

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

208
O.A. No. of 1998.

10-3-2000
DATE OF DECISION.

Sri Nirmalendu Laskar

PETITIONER(S)

Sri G.K.Bhattacharya, Smt. B.Dutta Das. ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri J.L.Sarkar, Railway counsel.

ADVOCATE FOR THE
RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

THE HON'BLE SMT. LAKSHMI SWAMINATHAN, JUDICIAL MEMBER.

DATE OF DECISION.

1. Whether Reporters of local papers may be allowed to see the
judgment ? PETITIONER(S)

2. To be referred to the Reporter or not ? yes

3. Whether their Lordships wish to see the fair copy of the
judgment ? ADVOCATE FOR THE
RESPONDENT(S)

4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Judicial Member.

Lakshmi
Signature
RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE

THE HON'BLE

DATE OF DECISION.

1. Whether members of local paper may be allowed to see the
judgment ? PETITIONER(S)

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the
judgment ? ADVOCATE FOR THE
RESPONDENT(S)

4. Whether the Judgment is to be circulated to the other Benches ?

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 208 of 1998.

Date of Order : This the 10th Day of March, 2000.

The Hon'ble Sri G.L.Sanglyine, Administrative Member.

The Hon'ble Smt. Lakshmi Swaminathan, Judicial Member.

Sri Nirmalendu Laskar,
Son of late Nalini Kanta Das Laskar,
Working as Safety Counsellor,
(Permanent Way),
N.F.Railway, Lumding.

... . Applicant

By Advocate Sri G.K.Bhattacharyya, and
Mrs B.Dutta Das.

- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.

2. The General Manager (Personnel)
N.F.Railway, Maligaon.

3. The Divisional Railway Manager,
N.F.Railway, Lumding.

4. The Divisional Engineer (Coordination),
N.F.Railway, Lumding.

5. The Divisional Engineer-IV,
N.F.Railway, Lumding.

6. Divisional Railway Manager,
(Personnel) N.F.Railway,
Lumding.

... . Respondents.

By Advocate Sri J.L.Sarkar.

O R D E R (ORAL).

SMT.LAKSHMI SWAMINATHAN (J.M)

The applicant is aggrieved by the orders passed by the respondents imposing a penalty of reduction of pay to the lower stage in the same time scale for a period of 2 years 6 months with non cumulative effect dated 12.5.1995 and the subsequent order dated 2.6.1998 giving effect to that order.

2. The applicant while in service as Permanent Way Inspector (PWI) has been imposed certain penalties by

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the respondents which are mentioned in the order dated 2.6.1998. Against the order passed by the respondents dated 12.5.1995 the applicant had filed an appeal which was not disposed of. He has also filed an earlier O.A.39/96 which was subsequently withdrawn by him and dismissed by Tribunal's order dated 27.3.1997. Sri G.K.Bhattacharya, learned counsel for the applicant has fairly submitted that in view of the Tribunal's order dismissing the application as withdrawn in O.A.39/96, he does not press the challenge to the penalty order passed on 12.5.1995. However, the grievance of the applicant is that in implementing the penalty order passed on 12.5.1995, after the implementation of the earlier penalty order mentioned in the order dated 2.6.1998, the affect is that the applicant's pay is sought to be reduced in the revised pay scale which came into effect on 1.1.1996 on acceptance of the recommendation of the 5th Pay Commission. He has submitted that in 1995, the applicant was in the pay scale of Rs.2375-3500/- and the corresponding scale after 1.1.1996 is Rs. 7400-11500/- As per the respondents order dated 2.6.1998, the effective date of implementation of the penalty order dated 12.5.1995 would operate in the revised pay scale applicable after 1.1.1996. Learned counsel has submitted that this has resulted in the applicant being put to greater financial hardship than was probably intended, when the penalty order was passed on 12.5.1995. He relies on the circular(R.B.E. 159/90) issued by the Railway Board in a similar circumstances when there was a switch over in the revised pay scale, as a result of the new scale coming into effect after the 3rd Pay Commission revision to the 4th Pay Commission. Learned counsel has submitted that although, admittedly no appeal or review is pending with the respondents, taking into account the facts and

circumstances, he has prayed that the respondents may be directed to consider his case in the analogy of the R.B.E Circular 159/90. He has submitted that it will only be fair if the respondents are so directed to take into account the quantum of financial loss that has been sustained by the applicant prior to 1.1.1996 and thereafter, in view of the implementation of the penalty order dated 12.5.1995 taking effect after the earlier penalty orders in seriatim mentioned in the order dated 2.6.1998. He has however, made it clear that he has not challenged the ~~virtues~~ of the penalty order dated 12.5.1995.

