

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.

T.A. No.3/91

(Civil Misc. Writ Petition No.3638/82)

Radhey Shyam Ojha ::::: Petitioner

Vs.

The District Judge,
Pratapgarh & 5 others. ::::: Respondents.

Hon. Mr.S.N. Prasad, Judicial Member.
Hon. Mr. V.K. Seth, Admn. Member.

(By Hon. Mr. S.N. Prasad, Judicial Member)

The above Civil Misc. Writ Petition No.3638/82 has been received here by way of transfer under section 29 of the Administrative Tribunals Act, 1985. In the aforesaid Writ Petition the Petitioner has prayed for quashing the order of the respondent No.1 dismissing the appeal of the Petitioner(Civil Appeal No.50 of 1981- Radhey Shyam Ojha Vs. Union of India and Others) and the order of the respondent No.2 (Prescribed Authority, under payment of Wages Act, Pratapgarh Vis(The Executive Magistrate) in so far as it has refused to award compensation to the petitioner under section 15 of the payment of Wages Act.

2. Briefly stated the facts of this case, inter-alia, are that the petitioner was appointed as Guard Grade 'C' in 1955 by the General Manager, Northern Railway, Baroda House, New Delhi and since then he has been posted at Pratapgarh; and without any rhyme or reason the petitioner was suspended on 30-10-1975 and later on removed from service by an order dated 22-11-1975 passed by the Divisional Operating Superintendent under Rule 14(11) of the Railway Servants Discipline and Appeal Rules, 1968. The petitioner filed appeals to

the appellant^{to} authority and both the orders of suspension and of removal were set aside. It was, however, mentioned that an enquiry would be held against the petitioner, although no such enquiry has ever been held. The petitioner, after his removal was set aside, was paid subsistence allowance with retrospective effect till his suspension was also revoked. The petitioner made several representations to the authorities responsible to pay salary to the petitioner and to pay him the deducted amount but to no effect. Ultimately an application under section 15 of the Payment of Wages Act was filed by the petitioner on 20-9-1977, before the Prescribed Authority (Sub-Divisional Magistrate, Pratapgarh) who transferred it to the Additional Sub-Divisional Magistrate under the orders of the District Magistrate, Pratapgarh. In his claim petition the petitioner claimed Rs.1984/- as salary etc. and also ten times as compensation on the grounds inter-alia that the deductions have been made by the respondents No.3 to 6 without any authority of law and that the same were illegal, unjustified and without jurisdiction etc. and also prayed for the condonation of delay in filing the application within the prescribed time. The respondents No. 3 to 6 filed a joint written statement denying the claim of the petitioner. The Prescribed Authority, by its order dated 20-1-81, allowed the application of the petitioner, but denied the compensation (vide Annexure-1). The petitioner filed appeal and the respondents No.3 to 6 also filed appeal against the order dated 20-1-81, but the appeal of the applicant and the appeals of the respondents No.3 to 6 have been dismissed by the District Judge

vide order dated 23-4-82 (Annexure-2). It has further been mentioned that the above order of the District Judge in so far as it has rejected the claim of the petitioner for ten times compensation is manifestly erroneous in law and liable to be quashed inasmuch as he has given no reason tenable in law for accepting the order of the Prescribed Authority; and similarly the Prescribed Authority has failed to exercise its jurisdiction and has been led away by irrelevant considerations in denying compensation to the petitioner under section 15 of the Payment of Wages Act; and since the respondent No.1 & 2 have not applied their mind to the claim of the petitioner for compensation in accordance with law and, therefore, have committed a manifest error of law in treating the orders of suspension and order of removal passed under Rule 14(1) of the Discipline and Appeal rules, 1968 and as such the petitioner is entitled to the relief sought for.

3. The respondents No.3 to 6 have filed counter-reply in which it has been, inter-alia, stated that the judgment and order of the Prescribed Authority dated 20-1-81 passed in Case No. 78/129/319/4 under section 15 of the Payment of Wages Act is self-explanatory and needs no elaboration or clarification and the order passed by the District Judge, Pratapgarh, in the above appeals is also well reasoned and does not suffer from any illegality, infirmity or invalidity. It has further been stated that the orders of suspension and subsequent removal passed by the Disciplinary Authority against the petitioner; or the appellate orders passed by the Appellate Authority in any appeal preferred by the petitioner under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 were never subjected to any judicial review before any forum,

and as such the said orders cannot be termed as 'illegal' and/or 'void' as alleged by the petitioner in ^{~ circumstances ~} and/view of the above ~~facts~~ the application of the applicant is liable to be dismissed with cost.

4. Rejoinder affidavit has been filed by the petitioner wherein he has reiterated almost all the view-points as mentioned in the O.A. with the addition that the written statement in the shape of counter-reply filed on behalf of the respondents No.3 to 6 is not in accordance with the rules and procedures inasmuch as there is no written authorisation accompanying the counter-affidavit on behalf of the persons who have filed it.

