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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 235/2009

Jodhpur this the 18th March, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Hyder Khan S/o Shri Kasam Khan, Aged 51 years R/o Near Christian Kabristan,
Chand Mari, Abu Road, District Sirohi; Artisan Khalasi, In the O/O Diesel
Foreman, North Western Railway, Abu Road, District Sirohi

.....Applicant

(Through Adv. Mr Vijay Mehta)

Versus

1. Union of India through the General Manager, North Western Railway,
Jaipur
2. Divisional Railway Manager, North Western Railway, Ajmer
3. Senior Divisional Mechanical Engineer (Diesel), North Western
Railway, Abu Road, District Sirohi.

(Through Adv. Mr Salil Trivedi)

.....Respondents

ORDER
(oral)

Per: Hon'ble Mr. Justice K.C. Joshi, Judicial Member

In the instant OA no order is challenged but it has been preferred
for seeking the following relief (s) from this Tribunal :

“The applicant prays that this Hon'ble Tribunal may kindly be pleased to issue directions to the respondents to make payment of salary to the applicant from the date of his dismissal to the date of his reinstatement after granting increments and to pay bonus to the applicant accrued to him during the aforesaid period. The respondents may kindly also be directed to make fixation of the 6th Pay Commission after taking into account the salary and increments accrued to the applicant during the

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aforesaid period. Any other relief, as deemed fit in facts and circumstances of the case may kindly be given to the applicant.”

2. The brief facts of the case as stated in the OA by the applicant are that the applicant was appointed on the post of Artisan Khalasi at Abu Road in the year 1979 in the Railway and while working there a penalty of dismissal was imposed on him by respondent No. 3. The applicant filed an appeal against the penalty before respondent No. 2 which was dismissed on 14.12.2004. Applicant filed an OA bearing No. 315/2004 before this Tribunal challenging the order of his dismissal which was set aside [Annex. A/1]. However, respondents did not reinstate the applicant, therefore, he filed contempt petition which resulted in applicant being provisionally taken on duty by the respondents vide order dated 10.11.2008 [Annex. A/2] and the words ‘provisional basis in Railway service’ which was later amended by words ‘taken on duty in Railway service on provisional basis’ by order dated 28.01.2009 [Annex. A/3] and further a corrigendum dated 03.08.2009 [Annex. A/4] was issued by the respondent No. 3 to the effect that *taken on duty in railway service on provisional basis* would be read as *on duty to railway service* (subject to outcome of the writ petition).

The applicant in the OA averred that once order of dismissal and appellate order was dismissed and resultantly he had reinstated in service, he is entitled to get all the benefits including back wages and increments bonus etc. as a legitimate right. He further averred that the

claim for back wages has a legal foundation and denial of the same is arbitrary and once dismissal is found to be illegal and quashed, it has to be perceived as never existed in the eyes of law and consequently the employee shall be entitled for all benefits flowing there from including payment of back wages, increments etc. and denying back wages would amount to inflicting punishment on him without following due procedure of law. He further averred that Ranjeet Kumar who was also likewise dismissed had been paid all the back wages and other dues. Therefore, the action of the respondents is completely arbitrary and discriminatory.

3. The respondents by way of their reply raised preliminary objection on the ground of limitation and pleaded to not to go into the merit of the case. However, the respondents averred the fact in their reply that order passed by disciplinary authority as well as the appellate authority was set-aside and applicant was reinstated in compliance to the order of this Tribunal in O.A. No. 315/2004. However, respondents averred in the reply that there was no direction of back wages etc. to the applicant as the order of dismissal was set aside on account of non-following of due process while conducting the disciplinary proceedings and respondents were given liberty to hold disciplinary proceedings in accordance with rules. The respondents averred that Ranjeet Kumar was not paid all the back wages as alleged and further averred that respondents filed writ petition before the Hon'ble High Court against

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the order passed by this Tribunal on 07.03.2008 in O.A. No. 315/2004 which was dismissed by the Hon'ble court and the order of the Tribunal was modified to the extent of consequential benefit as has been ordered in Ranjeet Kumar case. The respondents denied the averments made in the application that there was no direction of back wages and unless the back wages are specifically granted, the applicant simply can not claim the same; on the contrary the liberty has been given to hold disciplinary proceedings in accordance with the rules. On query, it was brought out that present an inquiry is pending against the applicant. The respondents further averred that once the back wages is not specifically granted then the same cannot be claimed by way of filing the subsequent OA and the relief claimed by the applicant is barred by res-judicata and the OA filed by the applicant deserves to be dismissed.

