

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00177/14

Reserved on : 08.11.2016

Jodhpur, this the 16th November, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Arjun S/o Jawara, aged about 59 years, resident of Village Ganoda, Tehsil Dataramgarh, District Sikar, retired from the post of Gang-man, NWR, Nohar under Senior Section Engineer (P Way-11), Alnabad.

.....Applicant

By Advocate: Mr Arjun Purohit.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner.
3. Divisional Engineer, North Western Railway, Bikaner.
4. Assistant Divisional Engineer-II, North Western Railway, Hanumangarh Junction.

.....Respondents

By Advocate : Mr Salil Trivedi.

ORDER

The present Original Application has been filed U/s 19 of Administrative Tribunals Act, 1985 seeking following reliefs:

“It is, therefore, most respectfully prayed that the Original Application filed by the applicant may kindly be allowed with cost, the order dated 22.05.2013 (Annex. A/1) may kindly be quashed and set aside, and the respondents may kindly be



directed to make fixation of the applicant from the date of termination of service, he be given all consequential and monetary benefits”

2. The facts of the case, in brief, are that the applicant was initially appointed on casual basis in the year 1978. Later on, he was given temporary status on the post of Gang-man w.e.f. 15.11.1980 in the pay scale of Rs 200-250/-. The services of the applicant had subsequently been terminated w.e.f. 28.07.1981. The applicant raised industrial dispute before Central Industrial Tribunal (C.I.T.), Jaipur. The C.I.T., Jaipur vide award dated 28.02.1989 (Annex. A/2) declared the termination of services of the applicant as illegal and set aside the termination order. The C.I.T., Jaipur further ordered to reinstate the applicant with full back wages from the date of termination till the reinstatement alongwith all admissible benefits. The said award was challenged by the respondent-department before Hon'ble High Court, Jodhpur in Writ Petition No. 5285/1990 and the petition of the respondent-department was rejected. The respondent-department filed special appeal No. 495/2001 wherein vide order dated 26.11.2002 (Annex. A/3), the Division Bench of Hon'ble High Court modified the award Annex. A/2 to the extent that back wages were reduced from 100% to 50%. The applicant was reinstated in service w.e.f .03.08.1991 and he was paid 50% of back wages vide letter dated 12.02.2004 (Annex. A/4) but these

back wages were paid from the date of reinstatement and not from the date of termination. The services of the applicant were terminated in the year 1981 and he was reinstated in the year 1991. In this regard, the applicant submitted a number of representations and lastly served a legal notice dated 03.07.2008 (Annex. A/50. After receipt of legal notice, the respondent-department prepared the due drawn statement dated 14.08.2008 (Annex.A/6) and counsel for applicant was given intimation in this regard vide letter dated 21.08.2008 (Annex. A/7). Thereafter, again legal notice was served by the applicant and he preferred OA No. 29/2009 before this Tribunal. Vide order dated 22.07.2011 (Annex. A/8), this Tribunal disposed of the OA with the direction to “”re-compute if necessary on the basis of Annex. A/5 and R/2, fix the pay of the applicant within two months next, and inform the applicant accordingly. If any arrears are to be paid it may be paid in another two months time.”” However, the respondent-department did not comply the directions of the Tribunal in its letter and spirit. Therefore, the applicant preferred C.P. No. 01/2012. During the pendency of contempt petition, respondent-department vide letter dated 22.05.2013 (Annex. A/1) rejected the representation of the applicant. Vide order dated 19.09.2013 (Annex. A/9), this Tribunal has passed the detailed order in the said contempt petition and directed the respondents for making correct fixation of pay/dues of the applicant. While

deciding the said C.P., this Tribunal granted him liberty to challenge the order dated 22.05.2013 (Annex. A/1). Accordingly, aggrieved of the same, the applicant has filed the present OA challenging the order dated 22.05.2013 (Annex. A/1) passed by the respondents during the pendency of the C.P. No. 01/2012.

