance Manager, North Western Railway, Ajmer.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

**ORDER**

**Per Mr. R.R.Bhandari, Administrative Member.**

Mr. Mool Chand Yadav has filed this application under Sec. 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

- (i) By an appropriate writ, order or direction, Annexure A/1, annexure A/2, annexure A/3 and Annexure A/4 may kindly be declared as illegal and the same may kindly be quashed and set aside and a direction in this regard may kindly be issued to the respondents.
- (ii) By an appropriate writ, order or direction after quashing Annexure A/4 (PPO) a fresh PPO may kindly be issued giving the benefit of 35 years of service.
- (iii) By an appropriate writ or order or direction, the period of absence i.e. 13 years 7 months and 12 days may kindly be ordered to be treated as on duty and consequential reliefs out of it may kindly be ordered to be made and paid to the applicant.
- (iv) By an appropriate writ or order or direction, the qualifying service of the applicant may kindly be ordered to be treated as 35 years instead of 27 years 2 months and 20 days .

*[Signature]*

(v) By an appropriate writ or order or direction, the fixation of the applicant's pay on the expiry of the punishment i.e. on 11.06.1994 and by giving him the benefit of Vth Pay Commission, the applicant's pay as on 01.01.96 may kindly be fixed and all accrued emoluments and D.A. may kindly be ordered to be paid to the applicant with interest.

(vi) By an appropriate writ or order or direction, the pension and other retiral benefits may kindly be ordered to be made by taking into account the qualifying service of the applicant as 35 years instead of 27 years 2 months and 20 days; along with other accrued retiral benefits.



2. A brief matrix of the case is as follows:

The applicant was appointed as Commercial Clerk in Railway on 26.11.1964 and on attaining the age of superannuation was retired from service on 30.11.2004. He was issued with a charge sheet for imposing major penalty (S.F. 5) on 30.03.87 and after detailed inquiry he was removed from service with effect from 01.02.1988. Against this penalty, he preferred an appeal to the Appellate Authority and the Appellate Authority vide his order dated 26.05.89 modified the penalty of removal to reduction to a lower stage. The last para of the Appellate Authority's order reads as under:

" 9. Considering the serious nature of the charges proved because of the possible manipulation in issue of tickets, I consider to reduce the penalty of removal from service imposed upon you to that of reducing you to the start of next lower grade for a period of 5 years with future effect, i.e. postponing the future increments and affecting your seniority. The intervening period be treated as " not spent on duty".

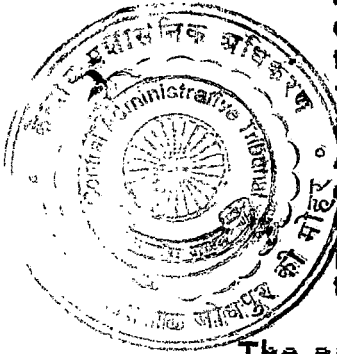
3. The applicant joined duty immediately thereafter on 11.06.1989. However, the applicant was issued a show cause notice by the Revising Authority i.e. Chief Commercial Manager, Western Railway, Church Gage, Mumbai for enhancement of penalty on 13.12.1989. Against the said show cause notice the applicant submitted his representation. Vide order dated 15.02.90,

*[Handwritten signature]*

2/13  
[Signature]

the applicant was again removed from service. Being aggrieved by the removal order dated 15.02.90, the applicant filed O.A. No. 125/90, before this Bench of the Tribunal. This Tribunal vide its order dated 05.01.1994, decided the said O.A in the following terms. The relevant portion reads as under:

" 10. We, therefore, hold that annex. A/10 is not a speaking order and is liable to be quashed on that ground. Accordingly, we quash the order of the Chief Commercial Superintendent (Annex. A/10) enhancing the punishment on the applicant from reduction to lower grade for five years to that of removal. The punishment imposed by the appellate authority i.e. the Additional Divisional Railway Manager of reduction vide Annex. A/6 is considered a valid order and would be operative after quashing of annex. A/10. The respondents are however at liberty to consider the representation of the applicant placed at Annex. A/9 and pass a speaking order after taking into account all the points raised therein "



The applicant was taken back in service. His representation was considered by the Chief Commercial Manager as per the orders of this Tribunal dated 05.01.94 passed in O.A. No. 125/90. The Chief Commercial Manager imposed the penalty of removal vide order dated 29.06.1994. Against the said order of removal, the applicant submitted a representation to the General Manager, Western Railway, but it was not considered favourably. Aggrieved by the same, the applicant preferred another O.A. No. 336/96, before this Bench of the Tribunal. This Bench of the Tribunal vide its order dated 05.10.2000 dismissed the said O.A.

