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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1627-of 1993

DATE-OF-ORDER: 2nd January, 1997

BETWEEN:

M.GOPALA KRISHNA

.. APPLICANT

AND

The Chief Personnel Officer,
South Central Railway,
Rail Nilayam,
Secunderabad.

.. Respondent

COUNSEL FOR THE APPLICANT: SHRI S.LAKSHMA REDDY

COUNSEL FOR THE RESPONDENT: SRI J.R.GOPAL RAO, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)
HON'BLE SHRI B.S.JAI PARAMESHWAR, JUDICIAL MEMBER

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri S.Lakshma Reddy, learned counsel for the applicant and Shri J.R.Gopala Rao, learned standing counsel for the respondents.

2. The applicant while working as Junior Fuel Inspector was removed from service for his unauthorised absence by the order dated 2.4.85 as confirmed by the appellate authority through his proceedings dated 22.9.87. That removal order was challenged in this Bench by filing OA 831/89. That OA was disposed of on 16.9.91 and the operative portion of that

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judgement reads as under:-

"Hence we quash the impugned order dated 22.5.89 and the applicant is entitled to reinstatement into service with all consequential benefits. Accordingly the application is allowed with no order as to costs."

The applicant was not reinstated immediately after the issue of the judgement dated 16.9.91. Hence he filed Contempt Application No.59/93 for non implementation of the directions of this Tribunal in OA 831/89 which was disposed of by the judgement dated 20.6.93. The relevant portion of the order in the C.A. reads as below:-

"The order dated 16.9.91 in O.A.No.831/89 is not to the effect that the applicant should be paid full pay and allowances for the intervening period. It merely consequential benefits. It means that the applicant is entitled to all consequential benefits as per rules. Hence, the contention for the petitioner that the court directed the payment of full pay and allowances for the intervening period is not tenable. Thus, when there is no direction by the Court or Tribunal in regard to the payment of salary and allowances for the intervening period, FR.54-A(2)(i) is attracted as this is a case where the order of removal was set aside by the Tribunal solely on the ground of non-compliance of the

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requirement of Article 311 of the Constitution. When steps were taken by the Respondents in accordance with FR 54-A(2)(i), it cannot be held that there was contravention of the order dated 16.9.91 passed in the O.A. The learned counsel for the respondents stated that the steps will be taken immediately in regard to the promotion of the applicant. As it is submitted for the applicant that he (the applicant) is going to retire within 4 months, the respondents are directed to take necessary steps in regard to the promotion of the applicant and fixation of the pay and the payment of arrears by 15.8.93. It is needless to say that the applicant is entitled to the monetary benefits from the date his junior was promoted, in case he is promoted and b/course to FR 54-A(2)(i). If the arrears are not paid the same will carry interest @ 12% per annum from that date i.e, 15.8.93. If the petitioner is in regard to the various reliefs referred to in this order, he is free to move this Tribunal, if he is so advised."

From the order in the C.A. it is seen that in the initial judgement in OA 831/89, no direction was given by this Tribunal for payment of full pay and allowances for the intervening period and it is also observed in the C.A. that "when there is no direction by the Court or Tribunal in regard to the payment of salary and allowances for the intervening period, FR 54-A(2)(i) is attracted as this is a case where the order of removal was set-aside by the



 

Tribunal solely on the ground of non compliance of the requirement of Article 311 of the Constitution".

3. On the basis of the direction in the OA and the C.A., Office Order No.49/93 dated 6.8.93 was issued. By this order the applicant was reinstated and the unauthorised absence was regularised as stated in the Office Order. He was also promoted on par with his immediate junior who was promoted as Senior Loco Inspector in the scale of pay of Rs.2375-3500 with effect from 1.1.84 and he was made eligible for higher rate of pay on shouldering higher responsibilities on proforma basis with effect from 4.12.92. A corrigendum was also issued to the impugned letter by the letter No.CP/121/Admn/434/MGK dated the unauthorised absence.

4. This OA is filed for setting aside the impugned Office Order dated 6.8.93 at Page 7 of the OA and to treat the service from 2.4.85 to 3.12.92 as duty and not as dies-non and to grant the benefit of promotion from 1.1.84 on par with the benefit of promotion to his junior Shri M.R.Naidu as Senior Loco Inspector in the scale of Rs.2375-3500 (RSRP) and fix the pay accordingly and to grant him leave encashment due to him for the intervening period from removal to reinstatement.