3. We have seen the reply filed by the respondents and heard Sri J.L.Sarkar, learned Railway counsel for the respondents. The respondents in their reply have contended that they have correctly implemented the penalty order dated 12.5.1995, as the applicant has several other penalty orders imposed against ^{has to be} him which ~~will~~ be dealt with in accordance with the rules and instructions. They have also stated that there is no circular of the Railway Board on the issue raised by the applicant, similar to the one issued earlier on 19.9.1990 - R.B.E.No. 159/90. Learned counsel has, therefore, submitted that in the absence of any such specific circular on the issue from the Railway Board, the applicant cannot claim any benefit. Learned counsel has submitted that no appeal had been filed by the applicant ~~otherwise~~ earlier, with regard to the penalty order dated 12.5.1995 and, ^{so as} ~~therefore~~, neither ^{on} the appeal nor review is pending with them. Sri Sarkar, learned counsel has, therefore, prayed that the O.A. may be dismissed.

4. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

5. As mentioned above, the only issue raised in this case is with regard to the implementation of the penalty order

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passed by the respondents dated 12.5.1995 by the subsequent order passed by them on 2.6.1998. It is seen from the order dated 2.6.1998 that prior to the penalty order passed on 12.5.1995 the applicant has been imposed 3 minor penalties from 1992-1994 for various periods. According to the rules, these penalties are not to run concurrently. Accordingly, by the time of implementation of the penalty order dated 12.5.1995 the reduction of pay of the applicant to lower stage for 2 years 6 months will begin, not from that date but from a subsequent date when the periods under the earlier punishments are over. In the present case, this would take effect after the implementation of the recommendations of the 5th Pay Commission and revision of pay scales with effect from 1.1.1996. We find some merit in the submissions made by the learned counsel for the applicant that *facts and all* it is only in the particular circumstance of the case that the financial loss which would be incurred by the applicant *than by* would be greater *than* what was intended by the competent authority at the time he passed the penalty order on 12.5.1995. In this connection the R.B.E.Circular No.159/90 appears to be relevant. The R.B.E.Circular 159/90 is re-produced below:

"Subject : Penalty of withholding of increments imposed prior to the introduction of the Fourth Pay Commission scales of pay with effect from 1.1.1986.

NO.E(D&A)90RG6-109, dated 19.9.1990

Attention is invited to Board's letter No. E(D&A)78RG6-17 dated 29.7.1978. It is, inter alia, mentioned in this letter that Appellate/Reviewing authorities while considering the appeals/revision applications from persons imposed with the punishment of withholding of increments may take into account the quantum of financial loss that would be sustained by employee whose increment had been withheld in the pre-1973 authorised scales of pay, on refixation in the revised scales of pay. (Third Pay Commission Scales) and accordingly reduce or modify the penalty imposed.

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2. On the analogy mentioned in paragraph 1 above, the Board have now decided that where the penalty of withholding of increments was imposed in the Third Pay Commission scales of pay prior to 1.1.1986, the Appellate/Revisionary authorities may while considering the appeals/revision applications take into account the quantum of financial loss that would be sustained in the pre-1.1.1986 scale and the greater monetary loss that would result/has resulted on refixation in the Fourth Pay Commission pay and accordingly reduce or modify the penalty imposed."

It is seen from the above circular that the Railway Board has considered ^{the} similar situation ^{where} penalties were imposed for withholding of pay/increments which span over a period from the Third Pay Commission to the Fourth Pay Commission. The respondents have stated that no such circular has been, however, issued by the authorities for the period from the Fourth Pay Commission to the Fifth Pay Commission and hence they are unable to consider the request of the applicant ^{been} _{which has} raised in this O.A.

6. Taking into account the peculiar facts and circumstances of the case and the aforesaid R.B.E.Circular 159/90, we are of the view that the respondents ought to consider the case of the applicant on the analogy of this circular. It is also noted that the respondents have stated that they have not received any appeal from the applicant against the penalty order dated 12.5.1995. In the facts and circumstances of the case we dispose of this application as follows :-

The applicant may submit a representation to the competent authority of the respondents within one month from the date of receipt of copy of this order for consideration of his case in the light of the R.B.E.Circular 159/90 regarding implementation of the penalty order dated 12.5.

1995. On receipt of such ^a representation, the respondents

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shall, in consultation with the Railway Board, pass a speaking and reasoned order, taking into account the facts and circumstances, including the earlier R.B.E.Circular 159/90 within a period of 4 months from the date of receipt of the representation with intimation to the applicant.

Parties to bear their own costs.

Lakshmi Swaminathan
(Smt. LAKSHMI SWAMINATHAN)
JUDICIAL MEMBER

G.L.Sanglyine
(G.L.SANGLYINE)
ADMINISTRATIVE MEMBE