4. Aggrieved by the order dated 05.10.2000, passed by this Bench of the Tribunal, the applicant filed D.B Civil Writ Petition No. 4715/2000 in the High Court of Judicature for Rajasthan at Jodhpur under Article 226 of the Constitution of India. The Hon'ble High Court of Rajasthan, vide its judgement dated 15.12.2001 partly

[Signature]

allowed the said Writ Petition. A few relevant portions are reproduced below:

Xxx                      xxxxx                      xxxxx                      xxxxx

Xxx                      xxxxx                      xxxxx                      xxxxx

" Aggrieved from the order dated 05.10.2000, the present petitioner has preferred this Writ Petition before this Court under Article 226 of the Constitution of India. The writ petition was presented on 03.12.2000 and placed before this Court on 04.12.2000 and the same came up before the Court on 19.12.2000. The Court passed the following order on 19.12.2000:



" Though in this petition inquiry as well as punishment order both are challenged but the challenge to the enquiry is not pressed into service and challenge is restricted only to quantum of punishment. Hence, notice is ordered to be issued to the respondents on the point of penalty only to show cause as to why this petition should not be disposed of at the admission stage itself. Notice returnable on 19.02.2001."

In response to the notice, as aforesaid, issued by the Court, the respondents filed reply on 05.05.2001 to which a rejoinder dated 06.06.2001 was also filed by the petitioner on 11.06.2001. "

Xxxx                      xxxxx                      xxxxx

Xxxx                      xxxxx                      xxxxx

We find that in such matter, uneven consequences should not be allowed to flow. So far as the present petitioner is concerned, we also find that he has already suffered the agony of a litigation for all these years ever since the order which had passed against him with regard to his removal from service way back in 1988. At present he is 47 years, and he is facing this litigation ever since the time when he was about 33 or 34 years of age. At this stage when he is 47 years, if the penalty of removal stands, he will not be able to get any benefit of the period of service which he had rendered earlier and it is obvious that at this stage it will not be easy for him to find any employment. For all these reasons and for the mitigating circumstances, as have been narrated in the earlier part of the order we find that the order, as had been passed against him with regard to the removal from service, cannot be sustained and the penalty should be reduced from removal to the one as was imposed by the Appellate Authority.

In the facts of the present case, when the appellant himself had restricted the scope of this petition to the question of quantum of punishment, we do not find it appropriate to deal with the other contentions raised before us against the validity of

*[Handwritten signature]*

415  
A/R

enquiry proceedings, denial of reasonable opportunity and breach of principles of natural justice.

In the result, the writ petition succeeds in part and the same is accordingly partly allowed. The order dated 05.10.2000 passed by the CAT is hereby quashed and set aside. The order passed by the Chief Commercial Manager read with the order dated 29.06.94 and the order of Chief General Manager are hereby quashed and set aside and the order dated 26.05.89 passed by the Appellate Authority is hereby restored. It is directed that the petitioner shall be reinstated in service with all legal consequences to follow on the basis of the order as above passed by the Appellate Authority. The order with regard to the salary for the intervening period for which the petitioner remained out of employment, shall be passed in accordance with law by the concerned authorities. Costs are made easy."



5. The applicant resumed his duties after the judgement of the Hon'ble High Court. Subsequent to this, the applicant had filed another O.A No. 65/2005 in this very Bench seeking the relief by way of declaring Annexures A/1, A/2, A/3 and A/4 to the said O.A be declared as null and void with a further prayer that the period of absence from 15.02.90 to 15.09.2002, may be treated as duty and full payment be made to the applicant. These reliefs were considered by this very Bench and the relevant portion of the order dated 14.09.2006 in the said O.A reads as under:

6. Heard the counsel on both sides. Now the question arises for consideration is whether the respondents had any power to cancel Annex. A/1 to A/4 and pass fresh orders Annex. R/1 & R/2. The learned counsel for the applicant simply submitted that the matter was subjudice and so the respondents have no power to cancel and pass fresh orders. Sec. 19 (1) of the Administrative Tribunals Act, 1985 states that subject to other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. In this case, the applicant is stated to be aggrieved by Annex. A/1 to A/4. However, these orders were withdrawn and fresh orders were passed and supplied to the applicant along with the reply. In the reply, it was specifically stated that Annex. A/1 to Annex. A/4 had been cancelled and fresh orders Annex. R/1 and R/2 had been passed. In my considered view it is the duty of the applicant either to withdraw this O.A or to challenge Annex. R/1 and R/2 by amending the O.A. But no such recourse had been thought fit by the applicant, rather the applicant insisted that the respondents had no power to pass any orders since the matter is subjudice.

