

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.:: 537 of 1994.

Dated this _____ the 29th day of November, 2000.

Dwarkanprasad Sharma, _____ Applicant.

Shri H. A. Sawant, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for
Respondents.

CORAM : Hon'ble Shri S. L. Jain, Member (J).
Hon'ble Smt. Shanta Shastri, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library. Yes.
- } NO

2-9-

(Smt. SHANTA SHASTRY)
MEMBER (A)

OS*

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ORIGINAL APPLICATION NO.: 537 of 1994.

Dated this _____ the 29th day of November, 2000.

CORAM : Hon'ble Shri S. L. Jain, Member (J).

Hon'ble Smt. Shanta Shastri, Member (A).

Dwarkanprasad Sharma,
Retired Shunting Jamadar,
Western Railway, Bombay Central,
Mumbai.
(Since deceased. Represented by
Smt. Gulab Dwarkanprasad Sharma).

... Applicant.

(By Advocate Shri H. A. Sawant).

VERSUS

1. The Chief Workshop Engineer,
Western Railway,
Churchgate,
Bombay - 400 020.
2. Union of India through
The General Manager,
Western Railway, Churchgate,
Bombay - 400 020.
3. The Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Smt. Shanta Shastri, Member (A).

In this case, the applicant was imposed a penalty of removal from service on 16.04.1984. Aggrieved by the order, the applicant made an appeal to the appellate authority on 02.06.1984 and the same was turned down on 15.01.1985. The applicant preferred a revision petition on 16.03.1985. The same was rejected on 06.08.1985. The applicant, thereafter filed a writ petition in the Hon'ble High Court of Bombay in 1985, which was

subsequently transferred to this Tribunal under T.A. No. 162/86. After hearing the case, the Tribunal allowed the application partly and remanded the appeal for further hearing and disposal after giving a personal hearing to the applicant and to pass a speaking order dealing with all the points raised in the applicants appeal memo. Accordingly, the appellate authority, after giving a personal hearing and considering the appeal of the applicant, passed orders on 06.04.1987 reducing the penalty from removal from service to reducing the applicant to the post of Pointsman in the scale of Rs. 260-400 on pay of Rs. 260/- per month for a period of one year with future effect on seniority and increment by C.W.E. (E), Churchgate, transferring him to Pratap Nagar. Accordingly, the applicant was reinstated in service with immediate effect and was transferred to Pratap Nagar Workshop. After completion of the period of reversion, he was retransferred to Lower Parel Workshop from Pratap Nagar Workshop on 22.06.1988. He was promoted and posted as Shunting Jamadar in the scale of Rs. 1200-1800 vide Office Order dated 05.07.1988.

2. The applicant has prayed for the following reliefs :

- "(a) This Hon'ble Tribunal may be pleased to order and direct the Respondents to fix the Applicant's pay as per rule during the period of punishment i.e. from the date of removal to the date of reinstatement and further promotion to higher grade;
- (b) This Hon'ble Tribunal may also be pleased to order and direct the Respondents to pay to the Applicant his salary during the said period of punishment at the rate at which he was getting his (Pay) salary when he was removed from service;
- (c) This Hon'ble Tribunal may also be pleased to order and direct the Respondents to treat the period from 19.04.1984 to 28.04.1987 which was illegally treated as DIES NON be treated as on duty period and pay backwages for this period according to law.

- (d) This Hon'ble Tribunal may be pleased to order and direct the Respondents to pay interest at 18% on the delayed payment of back wages and arrears from 19.04.1984 to the date of (actual) payment with all consequential benefits including benefit of retirement;
- (e) This Hon'ble Tribunal may be pleased to grant any other or further relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this case;

that cost of this application may pleased be provided for.
- (f) That the family pension of the L.R. may be fixed accordingly and be paid with consequential benefits."

