

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 14/96 /199

28-2-1997

Date of Decision:

Rajaram Ramlagan Nishad

Petitioner/s

Shri L.M.Nerlekar

Advocate for the
Petitioner/s

V/s.

U.C.I.

Respondent/s

Shri Sureshkumar for Mr.M.I. ~~Sethna~~ Sethna

Advocate for the
Respondent/s

CORAM:

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

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?

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

M

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 14/96

FRIDAY this the 28th day of February, 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Rajaram Ramlagan Nishad,
Shantibaiki Chawl, Room No.4,
Masarwani Estate, Aluhau Pool
Kurla, Mumbai - 400 070

By Advocate Shri L.M.Nerlekar .. Applicant

-versus-

Union of India
through
Divisional Railway Manager,
Central Railway
Bombay V.T.

By Advocate Shri Sureshkumar
for Shri M.I.Sethna .. Respondents

The application having been heard on 28th February, 1997
the Tribunal on the same day delivered the following :

- : O R D E R : -
- - - - -

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

This is a second round of litigation.

In O.A. 466/89 decided by division bench of this
Tribunal on 19-3-1991 the Tribunal had observed
in para 10 and 11 as below :

"10. It is possible from 1-2-1988 the applicant
might have been gainfully employed elsewhere.
So it may not be fit and proper to award any
backwages to the applicant in this case. Besides,
having regard to the nature of engagement of the
applicant in the capacity of casual labour, we
do not consider it proper to award back wages
as prayed for by the applicant w.e.f. 1-2-1988.
Hence the claim of the applicant for the backwages
and also with regard to damages for allegedly
keeping him out of employment is liable to be
rejected.

11. In the result we hereby direct the respondents
to engage the applicant forthwith in the capacity
in which he was engaged prior to 1-2-1988 without
detriment to his seniority if any. The claim for

payment of backwages and compensation and damages is hereby disallowed. The parties shall bear their own costs of this application. This application is ordered accordingly. "

The contention of the applicant is that he has been engaged w.e.f. 8-8-1991 but was not given any increments. He was screened and he was appointed as substitute Khalasi vide DRM(P)MB Letter dt. 7-10-92 and his pay has been fixed at Rs.762/- in the grade of Rs.750-940. In other words he started drawing increment from 1-10-93. According to the applicant the learned Tribunal while denying backwages had specifically directed the respondents to engage the applicant forthwith in the capacity in which he was engaged prior to 1-2-1988 without detriment to his seniority. According to him catering department is an open line^{and after completion of 120 days he attains temporary status and therefore he is entitled to all benefits available to casual labour with temporary status which as per para-10 of relevant circular are as below:}

"Casual Labour, whether in the open line or engaged in Projects, who have attained temporary status are entitled to the regular time scale of pay with the benefit of annual increment, D.A., HRA and CCA wherever applicable as per rules."

He has therefore sought the relief of fixing the pay of the applicant from 1-2-1988 and to grant him notional increments and work out his pay from 1-4-1991 and pay him arrears and other legal dues arising out of pay fixation with 18% interest thereon; and any other relief as the Hon'ble Tribunal may deem fit.

2. Counsel for the applicant relies on the judgment of the Supreme Court in Kumari Sarita Thakur vs. Union of India and another, 1994 SCC(L&S) 1014. Hon'ble Supreme Court after noticing that there was noticeable

delay in reinstatement of the appellant after the orders of the court directed to pay backwages from 1-8-1991 till the actual date of reinstatement.

No doubt there has been a delay in the appointment of the applicant inasmuch as the direction of the Tribunal was to engage him forthwith whereas he was engaged only from 8-8-1991. Therefore there appears to have been a delay of about four months. The judgment cited however does not appear to have cover the case because in that case the question covered was related to delay in the payment of wages whereas in this case the prayer is in relation to grant of increments.

3. Learned counsel for the respondents points out that there is no prayer that the applicant should be given payment of wages from 1-4-91 to 8-8-91, the date on which actual is appointment was made, nor has the applicant approached the Tribunal in time.

4. Learned counsel for the applicant also the relies on/judgment of the Supreme Court in the case of Union of India vs. Justice S.S.Sandhawalia (Retd.) and Ors, 1994 SCC(L&S) 530, in support of his contention that once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a reasonable rate considered reasonable by the court and Hon'ble Supreme Court had directed payment of interest @ 15%.

