

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.453/2001

Date of order: 21.8.2002

Ganpat Lal Gora, S/o Sh.Laxman Ram Gora, R/o Kalyanipura,
Ajmer, posted as Sr.Pharmacist at GLO Dispensary, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway,
Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer

...Respondents.

Mr.Nand Kishore - Counsel for applicant.

Mr.U.D.Sharma, Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant was appointed as Pharmacist Gr.III on 12.11.1963. Consequent to the departmental enquiry, he was removed from service in the year 1975. He filed O.A No.858/89 in this Tribunal and the same was decided on 11.5.93. The applicant was ordered to be reinstated without the benefit of back wages from the date of removal to the date of joining back in service and was also held entitled for continuity of service and pensionary benefits on retirement. The order passed by the Tribunal reads as under:

"4. We have considered the other aspect of the case and we are of the view that the interests of justice will be served if the applicant is reinstated without the benefit of back wages. The orders of the disciplinary authority and the Appellate Authority are modified suitably so that the applicant be reinstated with immediate effect in

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service. However, he will not be entitled for any back wages from the date of removal to the date of his joining back in service. The consequential order enabling the applicant to join service will be passed within one month from today.

5. As far as continuity of the service and the pensionary benefits on retirement are concerned, the applicant will be entitled to these benefits. However, he will not be entitled to claim any benefit of promotion and will also not be entitled to the benefits extended to his juniors on account of the removal order, during the intervening period from 1975 to 1993."

2. Pursuant to the aforesaid order, the department passed order dated 11/16.6.93 which reads as follows:

"Shri Ganpat Lal Gora, the then Pharmacist working under Medical Officer Marwar was removed from Railway services in the year 1975. Pursuant to orders 11.5.93 in O.A No.858/89 passed by the Central Administrative Tribunal, Bench at Jaipur, Shri Ganpat Lal Gora is reappointed in minimum of scale in Railway Services and posted under Medical Officer, Sojat Road, without the benefit of his past service, seniority, promotion, increment and backwages for the removal period and his past service will be counted for the purpose of pensionary benefits only."

3. Consequent to this order, the applicant was allowed to join on 11.6.93. Thus, he remained out of service from 22.9.75 to 11.6.93. The applicant filed another O.A No.259/94 before this Tribunal against the order dated 11/16.6.93. The Tribunal disposed of the said O.A vide order dated 24.1.96 with the following observations:

"It is clear from the order of this Tribunal that the

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applicant has been reinstated to his original post which he was holding at the time of his removal. He should, therefore, be fixed at the same stage of pay scale which he was drawing at the time of his removal. Once he has been taken back on duty he would earn his due increment from that date as is admissible for the said post. Shri Mathur also stated during the course of arguments that the job of Pharmacist Gr.III has been merged with the Pharmacist Gr.II. If it is so, the fitment in correspondence of the Pharmacist of these grades shall be decided as per rule."

4. It appears that the applicant also carried this matter to the Apex Court regarding his reinstatement in terms of order dated 11/16.6.93 in Civil Appeal No.6333/2000 and the Apex Court vide order dated 6.11.2000, observed as follows:

"Be that as it may, the order dated 11/16.6.93 will be treated as an order of reinstatement and if the order is treated as reinstatement the appellant's grievance is redressed. We clarify that the order of the government should be treated as one of reinstatement.

The other directions given by the Tribunal will, however, stand and other terms of the order passed by the authorities are in conformity with the earlier order of the Tribunal. The appeal is disposed of accordingly."

5. From the material placed on record, it is also evident that the applicant also moved an Interim Application No.2 in the aforesaid Civil Appeal No.6333/2000 which was finally disposed of by the Apex Court vide order dated 4.2.2002 ^(Annexure R-4) thereby clarifying that the service rendered by the applicant from 1963-1975 shall be treated only for notional seniority and pensionary benefits.

5. The case of the applicant in this O.A is that the intervening period 12.9.75 to 11.6.93 has to be counted for the purpose of increment in terms of order passed in O.A No.858/89 decided on 11.5.93, O.A No.259/94 decided on 24.1.96 and the order of the Apex Court in Civil Appeal No.6333/2000 decided on 6.11.2000.

