

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

OA 2/2009

Asif *Asif*
This the 3 day of *April*, 2012

Hon'ble Shri Navneet Kumar, Judicial Member

Ram Khelawan, aged about 60 years, s/o Late Shri Ram Charan, resident of –Village-Amiyan, P.S.-Gauriganj, District-Sultanpur.

.....Applicant

(By Advocate Shri Praveen Kumar)

- V E R S U S -

Union of India, through

1. The General Manager, Northern Railway, Baroda House, New Delhi
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Assistant Engineer, Northern Railway, Rae Bareilly

.....Respondents

(By Advocate Shri S. Verma)

ORDER

Per Mr. Navneet Kumar, J.M.

Present original application has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

1. To quash the impugned order dated 20.09.2007 (served on 22.10.2008) contained as Annexure no.A-1 to this OA with all consequential benefits.
2. To pay the applicant pay and allowances for the period, the applicant remained out of employment due to operation of dismissal order passed by the authorities till the date of superannuation and also carry out necessary revision wherever applicable when his juniors were granted the benefits of higher post and salary etc.
3. To pay revised pensionary benefits after giving correct fixation and also issue revised PPO.
4. To pay interest on aforesaid arrears @ 12% p.a. till the actual date of payment.
5. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
6. Cost of the present case.” *W*

2. Brief facts of the case are that the applicant was convicted by judicial Magistrate under the charges leveled under Section 323/325 IPC against which he preferred an appeal before the Sessions Court. In pursuance of the conviction the applicant was dismissed from service in 1984. Subsequently the criminal revision preferred by the applicant was allowed by the Hon'ble High Court and the conviction order dated 21.06.1983 as well as the appellate order dated 17.08.1983 were quashed. The Hon'ble High Court while passing orders has been pleased enough to observe as under:-

"The revision is accordingly allowed. The judgment and order dated 21.06.1983, passed by the Judicial Magistrate ,Ist Sultanpur in criminal case No.255 of 1983 and dated 17.08.1983 passed by the Sessions Judge, Sultanpur in Criminal Appeal No. 114 of 1983 are set aside. The revisionists are acquitted of the offences. The revisionists were on bail. They need not surrender. Their surity bonds are cancelled".

3. After the aforesaid orders the applicant made a representation to the authorities and when the same remained undisposed of, he preferred an original application No.390/1996. After the said original application, the applicant has preferred another original application No.173/2003. While deciding the original application No.173/2003 the Tribunal passed the following orders:-

"7. The O.A. is accordingly disposed of without any order as to costs with the following directions:-

- a) The applicant shall be reinstated in service within 15 days from the date of receipt of this order along with consequential benefits of seniority and further promotion, if any.
- b) As regards the question of back wages, the same shall be considered by the respondents in accordance with the extant rules on the subject, within a period of 3 months from the date of receipt of this order."

Subsequently the claim of the applicant for back wages was rejected by the authorities in 2007.

4. When the orders of the Tribunal were not complied with the applicant preferred contempt petition vide CCP No.2/2004 which was finally disposed of vide order dated 22.10.2008 wherein liberty was given to the applicant in respect of challenging for the remaining compliance if any, as directed by the Tribunal vide order dated 15.07.2003 passed in O.A.173/2003 as well as in respect of rejection of the second claim vide order

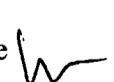


dated 20.09.2007. When the respondents have not taken a decision on the applicant's claim for back wages, he preferred the present original application.

5. On behalf of the respondents the averments made by the applicants were opposed and they filed detailed counter reply in which it is pointed out by the respondents that after the orders of the Tribunal dated 15th July,2003 passed in O.A.No.173/2003 a writ petition was preferred vide Writ Petition No.61/SB/2004. The PPO No.D/LKO/PEN/0108070166 which is addressed to the applicant's bank was issued on 20.03.2008. The respondents also mentions in their counter reply that they are under obligation to pay back wages to the applicant notwithstanding the facts that he had been removed from service following his conviction by the competent court under criminal charges. The respondents also pointed out that since the writ petition No.61(SB)/2004 is still pending before the Hon'ble High Court and has also taken the plea that since the applicant has not worked as such, he is not entitled for back wages on the cardinal principle of "no work no pay."

