

21

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 954/89

Transfer Application No: --

DATE OF DECISION: 9-11-84

Shri Hamid Hussain

Petitioner

Shri L.M. Nerlekar

Advocate for the Petitioner

Versus

GM Central Rly. Bombay VT

Respondent

Mr. S.C. Dhawan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

MR Kolhatkar
(M.R. KOLHATKAR)
M(A)

M

12

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.954/89

Shri Hamid Hussain,
16/32, Navapada,
Bandra, Bombay - 400 051. .. Applicant.

-versus-

General Manager,
Central Railway,
Bombay V.T. 400 001. .. Respondent

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Shri L.M.Nerlekar
Advocate for the
Applicant.

2. Mr. S.C. Dhawan
Advocate for the
Respondent.

JUDGMENT:
(Per M.R.Kolhatkar, Member(A))

Date: 9-11-84

This is an application u/s.19
of the A.T. Act. The facts of the case are
as below:

The applicant was appointed as
a Clerk on 11-6-1958 on selection by
Railway Service Commission. In the year 1970
the applicant was working in Thakurli. He
was transferred to Bombay. He did not
implement the transfer. Disciplinary proceedings
were initiated against the applicant vide
chargesheet dated 4/6-11-71. The applicant
was dismissed. He approached the High Court
through a writ petition which was dismissed.
However, the matter went upto the Supreme Court
and the Supreme Court disposed of the matter
by means of a judgment dated 20-8-1979.
As this judgment has a bearing on the present
application it needs reproduction:

"Special Leave to appeal granted.

On an earlier occasion when the Special Leave petition came up for hearing we had made a suggestion to counsel of both sides which it struck us was a fair one. Later, time was taken to consult both the parties and there is a minor difference between them which we think is not of such consequence as to lead to a break down. We have made a modified suggestion today which we think is reasonable in the circumstances of the case and the Ld. Solicitor General has also agreed that the equity of the situation shall be eminently met by that suggestion. Counsel for the petitioner also accepts it.

We, therefore, direct reinstatement of the petitioner :-

(a) Without any back wages, whatever, until the date of rejoining;

(b) His post will be that of a Senior Clerk which he was holding at the time of his terminating in 1977;

(c) The petitioner will have to his credit today, i.e. 20-8-1979, the length of service as a Senior Clerk from 1965 until 1970 when he should have reported for duty, but did not;

(d) His pensionary and other terminal benefits will continue as if he is continued in service down till today. His future promotion will be considered on the basis of length of service we have indicated under cl.(c) above;

(e) The petitioner will report for duty within two weeks from today in the Headquarters at V.T. Bombay and the respondent will give a suitable posting order in Bombay preferably in V.T. Bombay.

The appeal is disposed of in terms of the above order. "

The respondents issued an order in implementation of the Supreme Court Judgment dt.20-2-1984, in para-4 of which it stated:

"As regards his application dated 18-11-83 he may be advised that his period of absence from 1970 till his date of report will count for pension and Gratuity."

2. The applicant states that he reported for duty on 30-8-1979 and he was posted as Senior Clerk at V.T. In terms of Supreme Court order he was entitled to promotion. But Shri B.D.Kulkarni who had put in less service as Sr. Clerk was promoted on 1-10-80 as a Head Clerk ^{even though} at the time of promotion of Shri B.D.Kulkarni the applicant was also available. The applicant states that he is entitled to proforma fixation of pay with his reference to the pay of junior.

3. The applicant gave a notice of voluntary retirement and the same was accepted w.e.f. 16-8-1988. The applicant was informed that he had put in 22 years 1 month service and he was awarded pensionary benefits accordingly. However, ^{he contents that} in terms of Supreme Court judgment he was entitled to that pensionary benefits on the basis he has put 33 years of service. The two main reliefs sought by the applicant are to fix the pay of the applicant on reinstatement i.e. on 30-8-79 at Rs.452/- in the grade of Rs.330-560, and on

refixation of pay to sanction pension @ Rs.950/- p.m. on the basis ~~that last~~ drawn salary would be Rs.1900/-

4. The respondents have resisted the claim of the applicant. First of all it is stated that the claim is time barred. So far as the question of promotion and seniority is concerned, on merits it is contended that so far as seniority is concerned the seniority of Shri Kulkarni is at Sr.No.50 whereas seniority of applicant is at Sr.No.97. On the basis of this seniority the applicant was informed regarding fixation of his seniority on 13-12-1981 and at that time he had not taken any objection. Therefore there is no substance in the claim of the applicant so far as promotion and pay fixation is concerned both on the point of limitation as well as on merits.

5. So far as the claim for pension is concerned it is contended that what the applicant is seeking ^{is} to implement the judgment of the Supreme Court ^{which is not permissible} ~~relying on the~~ case law that this Tribunal cannot act as an execution court for the Supreme Court or any other court. Secondly it is contended that in fact the department has complied with the Supreme Court judgment, which did not imply that the pension should be given to the applicant in violation of the rules. It is stated that the extra-ordinary leave and leave without pay not covered by proper medical

15

certificate are treated as non-qualifying services for pensionary benefits. In all the non qualifying service ~~was~~ 9 years, 2 months and 19 days as below:

- (i) From ~~6-2-59~~ to 7-2-59 - 2 days
- (ii) From 12-7-60 to 15-7-60 - 4 days
- (iii) From 4-7-62 to 5-7-62 - 2 days
- (iv) From 19-6-70 to 12-5-73 - 4 years, 10 months and 24 days
(sanctioned by competent authority)
- (v) From 13-5-73 to 30-8-79 - 4 years, 3 months and 19 days
(sanctioned by Railway Board)
- (vi) Total 9 years, 2 months and 19 days.