6. According to the respondents, the applicant is not entitled to grant of increment for the intervening period 12.9.75 to 11.6.93, in terms of the aforesaid orders of this Tribunal as well as the order of the Apex Court as no specific order in this regard had been passed either by the Tribunal or by the Apex Court on which reliance have been placed by the applicant. It is also averred that the present O.A is not maintainable and in case the applicant was aggrieved of the noncompliance of the orders dated 11.5.93, 24.1.96 and order dated 6.11.2000, the proper remedy was to file execution proceedings under Sec.27 of the Administrative Tribunals Act, 1985.

7. We have heard the learned counsel for the parties and also gone through the orders passed by this Tribunal and the order of the Apex Court on which reliances have been placed by the counsel for the parties.

8. The sole point which requires our consideration is whether the applicant is entitled to notional increments during the intervening period from 12.9.75 to 11.6.93, on the basis of the order in O.A No.858/89 dated 11.5.93, O.A No.259/94 dated 24.1.96 and Civil Appeal No.6333/2000 decided on 6.11.2000.

9. We have given our thoughtful consideration to the matter and we are of the view that the applicant is not entitled to any relief.

10. From the perusal of order dated 5.11.93 passed in O.A

No.858/89, it is quite evident that the applicant was to be reinstated in service and he was held not entitled to any ~~back wages~~ ^{back wages} for the intervening period 12.9.75 to 11.6.93 and also that he will not be entitled to claim any promotion or any other benefits extended to his juniors during the intervening period. However, he was held entitled to continuity of service for pensionary benefits on retirement. Thus, there is no specific order/direction issued by the Tribunal that the applicant will be entitled for increment for the intervening period in question. When the applicant was reinstated pursuant to the aforesaid order which has been reproduced in the earlier part of this order, it is also clear that the applicant was reappointed (subsequently treated as reinstatement pursuant to the order of the Apex Court) without the benefit of his past service, seniority, promotion, increment and back wages for the removal period. This order was challenged by the applicant in O.A No.259/94 and this Tribunal vide order dated 24.1.96 (Annx.A3) observed that the pay of the applicant be fixed at the same stage of pay scale which he was drawing at the time of his removal, once he has been taken back on duty, he would earn his due increment from that date as is admissible for the said post. It is an admitted fact that the applicant was getting Rs.380/- in the pay scale Rs.330-560 on the date when he was removed from service and as such the pay fixed at the same stage i.e. Rs.380/- on 12.6.93 on which date he was taken on duty. That apart, the order dated 11/16.6.93 was also a subject matter of dispute before the Apex Court in Civil Appeal No.6333/2000 and vide order dated 6.11.2000, the Apex Court specifically observed that the order of the Government should be treated as one of reinstatement and other direction given by the Tribunal will however stand and 'other terms of the order'

passed by the authorities are in conformity with the earlier order of the Tribunal'. Thus, the order of the authorities has been approved by the Apex Court subject to the clarification that the order of reappointment will be treated as the order one of reinstatement and the applicant is entitled only to the notional seniority and pensionary benefits on the post of Pharmacist-III w.e.f. the initial appointment made on 12.11.63 till the date he was removed from service 12.9.75. The aforesaid period has been allowed to be given credit to the applicant by the Tribunal for the purpose of continuity in service and pensionary benefit on retirement only and not for payment of any amount for the aforesaid period. This is clear from the orders of the Apex Court dated 6.11.2000 and dated 4.2.02.

11. Since, the orders passed by this Tribunal and the order passed by the authorities dated 11/16.6.93 which inter alia specifically state that the applicant will not be entitled for the benefit of increment has been clarified by the Apex Court in its orders dated 6.11.2000 and dated 4.2.02, it will not be proper for us to hold otherwise and grant relief to the applicant. We are also of the view that since the matter in issue stands already agitated and decided by this Tribunal as well as the Apex Court, no relief can be granted to the applicant in the present proceedings.

12. For the foregoing reasons, we are of the view that the applicant is not entitled to any relief and the Application must fail with no order as to costs.


(M.L. Chauhan)

Member (J)


(H.O. Gupta)

Member (A).