3. In reply, the respondents have not disputed the facts and stated that the 50% back wages in pursuance of modification of award of the C.I.T., Jaipur by the Hon'ble High Court in the special appeal, for the period from 28.07.1981 to 02.05.1991 amounting to Rs 48,004/- was paid to the applicant vide DFM, Bikaner dated 05.07.2004. The respondents have further stated that the applicant was paid the back wages from the date of his termination to the date of reinstatement and not from the date of reinstatement as alleged by the applicant. The due drawn statement (Annex. A/6) was prepared incorrectly by the respondents due to misunderstanding of the decision passed in Special Appeal No. 495/2001. When this mistake was noticed, the corrective measures were taken and admissible amount of Rs 48,004/- was paid to the applicant. The respondents replied the legal notice vide letter dated 26.08.2008 but due to misunderstanding the letter was annexed with the reply to the counsel. When it was brought to the notice of the respondents, the mistake was corrected and information was sent to the

applicant through SSE (Pathway) in respect of cancellation of letter dated 21.08.2008 and a fresh letter dated 08.09.2008 (Annex. R/1) was given to the applicant. Therefore, the applicant cannot be allowed to take benefit of the mistake committed by the respondents. As on date, the reliance has been placed by the applicant on letter dated 21.08.2008 (Annex. A/7), which has been cancelled. Although, the necessary compliance of order dated 22.07.2011 passed in OA No. 29/2009 was made by the respondents but the applicant preferred contempt petition before this Tribunal. In the said C.P., the applicant was directed to file representation, which was decided by the respondents vide letter dated 22.05.2013. Thereafter, the said C.P. was dismissed by this Tribunal vide order dated 19.09.2013. The respondents have stated that they have made compliance of all directions in letter and spirit and nothing remains to be decided or left out. Hence, in this matter the applicant had no cause to file the instant OA. Merely because a liberty was given to the applicant while dismissing the C.P. does not give any cause to the applicant on merit, to file this OA. Hence, the respondents prayed to dismiss the OA.

4. Heard both the counsels.
5. Ld. Counsel for applicant, Mr Arjun Purohit while reiterating the averments made in the OA, contended that vide award dated 28.02.1989 (Annex. A/2), the C.I.T., Jaipur set aside the order of

termination dated 28.07.1981 in respect of the applicant, by which his services were terminated w.e.f. 28.07.1981. The C.I.T., Jaipur further ordered reinstatement of the applicant in service and held him entitled for all the benefits accrued during the intervening period. The respondents preferred Writ Petition No. 5285/1990 in the High Court, Jodhpur challenging the award but the same was dismissed vide order dated 04.08.1999. However, in a special appeal No. 495/2001 preferred by the respondents against order dated 04.08.1999 the Division Bench of the Rajasthan High Court vide order dated 26.11.2002 modified the order award of the C.I.T., Jaipur to the extent that of 50% back wages was allowed to the applicant instead of 100%. Ld. counsel for applicant contended that though the respondents have paid the 50% back wages from the date of termination to date of reinstatement but they have not granted the due increments during that period. Whereas, reinstatement includes continuity in service, and thereby, entitles the applicant to earn increment during the intervening period, i.e. from the date of termination to the date of reinstatement. Thus, he prayed that the respondents may be directed to grant the increments of intervening period and grant the arrears.

6. Rebutting the arguments advanced by Ld. Counsel for applicant, Ld. Counsel for the respondents contended that as per provisions contained in Para 1320 (FR-26) (a) of Chapter 13 of

Indian Railway Establishment Code Vol. II, no benefit of increment is admissible to the applicant. However, in compliance of orders passed by the Hon'ble Courts, the applicant has already been granted 50% of the back wages. Therefore, nothing remains to be decided or left out.

