

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 27 of 2006**

Date of order : 16th - March, 2011

C O R A M

**Hon'ble Mr. Justice Anwar Ahmad, Member [Judicial]
Hon'ble Mr. A.K.Jain, Member[Administrative]**

Ashok Kumar Roy, son of Sri Ram Narayan Roy, resident of Village and Post – Sakarigali Ghat, District – Sahebganj.

Applicant.

By Shri M. Krishna, Advocate

Vrs.

1. The Union of India through the General Manager, Eastern Railway, Fairly Place, Kolkata.
2. The General Manager, Eastern Railway, Fairly Place, Kolkata.
3. The Divisional Railway Manager, Howrah.
4. The Divisional Railway Manager, Maldah , District – Maldah.
5. The Senior Divisional Personnel Officer, Eastern Railway, Maldah.

Respondents.

By Shri Mukundjee, ASC

ORDER

Justice Anwar Ahmad, Member [Judicial] : - This original application has been filed by Ashok Kumar Roy for the following reliefs :-

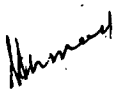
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“To make payment of 3 years' salary on the pay scale equivalent in the year 1990 without making any deduction and for quashing the order as contained in Annexure-A/4 so far as it relates to the deduction of Rs. 47,456.25 and consequent upon issuance of such order/direction, a further direction for payment of adequate interest and cost may kindly be issued.”

2. The learned counsel for the applicant submits that the applicant was appointed as Cleaner by the Railway administration on 18.08.1963. Subsequently, he was promoted to the post of Fireman – II and posted under Loco Foreman, Eastern Railway at Sahebganj. He submits that the applicant was dismissed from service on 07.02.1981 by the Divisional Railway Manager, Howrah [Respondent No.3] under Rule 14[ii] of the Railway Servant [Discipline & Appeal] Rules, 1968 on the allegation of participation in the strike of 1981. He submits that the applicant and other similarly situated employees of the Eastern Railway who were removed from service for the said allegation, filed a writ application before the Hon'ble High Court, Kolkata. The writ application was dismissed. The employees preferred an appeal before the Division Bench of the same High Court. The Division Bench granted interim relief by issuing a direction to the respondent authorities to make payment of their salary during the pendency of the appeal. The applicant was paid salary from 08.02.1981 to 06.01.1986. The Division Bench, however, dismissed the appeal with the direction to the applicant to prefer an appeal to the authorities to dispose of the appeal in accordance with law.

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Thereafter no payment was made from 07.01.1986 onwards. The applicant thereafter preferred an appeal before the General Manager, Eastern Railway, Howrah and the appeal was rejected on 14.06.1986. The applicant challenged the order in the Tribunal in OA No. 17 of 1987. The Full Bench of the Tribunal by a common judgment in the case of 07 [seven] applicants including the case of this applicant, set aside the appellate order on 14.12.1987 and remanded the case for fresh consideration. The respondents preferred special leave petition before the Apex Court and the special leave petition was dismissed. The direction of the full bench of the Tribunal was not complied with by the respondents and hence the applicant filed CCPA No.15 of 1992. However, during the pendency of the CCPA, the respondents passed an order and rejected the appeal. The Tribunal thereafter converted the CCPA No. 15 of 1992 into an original application as OA No. 552 of 1992. The aforesaid OA was disposed of by setting aside the order passed in the appeal and the appellate authority was directed to restore the appeal and dispose of it in accordance with law in the light of the decision of the Full Bench of the Tribunal delivered on 14.12.1987. The respondents entered into an enquiry under Rule 9 of the D.A. Rules and the enquiry was concluded on 29.07.1994 but no final order was passed. The applicant, therefore, filed another OA No. 246 of 1994 which was disposed of on 17.07.1995 with the direction to the respondents to dispose of the appeal at the earliest and not later than three months from the date of receipt of the order. The respondents did not dispose of the appeal. The



applicant, therefore, filed another OA No. 95 of 1996 which was disposed of by a common order dated 15.07.1999 with a direction to the Respondent No.2 to take a decision in the light of the direction of the Hon'ble High Court, Kolkata. In the meantime, the Apex Court in the case of Union of India & Ors vs. R. Redappa and another, heard along with a number of other Civil Appeals in the cases of the railway employees dismissed under rule 14[2] for having participated in the Loco Staff Strike of 1981, ^{and} ~~has~~ held that "the participants in the strike were unjustly treated" and issued the following directions :-

[a] "Employees who were dismissed under the Rule 14[2] for having participated in the Loco Staff Strike of 1981 shall be restored to their respective post within a period of three months from today.