3. The respondents have filed the written statement. It is stated that in the O.A. No. 650/89 filed by the applicant, the applicant had claimed the same reliefs as he is claiming now. The reliefs claimed were as follows :

- "4(a) This Hon'ble Tribunal will be pleased to order and direct the respondents to cancel and set aside the order by which the pay of the applicant was reduced to Rs. 260/- equivalent to Rs. 950/- during the period of punishment.
- (b) This Hon'ble Tribunal will be pleased to order and direct the respondents to pay the applicant his salary during the said period of punishment at the rate at which he was getting his salary when he was removed from service i.e. Rs. 1,200/- per month and accordingly pay arrears thereof."

4. The applicant had further filed a Contempt Petition which was withdrawn by the applicant. He was given liberty by this Tribunal vide order dated 10.12.1993 and the applicant has now re-agitated the same claims as were rejected by the Tribunal in the judgement in O.A. No. 650/89. Thus, the application of the applicant is barred by the principles of res-judicata and deserves to be rejected on that ground. The applicant was promoted as Shunting Jamadar on 11.07.1982 and was fixed at Rs. 266/- in the scale of Rs. 225-350/-. He was not fixed at

Rs. 238/- on 01.08.1982. His pay was raised to Rs. 238/- on 01.08.1983 due to upgradation of the post of Shunting Jamadar in the scale of Rs. 330-480/-. Though the applicant has cited the judgements in the case of Shrichand & Others V/s. Union of India & Ors. [1992 (20) ATC 434], E. P. Royappa V/s. State of Tamil Nadu...(1974) 4 Sec. 3 - AIR 1974 SC 555 and Laxman Singh V/s. Union of India [1991 (18) ATC 600, they are not applicable in the present case. In any case, the transfer issue cannot be raised at this distant stage because it pertains to the year 1988 and it is barred by limitation. According to the respondents, the applicant's prayer for the salary and arrears was not granted by the Tribunal in the earlier O.A. Had he been aggrieved, he should have filed a S.L.P. at the relevant time before the Hon'ble Supreme Court. The applicant is not entitled to backwages as this relief for salary from the date of removal to reinstatement and arrears was not granted by this Tribunal. The salary of the applicant was fixed correctly by the respondents in accordance with the judgement dated 19.08.1991.

5. The Learned Counsel for the applicant contends that the stand taken by the respondents is malafide, arbitrary and illegal. He is relying upon the judgements in the case of Miss C.H. Ushakumari V/s. The Sr. Superintendent of Post Offices & Others [1993 (23) ATC 468], K. L. Anand V/s. C.S.I.R. [1992 (20) ATC 46] and Steel Authority of India Limited V/s. V. B. Rao [1992 SCC (L&S) 234] wherein it has been held that backwages as per rules have to be paid. The applicant further states that the fixation of the pay made by the Respondents is erroneous. Instead of Rs. 1,320/-, the applicant has been paid only at the rate of Rs. 1,260/- per month and the retirement benefits have

been calculated at the lower rate of pay. The Learned Counsel submits that the impugned order of the Respondents fixing his pay in pursuance of the judgement of this Tribunal dated 19.08.1991 is bad in law and without application of mind. He is legally entitled to get his pay fixed at the same rate as what he was getting at the time of his removal from service and the intervening period from 19.04.1984 to 28.04.1987 should not be treated as dies non in as much as he had not been given show cause notice as required under rules for treating the period accordingly.

6. We have heard the Learned Counsel for both the sides and have perused the pleadings. In our considered view, the prayers made by the applicant in this O.A. are the same as were made in the earlier O.A. No. 650/89. Since the Tribunal had considered the prayers in that O.A., the applicant cannot now re-agitate the same issues, even if the Tribunal had not made any specific orders on those reliefs. Relevant consideration had been taken into note, therefore, the same cannot now be attacked on merits by re-arguing the case. We are, therefore, not inclined to grant any relief in this matter.

7. The O.A. is accordingly dismissed. No order as to costs.

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(Smt. SHANTA SHASTRY)
MEMBER (A).

S. L. Jain

(S. L. JAIN)
MEMBER (J).

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