7. I have considered the rival contentions and also perused the record. The present case has a chequered history. The applicant firstly challenged his termination of services from the post of Gang-man w.e.f. 28.07.1981 before C.I.T., Jaipur. Vide order dated 28.02.1989, C.I.T., Jaipur gave the award in favour of the applicant directing the respondents to reinstate him with full back wages. The respondents filed the writ petition before the Hon'ble High Court challenging the award but the same was rejected. However, vide order dated 26.11.2002 passed in a special appeal preferred by the respondents, the Division Bench of the Rajasthan High Court modified the award in the following manner :

“We find from the material on record that the continuous employment of the workman is less than two years duration and that too only as daily rated employee, who had been employed intermittently. The dispute about termination has also been raised belatedly after about four years and in view of the circumstances, it would have been just to award 50% of back wages only instead of full back wages and we, accordingly, modify the award to that extent. However, we make it clear that if during this period any sum in excess of 50% of arrears of emoluments has already been paid, any such excess amount paid to the respondents, shall not be recovered.”

Thereafter, the applicant filed representations and served legal notices for grant of benefit of pay fixation and other benefits. The applicant has also placed on record due drawn statement dated 14.08.2008 (Annex. A/6) but the respondents have stated that the same was prepared incorrectly by misunderstanding the judgment of the Hon'ble High Court. Corrective measures were taken and a fresh letter dated 08.09.2008 (Annex. R/1) was served to the applicant through SSE (Pathway). Subsequently, the applicant was paid Rs 48,004/- towards back wages. However, the applicant filed OA No. 29/2009 and this Tribunal vide order dated 22.07.2011 disposed of the OA with the direction to the respondents to re-compute the pay of the applicant. However, it can be inferred while going through the oral order that it was passed in the light of orders passed by C.I.T., Jaipur, Single Bench & Division Bench of the Hon'ble High Court and was not beyond the realm of these orders. Thereafter, being dissatisfied by the compliance of the order dated 22.07.2011 passed by this Tribunal in OA No. 29/2009, the applicant filed contempt petition No. 01/2012 alleging non-compliance of order in its true spirit. This Tribunal arrived at a finding that no contempt is made out. However, a liberty was granted to the applicant, to challenge the refixation, if he had any grievance. Basically the claim of the applicant is that the respondents, while giving him 50% of the

back wages, did not fix his pay after granting yearly increments, of the intervening period, computing the back wages.

8. The applicant claims that such reinstatement includes continuity of service and therefore, the applicant is entitled to the benefit of fixation of salary for interim period and increments for the interim period. However, while going through the order passed by the Division Bench of Hon'ble High Court, which is the basis of granting the 50% back wages to the applicant, findings recorded that "*continuous employment of the workman is less than two years duration and that too only as daily rated employee, who had been employed intermittently*". Moreover, provisions contained in Para 1320 (FR-26) (a) of Chapter 13 of Indian Railway Establishment Code Vol. II also do not allow any such benefit. Therefore, in view of judgment of Division Bench of Hon'ble High Court coupled with provisions of Para 1320 (FR-26) (a) of Chapter 13 of Indian Railway Establishment Code Vol. II, the claim of the applicant for benefit of increments for the intervening period cannot sustain. The respondents have categorically stated that the applicant has been paid 50% of the back wages from the date of his termination to the date of his reinstatement. The claim of the applicant in regard to grant of increment, during the period he remained out of service, in my view, is not admissible since the Division Bench of Hon'ble High Court recorded findings that he worked intermittently for less than two years coupled with the fact

that the applicant remained out of service during the period of his claim and did not perform his duties physically. His claim for increments for that period, therefore, is neither earned, nor justified.

9. Accordingly, I see no reason to interfere with the order dated 22.05.2013 (Annex. A/1) passed by the respondents. Hence, the OA is dismissed. No costs.


[Praveen Mahajan]
Administrative Member

Ss/-

Copy
22-11-16

Afghanistan
22/11/16.