5. The applicant was reinstated into service with effect from 4.12.92 and he retired from service as Senior



Loco Inspector on 30.9.93. Hence the points that fall for our consideration in this OA are,

(i) Whether the period of his leave during the intervening period from the date of his removal till the date of his retirement is properly regularised;

(ii) Whether he has been granted consequential benefits for the period he was away from duty in pursuance of the direction given in the judgement in OA 831/89;

(iii) Whether he has been promoted correctly on par with his junior Shri M.R.Naidu; and

(iv) Whether he is entitled for leave encashment at the time of retirement on the basis of the determination of the unauthorised absence for the period during which he was away from service from the date of his removal till the date of reinstatement.

6. We will not like to express any opinion whether the applicant is entitled for consequential benefits as prayed for by him or not. This question has already been answered fully in the order in the Contempt Application No.59/93. It will not be proper for us to further examine this issue when that issue has been clinched by the order given in the Contempt Application. No further consideration for this part of relief is necessary.

7. The consequential benefits arisen^{ing} out of the directions in OA 831/89 and the Contempt Application No.59/93 have been done in accordance with the rules as can be seen from the impugned Office Order dated 6.8.93. The applicant has been paid 50% of the salary for the period he was away from service and the unauthorised absence was treated as dies non. This has been commented upon in the contempt Application No.59/93. The order in the Contempt Application clearly says that there are no directions in the Original Application No.831/89 to grant to the applicant full pay and allowances for the intervening period.

8. The learned counsel for the applicant further submitted that the order in the OA was passed on 16.9.91 and he was reinstated on 4.12.92 i.e, after a year of passing of the order in the OA. Hence for that period atleast he should be paid full salary and allowances as it is the fault of the respondents in not reinstating him immediately after the direction was given in the OA 831/89. The learned standing counsel for the respondents today submitted that ~~when the~~ R.A.No.17/92 was filed in the OA 831/89, ^{only} that RA was disposed of on 27.7.92. Immediately thereafter he was issued with the reinstatement order on 27.11.92 and he joined on the basis of that reinstatement order on 4.12.92. From the chronology of the events that have been given as above, we find that the reinstatement was delayed because of the pending Review Application in the OA 831/89. When the R.A. was disposed of,

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reinstatement order was issued within four months from the date of issue of the order in the R.A. and the applicant also joined immediately thereafter. Hence we do not find any reason to grant the pay and allowances for the intervening period from the date of passing of the order in the OA till the date of reinstatement.

9. The next prayer in this OA is that the applicant was not promoted to the post of Senior Loco Inspector on reply in Para 5 have stated that the applicant was in service on 1.1.84 and the restructuring order came with promoted with effect from 1.1.84. In view of the submission of the respondents as above, it is essential that the applicant should also be promoted to the post of Senior Loco Inspector in the grade of Rs.2375-3500 with effect from 1.1.84 and his pay during the intervening period when he was away from service should be paid in accordance with the scale of pay he was holding immediately earlier to the removal from service in accordance with FR 54-A(2)(i) of IREC Vol.II (Annexure IV to the reply). His pay on reinstatement on 4.12.92 should be regulated on that basis and his further pay fixation has to be done on the basis of his pay fixation as on 4.12.92. His final of pay on the above basis, when he retired on 30.9.93.

If he is considered fit and otherwise suitable.

as per last pay drawn,

10. As regards the last prayer that he should be paid

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not propose to give any direction. When the period has been regularised in accordance with the rules, we ~~cannot~~ ^{need} give any further direction. Hence there is no need to further go into this prayer.

11. In the result, the following direction is given:-

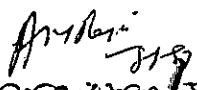
The applicant should be promoted to the post of Senior Loco Inspector on par with his junior Shri M.R.Naidu with effect from 1.1.84. His pay and allowances should be ^{fixed} in the cadre of Senior Loco Inspector in the scale of pay of Rs.2375-3500 and the consequential arrears during the period he was away from duty should be ^{fixed} on that basis. His pay fixation as on 4.12.92 when he was reinstated should also be determined on the basis of his pay fixation as on 1.1.84. His final settlement dues will have to be paid on the basis of his last pay drawn in pursuance of the above directions. The arrears, if any, arisen on account of the above pay fixation should be paid to him within a period of four months from the date of receipt of a copy of this order.

13. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
JUDICIAL MEMBER


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER

2/1/97
DATED: - 2nd January, - 1997
Dictated in the open court.


D. Registrar