5. We have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

6. The petitioner himself has argued his case and while drawing our attention to the contents of the petition and to the contents of counter-reply of respondents No.3 to 6, has argued that the written reply in the shape of counter-reply filed by the Assistant Personnel Officer Shri P.N. Tripathi who is neither by name or by designation has been arrayed as party in this writ petition and has filed counter reply on behalf of respondents No.3 to 6 without authorisation and without being competent to file the same, and as such there is violation of the provisions contained under rule 12 of the Central Administrative Tribunals Procedure ~~Rules~~ ^{Rules} and also against the

Rule 6 of order 15 ^{of} the Civil Procedure Code 1908 and as such on this ground alone the counter-reply filed on behalf of respondents No.3 to 6 is liable to be rejected; and has further argued that the above impugned order passed by the respondents No.1 and 2 are not valid and legal ~~in~~ inasmuch as they have not applied their mind while passing the above order and have ignored the relevant law and material on record; and he has further argued that respondent No.2 ^{1 and ~ ~} have not exercised ^{discretion and ~} his power in accordance with law while rejecting the claim of the petitioner for compensation and as such the impugned orders are arbitrary and illegal. He has further argued that the respondent No.1 has committed manifest error of law in treating the orders of suspension and removal passed under Rule 14(ii) of Railway Servants Discipline and Appeal Rules, 1968 and as such the relief sought for be granted and the petitioner's petition be allowed and in support of his ^{arguments ~} ~~claim~~ he has relied on the following rulings:-

- 1) (1988) 8 Administrative Tribunals Cases ^{~ page} /16)
Ram Rakha (Applicant) Vs. Union of India & Another (Respondents).
- 2) AIR 1963 S.C. 1141 (V. 50 C. 172).
Express Newspapers Pvt. Ltd. (Appellant)
Vs.
Michael Mark and another. (Respondents)
- 3) AIR 1986 S.C. 555 - (Civil Appl. No.242 & 576 of 1982)
Dt. 12-9-85.
"Satyavir Singh and others (Appellants) Vs.
Union of India and others (respondents)
and
D.P. Vohra, (Appellant) Vs. U.O.I & Others (respondents)

4) (1987) 5 A.T.C. page 518

B.K. Sharma (Petitioner) Vs. Union of India & Others (respondents).

5) AIR 1975 S.C. page 2216

The Divisional Personnel Officer,
Southern Railway and another (Appellants)
Vs.

T.R. Challappan (Respondent).

7. The learned counsel for the respondents has argued that Shri P.N. Tripathi, Assistant Personnel Officer, who has ^{~ reply ~} filed (written statement) on behalf of the respondents is a responsible officer and has been duly authorised in this behalf by the respondents ^{~ NO. 3 to 6 ~} and is competent to file the counter reply as he has been looking after the above-mentioned case on behalf of respondents No. 3 to 6 and he is well conversant with ^{~ all ~} the facts of the case and as such there is no ^{~ violation ~} ~~failure~~ of any procedure in filing the counter-reply on behalf of respondents No. 3 to 6. He has further argued that the above impugned orders passed by the respondents No. 1 & 2 have been passed validly and legally and in accordance with the relevant law and ^{~ violation ~} there is no ~~failure~~ of any ^{~ relevant ~} rules; and has further argued that the above order has been passed by the respondents No. 1 & 2 after applying their minds [~] and the impugned orders are well reasoned orders. He has further argued that the above rulings relied upon by the applicant are not applicable in this case as the facts of the above rulings are different from the facts of this instant case.

8. We have perused the above rulings.

9. This is significant to note that a perusal of Annexures 1 & 2 shows that against the impugned order dated 20-1-81 passed by the Executive Magistrate, (First Class) Pratapgarh Shri B.D. Sharma, two appeals were filed (1) Appeal No.50/81 - by the aforesaid Shri Radheshyam Ojha - applicant in the instant case - and ^{other} ~~(2)~~ Appeal bearing No.97/81 - by General Manager, Northern Railway & Others and both the aforesaid appeals were dismissed by the learned District Judge, Pratapgarh, by his judgement and order dated 23-4-82 copy of which is Annexure ~~A~~-2. A perusal of this Annexure ~~A~~-2 shows that the learned District Judge, Pratapgarh, has discussed all the factual facts and legal points in detail and after considering all the view points he dismissed both the aforesaid appeals. Relevant portion of the aforesaid judgement appearing at Pages 6 & 7 thereof while dealing with the aforesaid appeal of the applicant Shri Radheshyam who is applicant in this case, reads as follows:-

" It is also relevant that is his claim the appellant asked for grant of night service allowance, running allowance which are normally given to the officials who render night service and do the requisite running job. The learned prescribed Authority has allowed these parts of the claim also irrespective of the fact that during the suspension period the appellant had not carried out such duties and it is a matter of some speculation whether he would have been given night work during the entire relevant period had he not been suspended. In the entirety of facts it cannot be said that the appellant had succeeded in establishing his claim for compensation contemplated

under sub-section (3) of Section 15 of the Act. According to this provision there is no entitlement for the compensation and it can be allowed by the Prescribed Authority, in case such authority considers it fit to grant some compensation. The orders of the learned prescribed Authority in rejecting the claim for compensation cannot be said to be unreasonable or illegal and to my mind no interference is called for in the order of the learned Prescribed Authority in this behalf. "

9. A careful perusal of the impugned judgement and order dated 20-1-81 (Annexure-1) referred to above) also shows that all the relevant facts and law points were thoroughly considered and discussed by the aforesaid Shri B.D. Sharma and he has given detailed reasonings for allowing the payment of Rs.1904/- and also for awarding costs to the tune of Rs.450/- and has given reasons for not allowing any compensation.

10. After considering all the view points and all aspects of the matter and keeping in view the above rulings relied upon by the ~~learned counsel~~ ^{for the} applicant, we find that the above rulings are found to be of no avail to the applicant as the facts of the present case ^{are} different and distinct from the ^{facts of the} above rulings inasmuch as in the above Ruling No.1 - 1988 (7) A.T.C. page 16 - Ram Rekha (Supra), the person who had filed the Counter-reply on behalf of the respondent No.2 in that case was not an officer but an Upper Division Assistant whereas in the instant case, Shri P.N. Tripathi, Assistant Personnel Officer, who was duly authorised by respondents No.3 to 6, who is the officer being well conversant with the