[b][i] Since more than three years have been elapsed from the date, the orders were found to be bad on merits by one of the Tribunal it is just and fair to direct the appellant to pay the employees compensation equivalent to three years' salary inclusive dearness allowance calculated on the scales of pay prevalent in the year the judgment was delivered, i.e., in 1990.

[ii] This benefit shall be available even to those employees who have retired from service. In those cases where the employees are dead, the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the retirement or death.

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[c] Although the employees shall not be entitled to any promotional benefit but they shall be given notional continuity from the date of termination till the date of restoration for purpose of calculation of pensionary benefits. This benefit shall be available to retired employees as well as to those who are dead by calculating the period till date of retirement or death."

3. The learned counsel for the applicant submits that the applicant was reinstated in service and he retired from service on attaining the age of superannuation. But the direction of the Hon'ble Tribunal was not fully complied with in as much as salary at the pay scale of 1990 for three years by way of compensation as directed by the Apex Court as well as this Tribunal, was not paid. He submits that after the direction of Apex Court in R. Redappa's case, almost all the similarly situated employees were given the arrear of salary for three years inclusive of dearness allowance calculated on the scale of pay prevalent in the year 1990. The applicant, therefore, filed CCPA No. 148 of 2004 in which the respondents filed their show cause reply dated 23.11.2004 [Annexure-A/4] wherein they acknowledged that the applicant is entitled to get the compensation equivalent to three years' salary inclusive of dearness allowance calculated on the pay scale prevalent in the year 1990 deducting the payment already made for the period 08.02.1981 to 06.01.1986 amounting to Rs. 47,456.25. He submits that almost all the employees who were removed from service on the allegation of

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participation in 1981 strike were reinstated in the light of orders passed by the various Hon'ble Tribunals and Apex Courts and were paid three years' salary without deduction of any amount of salary already paid to them by way of interim relief. He, therefore, submits that the deduction of the salary already paid to the applicant for the period 08.02.1981 to 06.01.1986 amounting to Rs. 47,456.25 is not justified and hence the respondents be directed to refund the said deduction.

4. The learned counsel for the respondents on the other hand submits that the applicant Shri Ashok Kumar Roy, Ex.2nd, F/Man, retired on 29.03.2001, was removed from service w.e.f. 07.02.1981 [under DA Rules 14(ii)] for participation in Loco Running Staff Association Strike, 1981. He was reinstated in service as per judgment in OA No. 95 of 1996 w.e.f. 23.09.1999 vide DRM/Howrah's order dated 11.11.1999 followed by DRM/Malda's order dated 01.12.1999.

5. He filed a suit in the Hon'ble High court, Kolkata against this removal. His petition was dismissed, but on appeal before Division Bench, applicant was given the salary for a period from 08.02.1981 to 06.01.1996 as "Interim relief" as per Rly. Board's opinion/guidelines in this regard.

6. Long afterwards Sri Roy filed an OA No. 95/96 before the CAT/PNBE. In this OA, Hon'ble CAT/PNBE ordered for a compensation equivalent to three years salary inclusive of DA to be calculated on the scale of pay prevalent in the year of judgment delivered i.e. 1990.

7. Hon'ble CAT/PNBE's orders have been complied accordingly and

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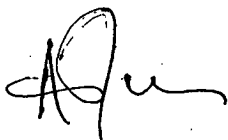
compensation was paid to the applicant with the necessary adjustment of salary already paid [period from 08.02.1981 to 06.01.1986] to the applicant as per guidelines/orders of Rly. Board communicated through CPO/KKK's letter dated 23/09/1999 and DRM/HWS's order dated 10.11.1999.

8. Calculated amount of compensation equivalent to three years salary was Rs. 64,248/-. Adjusted amount of salary already paid was rs. 47,456.25. Amount paid to Sri Roy was Rs. 16,792/-.

9. Considered the rival submissions made. The learned counsel for the applicant had submitted that almost all the employees who were removed from service were reinstated and were paid their three years' salary without deducting any amount already paid to them by way of interim relief but he has not filed any chit of paper to substantiate his submissions. It is settled principle of law that double payment cannot be allowed. So we are of the view that there is no illegality in the deduction of payment of Rs. 47,456.25.

10. As discussed above, we are of the view that the OA lacks merit and hence it is fit to be dismissed.

11. In the result, the OA is dismissed . No costs.



[A.K.Jain]
Member [Administrative]
mps.



[Anwar Ahmad]
Member [Judicial]