6. On behalf of the applicant a detailed rejoinder was filed and the contents of the original application are reiterated.

7. Heard Id. counsel for the parties and perused the records.

8. The admitted facts of the case are that the applicant was initially appointed as Gangman on compassionate ground , was implicated in a criminal case and was convicted vide order dated 21.06.1983 by Judicial Magistrate , Ist , Sultanpur for the charges leveled under Section 323/325 of IPC. Against the said conviction order the applicant preferred the criminal appeal which was decided by an order dated 17.08.1983. In the meantime, the applicant was placed under suspension. However, criminal revision was preferred by the applicant along with others and in the meantime a notice under Section 14(1) of Discipline & Appeal Rules, 1968 was issued to the applicant and accordingly the applicant was removed from service w.e.f. 01.09.1984. Vide order dated 22.05.1995 a criminal revision was allowed by the Hon'ble High Court and the conviction order as well as appellate order dated 21.06.1983 and 17.08.1983 were 

quashed. Subsequently the applicant submitted a representation for reinstatement and when no order was passed he preferred O.A.No.390 of 1996. In compliance of the orders of the Tribunal appeal of the applicant was rejected and subsequently the applicant preferred an original application i.e. O.A.No.173/2003 which was finally disposed of by means of an order dated 15.07.2003. It is also necessary to point out that the respondents sanctioned certain amount in favour of the applicant and also issued PPO for payment of pension. It is also necessary to point out that the respondents preferred the writ petition challenging the order dated 15.07.1983 passed in O.A.No.173 of 2003 and the said writ petition is still pending for final adjudication before the Hon'ble High Court. Due to non-compliance of the orders passed by the Tribunal in O.A.173/2003 the applicant preferred contempt petition which also stood disposed of with liberty to agitate in respect of remaining compliance, if any. The Tribunal while deciding the original application No.173 of 2003 directed the respondents to reinstate the applicant in service within 15 days from the date of receipt of the order along with the consequential seniority and further promotion and has also directed the respondents to consider the claim of the applicant in regard to the question of back wages in accordance with the extant rules on the subject within a period of three months from the date of receipt of the order. By means of the present original application the applicant is challenging the order dated 20.09.2007 whereby the case of the applicant was considered in terms of the order dated 15.07.2003 passed in O.A.173/2003 wherein it is observed that since the applicant has already retired, it is not possible to reinstate him in service and in the light of the principles of "no work no pay" the applicant is not entitled for any back wages. It is undisputed that after the acquittal from criminal case no criminal charge is leveled against the applicant, but since the order on the basis of which respondents have passed an order dated 20.09.2007 a writ petition is already pending before the High Court for adjudication, as such, it is not appropriate for the Tribunal to interfere with the relief as claimed for. The applicant is also a party to the writ petition, as such, he should also try to get the writ petition decided at an early date. The applicant has also relied upon the

Railway Board circular dated 29.04.1985 wherein it has been observed by the Railway Board that:-

“2 It has been represented to the Railway Board that in cases of acquittal by a Court of Law there is no such thing as clear or honorable acquittal and that even if the acquittal is on benefit of doubt the entire period from the date of suspension proceeding the date of dismissal/removal/compulsory retirement to the date of resumption should be treated as duty with full pay and allowances.”

9. As stated above, there is no dispute that after the orders of the Hon'ble High Court in the criminal revision, there is no criminal charge leveled against the applicant, but since the orders passed in O.A.No.173 of 2003 is under challenge before the Hon'ble High Court I do not think it is appropriate to pass any orders in regard to payment of back wages to the applicant as the payment of back wages and reinstatement is under consideration before Hon'ble High Court.

10. As such, in the interest of justice the respondents are directed to pursue the matter before the Hon'ble High Court and try to get it disposed of at an early date after making request to the Hon'ble Courts or moving application for early disposal and it is also expected that the applicant shall also cooperate with the respondents in doing so.

11. With the above observation, the O.A. stands disposed of. No cost.

VRG
MEMBER(J)

s.b