2/26  
J/13

7. Examining this case as per A.T. Act 1985, Sec. 19 (4) states that where an application has been **admitted** (emphasis supplied) by a Tribunal under Sec. 3, every proceeding under the relevant rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules. A perusal of the application shows that this case has not been admitted by this Bench of the Tribunal as per Sec. 19 (3) of the A.T Act, 1985. Thus the provisions did not debar the respondents to cancel Annex. A/1 to A/4, since they realized that the said orders have not been passed by the competent authority and in order to rectify the mistake they withdrew the same and passed fresh orders and they are right in exercising this power. However, it seems that before passing Annex. R/1 and Annex. R/2, no opportunity had been accorded to the applicant besides the applicant had also submitted that the respondents have no right to pass any order when the matter is subjudice.

8. Considering the entire aspects of this case, I am of the considered opinion that it would be proper in the interest of justice, at this stage not to discuss the merits and demerits of Annex. R/1 and R/2 since the same had been passed without affording any opportunity to the applicant by the competent authority.

9. In view of the above position, the O.A is disposed of with a direction to the applicant to submit a comprehensive representation against Annex. R/1 and R/2 to the competent authority within 15 days from today and the respondents are directed to pass orders on the same within a period three months from the date of receipt of such representation. O.A is disposed of as above. No costs.



6. The applicant made a detailed representation dated 23.09.2006 ( Annex. A/7) in reference to the above orders of 14.09.2006 of CAT, Jodhpur in O.A. No. 65/2005. The respondents, as submitted in their reply, considered the representation and decided the matter by a detailed order dated 02.01.2007. The respondents also brought out that (a) the period 1988 and 1989 has been decided by the Appellate Authority vide his order dated 26.05.1989 ; (b) the period from 15.02.1990 to 29.06.1994 has been treated as suspension and (c) the period from 30.06.1994 to 15.09.2002 has been treated as leave due as admissible under the rules. This is the impugned order at Annex. A/1 dated 02.01.2007.

*[Handwritten signature]*

7. It will be thus observed that the applicant has made number of representations to be considered by various authorities and filed three O.A Nos 125/90, 336/96 and 65/2005, before this very Bench and detailed discussions have taken place and this very Bench had issued three judgements accordingly. The applicant has also filed D.B. civil Writ Petition No. 4715/2000 before the Hon'ble High Court of Rajasthan. The Hon'ble High Court of Rajasthan had also issued a detailed judgement.




At this stage when the learned counsel for the applicant was confronted with a query that whether the decisions of this Bench of the Tribunal and the judgement of the Hon'ble High Court of Rajasthan have been complied with, the applicant is silent about it. I, therefore, presume that the said decisions have been honoured by the respective authorities as otherwise, the applicant would have approached this Tribunal or the Hon'ble High Court of Rajasthan by way of contempt petitions. Therefore, I am of the considered opinion that it is relevant to adjudicate only on the points which are not covered in the previous O.As.

9. The matter was also heard at length. Both the counsel submitted their arguments in detail. Both the counsel were pressing that the provisions of Rule 1342, 1343, 1344 and 1345 of the Indian Railway Establishment Code Vol. II are applicable in this case. The learned counsel for the applicant has submitted that the said provisions have not been applied properly by the respondents,

*[Handwritten signature]*

while the respondents counsel countered it saying that the said provisions have been followed in its true spirit and applied in the applicant's case and the applicant had been paid accordingly.

10. The learned counsel for the applicant in summing up his case brought to my notice the judgement of the Apex Court in the case of **U.P.S.R.T.C. Ltd vs. Sarada Prasad Misra and Another** [ 2006 SCC (L&S) 857 ], wherein it was brought out that reinstatement and back wages are two different aspects. He quoted para 13 and 16 in this regard which are reads as under:



13. But even otherwise, the award passed by the Labour Court as also the order of the High Court granting back wages deserves interference. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case and neither straitjacket formula can be evolved, nor a rule of universal application can be adopted (vide *PGI of Medical Education & Research vs. Rajkumar; Hindustan Motors Ltd. Vs. Topan Kumar Bhattacharya*). In *Kendriya Vidyalaya Sangathan vs. S.C. Sharma* this Court held that when question of determination of entitlement of back wages comes up for consideration, prima facie, it is for the employee to prove that he had not been gainfully employed. Initial burden is on the employee to show that he remained without any employment. In several cases, similar view has been taken by this Court in recent years. In *M.P. SEB vs. Jarina Bee* it was observed that reinstatement in service and payment of back wages are two different things and payment of back wages is not a natural consequence of setting aside an order of dismissal. In *Allahabad Jal Sansthan vs. Daya Shankar Rai*, it was indicated that the law is not in absolute terms that in all cases of illegal termination of services, a workman must be paid full back wages. In *Haryana State Coop. Land Development Bank vs. Neelam* it was stated that the aim and object of the Industrial Disputes Act is to impart social justice to the workman but keeping in view his conduct. Payment of back wages, therefore, would not be automatic on entitlement of the relief of reinstatement. In *G.M. Haryana Roadways vs. Rudhan Singh* the Court reiterated that there is no rule of thumb that in each and every case, where the Industrial Tribunal records a finding that the order of termination of service was illegal that an employee is entitled to full back wages. A host of factors which are relevant, must be taken into account.

