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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.23/97

Date of order: 25/1/2015

Harak Chand Verma, S/o Sh.Lalchand Verma, Retd.Station
Supdt, R/o House No.44/609, Behind Kalimai Mandir Foy
Sagar Road, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Rly, Churchgate, Bombay.
2. Divisional Railway Manager, Ratlam Division, W.Rly. Ratlam.

...Respondents.

Mr.S.L.Songara - Counsel for applicant

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

By this O.A filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

- i) to declare the PPO No.WR/11306/278689 Part I alongwith Anxx.1 as null & void.
- ii) to direct the respondents to grant pension to the applicant by including the period of 13 years 4 months and 25 days as qualifying service.
- iii) to direct the respondents to grant the benefit of revised fixation, seniority, promotion and difference of pay and pension with interest.
- iv) to direct the respondents to pay the applicant the salary and allowances for the period from 24.6.93 to 21.7.93 with interest.
- v) Cost of the application.

2. Facts of the case as stated by the applicant are that the applicant was superannuated at the age of 58 years on 31.12.95 from the post of Station Supdt. It is stated that the applicant was prosecuted under Sec.66 of the Bombay Prohibition Act, before the Judicial Magistrate First Class, Godhra and the applicant was acquitted on 23.10.75. Thereafter, departmental proceedings were initiated against the applicant and after enquiry the penalty of removal from service was imposed upon the applicant vide order dated 22.6.80. Against this order, the applicant filed a civil suit which was transferred to this Tribunal and the Tribunal decided T.A No.1341/86 on 17.5.93 with the direction to the respondents to take back the applicant in service with no back wages and without any promotion for the period when the applicant was out in service. But made specifically clear that the applicant shall be entitled to pensionary benefits according to law. It is stated that the applicant reported on duty on 24.6.93 but he was allowed to resume duty on 22.7.93 and no payment was made to the applicant for this period. It is also stated that the applicant was entitled to promotion in the scale Rs.700-900 (Rs.2000-3200) w.e.f. 1.1.79 where as he was given promotion w.e.f. 1.7.95 only. It is further stated that an amount of Rs.35,000/- was wrongly withheld against which the applicant filed a representation but with no avail. It is stated that the PPO No.11306/2786897 was issued to the applicant by not counting the service of 13 years 4 months 25 days for pension purposes was without application of mind, therefore not sustainable in law. No reasons were recorded as to why this period is not counted as qualifying service for pension. No opportunity of hearing/show cause was given to the applicant, therefore, not counting the period of 13 years 4 months and 24 days, is not sustainable in law. Therefore the



applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the applicant was given pensionary benefits as per the directions given in TA No.1341/86 and there was no reason to count the period of 13 years 4 months 24 days for the purpose of pension for which the applicant did not work. It was stated that specific directions were given by the Tribunal in the aforesaid TA that the applicant would not be entitled to any back wages and benefit of promotion and there was no direction to the effect that the applicant would be treated in continuation in service. Therefore, the applicant was treated as absent during the interruption period and the action of the respondents was legal, valid and justified. It is also stated that all other dues/benefits were given to the applicant, therefore, any other benefits claimed by the applicant is not sustainable in law, therefore, the applicant is not entitled to any relief sought for.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The foremost grievance of the applicant in this O.A is that the period of 13 years 4 months and 24 days was not counted as qualifying service for the purpose of pension. The contention of the respondents in this connection has been that while deciding TA No.1341/86 dated 17.5.93, the Tribunal did not hold that the services of the applicant would be treated as continuous, therefore, the period of interruption was not counted as qualifying service for the purpose of pension. The Tribunal in TA No.1341/86, issued the following directions:

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"We are of the view that the applicant may be taken back in service with no benefit of back wages and without the benefit of promotion during the period when he was out of service. The applicant is likely to retire shortly and he shall be entitled to pensionary

benefits according to law. The order of removal from service of subsequent order of appellate & revising authorities are set aside, subject to the directions in this para".

6. On the basis of the above directions, the respondent department treated the applicant as absent for the period from removal to reinstatement. In the directions given by this Tribunal in the aforesaid TA it was made specific that the applicant shall not entitle to any back wages for the period of interruption. The Tribunal did not hold that this period shall not be counted for even pensionary purpose. In the absence of any specific direction, it was not proper on the part of the respondents to fix the pension of the applicant by treating the period of interruption (13 years 4 months and 24 days) as not qualifying service for the purpose of pension. If this was the interpretation of the respondents regarding the order passed in TA No.1341/86 then it was obligatory on the part of the respondents' department to pass an order under Rule 39 of the Railway Service (Pension) Rules which was not done in this case. Rule 39 of the Railway Service (Pension) Rules 93 is reproduced as under:

"Rule 39. Counting of past service on reinstatement.

(1) A railway servant who is dismissed removed or compulsorily retired from service, but is reinstated on appeal review, is entitled to count his past service as qualifying service.

2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the



order of reinstatement."

7. As a matter of rule, when a person is exonerated/reinstated after quashing the order of removal/dismissal, he is entitled to count his period of interruption for the purpose of pension unless it is specifically ordered by the competent authority. But in this case, no order was passed by the competent authority as to how this period of interruption will be regulated and the Pension Payment Order was issued by not counting the period of 13 years 4 months 24 days as qualifying service for the purpose of pension. Therefore, the action of the respondents appears to be not only legal, unjust and arbitrary but it is also in violation of the principles of natural justice.

8. In Menaka Gandhi Vs. UOI (1978) 1 SCC 248, it was held that before any punitive action is taken which deprive the employee of the benefits he is enjoying, an opportunity has to be given.

9. In Bhagwan Shukla Vs. UOI & Ors, 1994 SCC(L&S) 1320, it was held that on promotion, the pay of the petitioner was fixed, but it was reduced without giving any opportunity to show cause to the petitioner. Hon'ble Supreme Court held that the order was violative of principles of natural justice.

10. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, it was held that if any order involves civil consequences and has been issued without affording any opportunity to the applicant, such an order cannot be passed without complying with audi alteram partem - party should be given an opportunity to meet his case before an adverse decision is taken against him.

11. In our opinion, in view of the order passed by the Tribunal in TA No.1341/86, the applicant was entitled to the benefits of pension for the period of interruption from 22.6.80 to 21.7.93.

12. As regards the claim of promotion, the applicant has

already been given promotion w.e.f. 1.7.95, i.e. after his reinstatement in service. The applicant failed to establish any case for his promotion w.e.f. 1.1.79. Moreover, this prayer seeking promotion w.e.f. 1.1.79 appears to be hopelessly barred by limitation, therefore, in our view, the applicant is not entitled to this relief.

13. As regards other reliefs, the applicant failed to establish any case for interference by this Tribunal, therefore, the applicant is not entitled to any relief sought for.

14. We, therefore, allow the O.A in part and direct the respondents to grant pension to the applicant by including the period of 13 years 4 months 24 days as qualifying service and issue the revised pension order. The applicant shall also be entitled to difference of pension and other retiral benefits in view of the revision of his pension. The whole exercise must be completed within a period of 4 months from the date of receipt of a copy of this order. The applicant shall not be entitled to any other relief sought for.

15. No order as to costs.

Nagrath
(A.P.Nagrath)

Member (A).

Singh
(S.K.Agarwal)

Member (J).