4. By way of rejoinder applicant averred that reinstatement in service with consequential relief is a natural corollary when the order of termination has been quashed and found to be in violation of the principles of natural justice and further averred that respondents have not explained in their reply that as to why applicant is not entitled to get his salary and increments and all other benefits including bonus and fixation of 6th CPC despite the order passed by Hon'ble High Court.

5. Counsel for the applicant contended that in OA decided by the Tribunal consequential benefit was not allowed but in DBCWP No.

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5088/2008 in Hyder Khan vs UOI & Ors Hon'ble Rajasthan High Court ordered to extend the consequential benefits to the applicant in view of the judgment passed by this Tribunal in Ranjeet Kumar case. Counsel for the applicant submitted that although the inquiry proceedings are pending but he has not been paid the salary w.e.f. 14.07.2004 i.e. date of termination to 06.11.2008 i.e. the date of reinstatement and respondents have no authority to deny the payment of the regular salary and increments and treat him on duty for all purposes. Therefore, respondents be directed to make the payment of salary to the applicant from the date of dismissal to the date of reinstatement after granting accrued increments etc. during the aforesaid period. He further contended that the respondent should also be directed to make the fixation of the 6th Pay Commission after taking into account the salary and increments accrued to the applicant during the aforesaid period.

6. The learned counsel for the respondents submits that as the matter was remanded by the trial court, therefore, in case of any order of the removal passed by the respondents, he is not entitled to any salary from the date of the earlier removal ordered and to the date of reinstatement.

7. Counsel for the applicant in support of his arguments relied upon the following judgments :

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(i) Hon'ble Supreme Court in Civil Appeal No. 548 of 2000, *Gurprit Singh vs State of Punjab & Ors* reported in *FLR 2002 (92) p. 838* held that once the applicant is directed to be reinstated in service, on setting aside the order of termination, the continuity of service cannot be denied.

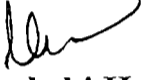
(ii) Hon'ble Supreme Court in Civil Appeal No. 1377 of 2007, *Director General, I.C.M.R vs Dr D.K. Jain and Annr.* reported in *FLR 2007 (113) p. 367* held that setting aside the termination order would amount to continuity of service.

(iii) Hon'ble Bombay High Court in Writ Petition No. 2284 of 1986 with W.P. No. 5902 of 1986 *Santosh Dattaram Nadkarni vs Niw India Industries Ltd. & Annr.* reported in *FLR 1988 (56) p. 566* held that when employee is reinstated, denying even a part of wage amounts to inflict punishment on him.

(iv) Hon'ble Rajasthan High Court in *Krishi Upaj Mandi Samiti, Dholpur through its Secretary vs Bangali Mal Sharma & Annr.* reported in *Western La Casesp. 63, 7.1.2011* held that when an employees' termination order has been set aside with all consequential benefits then he cannot be denied actual benefits for the purpose of consequential benefits.

8. In view of the judgments cited above the OA filed by the applicant requires to be allowed and the same is allowed. Accordingly, the respondents are directed to make the payment of the actual salary to

the applicant from the date of dismissal to the date of reinstatement after granting increments and to pay bonus to the applicant accrued to him during the aforesaid period. The respondents are further directed to make fixation of 6th Pay Commission after taking into account the salary and increments accrued to the applicant during the aforesaid period. However, the respondents will be at liberty to proceed with any pending inquiry, in accordance with law and rules. No order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member

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