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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**NEW BOMBAY BENCH**O.A. No. 235/87
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198

DATE OF DECISION 26.3.92Shri H.J.Acharya PetitionerApplicant in person Advocate for the Petitioner(s)

Versus

The General Manager, W.Rly.Bombay RespondentShri A.L.Kasturey Advocate for the Respondent(s)**CORAM**

The Hon'ble Ms. Usha Savara, Member (A)

The Hon'ble Mr. S.Santhanakrishnan, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

b. Lawrence
26.3.92

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 235/87

Shri H.J.Acharya
V/S.

... Applicant

The General Manager,
Western Railway,
Churchgate, Bombay. ... Respondents

CORAM: Hon'ble Member (A) Ms.Usha Savara
Hon'ble Member (J) Shri S.Santhanakrishnan

Appearance

Applicant in person

Mr.A.L.Kasturey
Advocate
for the Respondents

JUDGEMENT

Dated: 26.3.82

(PER: Usha Savara, Member (A)

The application is filed with a prayer that the Respondents be ordered to grant and pay one additional increment w.e.f. 1.6.1974 in terms of declared Government policy, and costs be awarded to the applicant.

2. The applicant was working as laboratory Superintendent, in May 1974, when there was a railway strike. The Govt. of India offered certain incentives to the workers, who were in attendance from the very first day of strike. It was decided that one advance increment would be granted from 1.6.1974 to such of the staff, who had not received any other form of benefit such as extension/reemployment in service etc. The strike took place between 8.5.1974 to 28.5.1974. It is the applicant's case that he remained on duty from 8.5.1974 to 18.5.1974, when he was forced to leave by service of dismissal order.

This order was set aside by the General Manager by his letter dated 18.11.1984 in appeal and the penalty of 'censure' was imposed. The intervening period from 18.5.1974 to 23.11.1974 was treated as period not spent on duty, and the applicant was paid only 50% of wages and allowances.

3. This was challenged before the Central Government Labour Court, but the Court decided that the matter was not within their jurisdiction. The matter was referred to Central Govt. Industrial Tribunal (CGIT-in short), and C.G.I.T. by its award decided that the action against the applicant was not in accordance with rules and was not justified. The order of 'Censure' and the consequential order of reducing wages for the period 18.5.1974 to 23.11.1974 by 50% must fail, and it was ordered, that the applicant must be paid 50% of his deducted wages.

4. The applicant, thereafter, was paid his dues as per Award but he was not given the advance increment, which was to be paid to all loyal workers who were on duty during the strike days. It is the applicant's case, that he remained on duty from 8.5.1974 to 18.5.1974; thereafter he was not allowed to perform his duty because of the dismissal order. If this order had not been passed, he would have remained on duty throughout the strike, and therefore, would have been entitled to the advance increment. Since he was not allowed to perform his duty by the respondents, he should not be deprived of this benefit. He must be deemed to have continued to remain on duty, and hence entitled to claim the benefit in terms of Govt. policy.

5. The facts are not disputed by Shri A.L.Kasutrey, learned counsel for the respondents, but he merely avers in the written statement that it is not feasible to grant advance increment at this stage. He, however, affirms that the award given by C.G.I.T. has been fully implemented.

6. A necessary consequence of the award was that the applicant was considered to be on duty from 18.5.1974 onwards. It is not disputed that he was on duty from 8.5.1974 to 18.5.1974, therefore, it follows that he remained on duty during the entire strike period. Since attendance from the first day was the criteria for grant of advance increment, the applicant falls within the criteria and the respondents cannot deny the benefit to the applicant, who was not allowed to prove his loyalty by circumstances, created by the respondents themselves.

7. In view of the circumstances detailed above, we have no hesitation in allowing the application with a direction to the respondents to give the applicant the benefit of the additional increment from 1.6.1974. The respondents will comply with these directions within a period of 3 months of receipt of a copy of this order, but there will be no order as to costs.


 (S. SANTHANAKRISHNAN)
 MEMBER (J)


 (MS. USHA SAVARA)
 MEMBER (A)