Xxx

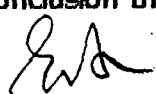
xxx

xxx

xxx

xxxx

16. From the above cases, it is clear that no precise formula can be adopted nor "cast iron rule" can be laid down as to when payment of full back wages should be allowed by the Court or Tribunal. It depends upon the facts and circumstances of each case. The approach of the court/tribunal should not be rigid or mechanical but flexible and realistic. The court or Tribunal dealing with cases of industrial disputes may find force in the contention of the employee as to illegal termination of his services and may come to the conclusion that the action has been taken otherwise that in accordance with



law. In such cases obviously, the workman would be entitled to reinstatement but the question regarding payment of back wages would be independent of the first question as to entitlement of reinstatement in service. While considering and determining the second question, the court or tribunal would consider all relevant circumstances referred to above and keeping in view the principles of justice, equity and good conscience, should pass an appropriate order."

11. The learned counsel for the respondents brought out that the orders of the Hon'ble High Court of Rajasthan were very clear and he highlighted the following portion from the judgement of the Hon'ble High Court of Rajasthan in D.B. (Civil) W.P No. 4715/2000 filed by the applicant:



**"So far as the present petitioner is concerned, we also find that he has already suffered the agony of a litigation for all these years ever since the order which had passed against him with regard to his removal from service way back in 1988. At present he is 47 years, and he is facing this litigation ever since the time when he was about 33 or 34 years of age. At this stage when he is 47 years, if the penalty of removal stands, he will not be able to get any benefit of the period of service which he had rendered earlier and it is obvious that at this stage it will not be easy for him to find any employment.**

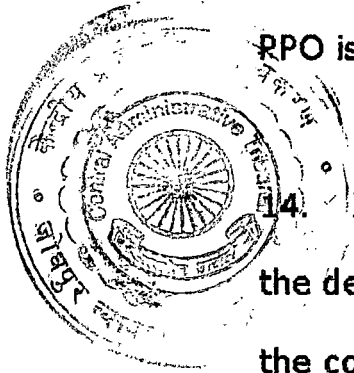
12. From the above portion it could be construed that the Hon'ble High Court is sympathetic keeping in view the age of the applicant. Since then the applicant had completed more than 25 years of qualifying service, substantial portion of pension and other retiral benefits have also been paid to him and thus the situation of the applicant at this point of time is much different than at the time, the Hon'ble High Court rendered its judgement.

13. With regard to the impugned order at annex A.1, the learned counsel for the respondents mentions that it is very much in order covering all the aspects brought out right upto the decision of this Bench of the Tribunal dated 14.09.2006 in O.A. No. 65/2005. The

*[Handwritten signature]*

2/20  
#17

respondents counsel further mentions that the respondents have paid all the due amount to the applicant as per the verdicts of this Bench of the Tribunal as well as the verdict of the Hon'ble High Court of Rajasthan and the respondents have implemented the judgements in its true spirit in calculating the pension and other retiral benefits. It was also brought out that Annex. A.4 i.e. PPO giving details of pension etc. has been issued by taking into account all the factors and therefore the same does not require any modification or change. The respondents also confirmed that the PPO issued vide Annex. A/4 is in force at this point of time.



14. After careful analysis of the documents placed on record and the detailed arguments advanced by both sides at the bar, I am of the considered opinion that all the issues have been settled in the previous O.As as well as by the judgement of the Hon'ble High Court of Rajasthan in the D.B. (Civil) W.P. No. 4715/2000. I also note that the impugned order issued as a consequence to the orders passed by this Bench in O.A. No. 65/2005 is as per rules. The applicant is entitled to certain amount of pension and the same has been passed vide PPO at Annex. A/4. Therefore, I do not find that any intervention by this Tribunal in the administrative procedure adopted by the respondents in calculating the pension and other retiral benefits is necessary. The O.A is therefore dismissed. No costs.

*R.R. Bhandari*  
[R.R. Bhandari]  
Administrative Member

Approved  
2/15/68  
R/C

Received from  
Lt. [unclear]  
([unclear])  
3/11/67

Part II and III destroyed  
in my presence on 05-8-14  
under the supervision of  
section officer ( ) as per  
order dated 26-3-14

[Signature]  
Section officer (Record)