The total length of service of the applicant from 11-6-58 till 16-8-88 was 30 years, 2 months and 5 days and after reducing ~~it by~~ 9 years, 2 months and 19 days as non qualifying service the total qualifying service came to 22 years, 1 month and the applicant's pension was correctly fixed at Rs.494/-

6. The applicant relies on the judgment of the Supreme Court in P.L.Shah vs. U.O.I. & Ors. vide 1989 (1)CLR 270. In this case the Supreme Court held that the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on 6-5-1982 the Tribunal could not entertain an application for directing the Government to revise the order dated 6-5-1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers. This judgment is quoted in support of his contention that he can

agitate the claim for promotion and pay fixation even at this late stage. The applicant also relies on the judgment of the Allahabad ^{H.C.} in Mritunjay Singh v. State of UP and others, 1971 LAB I.C. 646 in which it is held that the suspension per se does not disentitle employee to get increment during suspension period where contract of service subsists during the period. To the same effect ^{is} the judgment of the High Court of Rajasthan in Kan Singh v. State of Rajasthan & Ors. delivered on 28-2-1989, 1989 CLR 138.

7. Since we are required to consider the significance of the Supreme Court judgment we at the outset consider the plea of the applicant that the Tribunal cannot act as an execution court for the Supreme Court for which reliance is placed on the case of Smt. Lakshmi and Others v. Secretary, Govt. of India and another, (1987) 4 ATC 965. That was a case decided by the Bangalore Bench of this Tribunal in which the Tribunal ~~was~~ approached to implement the unimplemented order of the ~~Higher~~ Court. The learned Tribunal considered the matter in relation to the jurisdiction, ~~power and~~ ^{tive} authority of the Administrative Tribunals contained in Chapter III of the A.T. Act, 1985 and concluded that application u/s. 19 of the Act for such a relief ^{is} ~~not~~ maintainable and cannot be entertained. In our view what is stated in the above judgment does not apply to the instant case. First of all

what was sought to be implemented in the case was really the unimplemented portion of the judgment of the High Court to which the Tribunal succeeded. In this particular case, what is called interquestion is the order of the respondents awarding/fixing a particular pension for the applicant. Since the pension is a service condition the claim is certainly entertainable by the Tribunal. Secondly the judgment in Smt. Lakshmi's case related to the High Court whereas in this particular case even if it is assumed that we are called upon to implement the Supreme Court judgment we cannot be oblivious of provisions of Article 141 of the Constitution which requires that the law laid down by the Supreme Court is binding on all subordinate courts and Tribunals. We, therefore, find no substance in the contention of the respondents that we have no jurisdiction.

8. So far as pay fixation is concerned, we note that the applicant had represented regarding promotion and pay fixation at the appropriate time and a reply was given to the applicant vide letter dated 13-12-1981 at Ex.I to the written statement. That reply was not further challenged and we consider ^{that} that reply has become final. We therefore hold that the applicant has no case so far as alleged denial of promotion and pay fixation is concerned.

9. So far as question of fixation of pension is concerned, however, it is a different matter. We must also take note of the fact that the Supreme Court judgment which was delivered by consent proceeded on the basis of treating the service of the applicant only for purposes of seniority between 1970 to 1979 as nonest vide para (c).
The Supreme Court in para (d) stated that "his pensionary and other terminal benefits will continue as if he is continued in service down till today." In other words it was agreed and it was decided that although the service between 1970 and 1979 was nonest for purposes seniority & of promotion, it would count for purposes of pension. The respondents accepted this position by issue of order dated 20-2-84 at Annexure A-3 which is already reproduced above. It is for the respondents to regularise his absence by grant of leave which according to them does not imply counting non- qualifying service in terms of pension rules; but when the judgment of the Supreme Court was delivered it was delivered on the basis of an understanding. A solemn undertaking was given before the Supreme Court that his services between 1970 and 1979 would count for purposes of pension and Supreme Court passed a judgment on that footing. The department now cannot go back and say under that ~~now~~ the relevant rules that service cannot count as qualifying service. We note that out of 9 years 2 months 19 days (19) which is treated as non qualifying service

9 years 2 months 11 days are required to be treated as qualifying service on the basis of above ^{reasoning} because it falls in the period between 19-6-70 to 30-8-79. The department is therefore bound to give the benefit of the service to the applicant for the purpose of pension and their action in denial of pension for this period is patently illegal and unjust. We, therefore, dispose of this application by passing the following order :

O R D E R

The application is partly allowed. The respondents are directed to recalculate the pensionary benefits of the applicant on the footing that 9 years 2 months and 11 days out of 9 years 2 months and 19 days treated as non qualifying service by the respondents are required to be treated as qualifying service and on that basis refix his pension and give him all consequential benefits.

The action in this regard should be completed within three months from the date of communication of this order.

There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)