5. Learned counsel for the respondents apart from relying on circular viz. 10.1 and earlier submissions relating to non-eligibility of the applicant for backwages for the period from 1-4-91 to 8-8-91 contendsthat the O.A. is barred by limitation because the cause of action arose on 1-10-93 and applicant has filed the application on 30-11-95. Secondly in terms of the orders

of the Tribunal the applicant was appointed from 7-8-91 and it could not be said to be an unreasonable delay especially ^{when} the applicant has not produced copy of any application made by him contemporaneously for engaging him as casual labour. According to counsel for the respondents the applicant was screened and thereafter appointed as substitute Khalasi in the time scale of Rs.750 - 940 from 7-10-92 and his increments has been released from 8-10-93. According to counsel the applicant was engaged as daily rated casual labour since 1988 and daily rated employee is not entitled for fixation as per Extent Rules of Railway Board and the applicant is not entitled to consequential benefit of leave and payment of bonus made to the railway employees from time to time.

6. Coming to the main relief claimed by the applicant viz. grant of notional increment, the contention of the respondents that daily rated workers are not entitled to grant of notional increments till they are screened does not appear to be in accordance with the rules. It is clear that the Tribunal had directed the respondents to engage the applicant forthwith i.e. in March '91 without detriment to his seniority. It is not disputed that the applicant was first engaged in 1988 and thereafter in terms of court's order he was re-engaged in August, 1991 but the effect of the court's order that there is no detriment to his seniority is that as an open line worker he is deemed to have ~~been~~ completed 120 days of work as casual labour. He therefore attained temporary status on 1-6-88. He is therefore entitled to notional fixation of his pay from 1-6-88 whereas the respondents have given fixation of pay only from 1-10-92. Therefore the respondents are directed to work out his pay from 8-8-91 on the basis of notional increments earned by

him from 1-6-88 and pay him arrears and other dues arising out of pay fixation.

7. The applicant has also asked for any other relief as may be deemed fit by the Tribunal. Following the ratio of Supreme Court judgment cited before me I am of the view that there is a delay of four months in engagement of the applicant because on the plain reading of the term "forthwith" the respondents could not have delayed the engagement of the applicant any time beyond the receipt of the order by them. On an earlier occasion counsel for the respondents stated that they received the order on 1-5-1991 and therefore the respondents are bound to appoint the applicant from 2-5-91. Therefore the respondents are directed to make payment of difference of pay from 1-5-91 to 7-8-91 following the ratio of Kumari Sarita Thakur vs. U.O.I.

8. I now come to the next question regarding payment of interest in terms of ratio of U.O.I. vs. Justice S.S.Sandhawalia & Ors. In that case Hon'ble Supreme Court was concerned with amounts which were legally due viz. amounts due in terms of High Court Judges(Condition of Service) Act and the pensionary benefits. In my view the relief being given to the applicant is not in terms of statutory rules but relief by judicial determination. I am, therefore, of the view that the applicant is not entitled to any interest. O.A. is disposed of in these terms.

M.R.K. Kolhatkar

M

(M.R. KOLHATKAR)
Member(A)

Date : Office Report

Orders

C.P. No. 82/97
Alred by applicant,
filed on 12/12/97

8) 12.12.1997

C.P. No. 82/97

Shri C.M. Nerkar
for the applicant.

22
12/11

Issue notice to the
respondents to file reply to the
C.P.

Returnable on 23/1/1998.

M.R.Kothakar
(M.R.Kothakar)
MCA)

M.R.K.
(B.S. Hegde)
M(J)

(H)

OS

23/1/98 - 56

None for the Applicant.
Shri Suresh Kumar for
Respondents.

Reply to C.P. 82/97 is
being filed by Counsel
for Respondents in a
day.

The matter is adjourned
to 16/3/98.

M.R.Kothakar (R.G. Vaikyanatha)
(M.R.Kothakar) V.C.
M(A)

abp

Reply of Respondent
to C.P. 82/97 reos
on 23/1/98

5/2

Notices issued to
Applicant & Respondents on
19/12/97
18/12/97
26/12/97