

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
(CAMP OFFICE AT GWALIOR)

original Application No. 546/2002

Jabalpur, this the 17th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Hari Prakash Bhatnagar
s/o late Sh. Madan Gopal Bhatnagar
Age 52 years Occupation-Retired as
Pump Khallasi (Post under dispute)
Railway Division Bhopal
R/o J-17/4, Near Loco (West)
Railway Colony, Gwalior
at present residing at Mr.No. J-11/4,
Tansen Road, Gwalior (Madhya Pradesh).Applicant

(By Advocate: Shri A.K. Srivastava)

-versus-

1. Union of India through
The General Manager,
Central Railway,
Bombay, V.T.
2. The (Divisional) Superintendent,
Central Railway, Bhopal.Respondents

(By Advocate: Shri V.K. Bhardwaj)

O R D E R

By Madan Mohan, Member (Judicial)-

By filing the present original Application, the
applicant has sought the following main reliefs:

"A. That the fixation of pension amount
and other retiral benefits of the applicant
settled and ordered to be paid vide order
dated 13.10.2001 and the fixation of amount,
calculated to be payable to the applicant
vide detailed particulars as per Annexure
(A/9), be kindly declared to be not in
accordance with law and rules governing
service conditions of the applicant for

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purposes of fixation of pension and other retiral benefits on his retirement as per order dated 22.8.1995 and be further declared to be illegal, being not based on the legal entitlement of the applicant, and order be kindly passed for treating him as Fireman and on and before the date of retirement and for his restoration on the said post, as per order of the Hon'ble Central Administrative Tribunal dated 8.4.1991 passed in O.A. No. 567/87 for purposes of pay fixation etc. The respondents, as such, be kindly ordered and directed for refixing the amount of pension and other retiral benefits by following the directions of Hon'ble Central Administrative Tribunal for the legal entitlement of the applicant for the post of Fireman and as a consequence for fixation of his pay in the pay scale of Fireman 'A' in the pay scale of Rs. 950- 1500. The pay scale of the said post in the year 1985 and earlier year 1984 and for further revised pay scale from time to time till the date of the retirement of the applicant on 22.5.1995. As a consequence, the order dated 10.9.91 passed for fixation of pay in the pay scale of Y.K.C. (Khallasi) from 28-01-1986 onward in the pay scale of the Y.K.C. be kindly quashed.

B. That, the respondents be kindly ordered for making payment of arrears as a result of refixation of pay and pension of the applicant as per the pay in the pay scale of the post of Fireman 'A' on the basis of difference in the amount paid and the amount calculated on refixation of the pay, pension and other retiral benefits within a reasonable period, as per direction of the Hon'ble Tribunal. Interest be kindly ordered to be paid to the applicant on the amount calculated for payment, as a result of re-fixation.

C. That, any other relief which may be found in the interest of the applicant may kindly be granted."



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2. The brief facts of the case are that the applicant had been working as Shunter (Fireman - A¹) at Gwalior in the pay scale of Rs. 290-400, in Jhansi Division. When he was transferred to Bhopal Division by way of punishment in April, 1984, this affected his seniority in the Jhansi Division and although his juniors were promoted, the applicant was ignored. The applicant worked as Fireman on his transfer to Bhopal but he has been treated as Y.K.C. (Khallasi), a lower post than Shunter. for the purposes of payment of salary in the scale of lower post. The applicant submitted his representation dated 22.8.1984 against it. After the formation of Bhopal Division, the applicant was asked for his option and he submitted his option for Jhansi Division but the same was not considered and he was forced to work at Bhopal on a lower post than the one on which he was working at Gwalior and his claim for further promotion on the basis of his seniority in Jhansi Division was throughout ignored while promoting juniors to him by keeping the representation of the applicant undecided. The misfortune of the applicant started in the year 1984, when he had been working as Shunter in the grade of 290-400/- he was stopped from working on his post as Shunter and other junior was appointed in his place without any reason or justification and without affording any opportunity of hearing to the applicant. Representations were submitted by the applicant against the said arbitrary and illegal action of the respondents in demoting the applicant. But instead of deciding his representation, he was sent on forced leave for six days by the Loco Foreman. He met the Assistant Mechanical Engineer on his visit to Gwalior on 9.4.1984 and requested for assigning him the duties of Shunter as per his written application but the said A.M.E. instead of considering his requested, suspended him for three days from 11.4.1984 to 13.4.1984. The suspension,

however, was revoked on the intervention of the staff but the applicant was transferred to Bhopal by way of punishment.

2.1 The applicant was made to face enquiry which was being held at three places, namely, Jhansi, Gwalior and Bhopal. On 24.8.1984, the applicant went on leave and he fell ill and remained on sick leave upto 9.9.1984. The applicant had to be on leave till 4.4.1985 due to his own illness and that of his wife at Gwalior and he was, therefore sanctioned leave for the period from 26.4.1984 to 4.4.1985, but the said leave was treated as unauthorised and a charge-sheet was issued on 30.4.1985. The applicant was punished in the enquiry conducted against him by removing him from service vide order dated 8.5.1985. Against the said order the applicant preferred an appeal before the appellate authority, the appellate authority also maintained the said punishment. The applicant challenged the said orders before the Tribunal by filing OA No. 327/1987. The Tribunal vide its order dated 8.4.1991 set aside the punishment orders and ordered for re-instatement of the applicant on the post of Fireman, earlier held by him, from which post he was reverted to that of Y.K.C. As per the order of the Hon'ble Tribunal the applicant was to be deemed to be Fireman from the date of his illegal reversion till 27.1.1986, but no effect was given to the said order of the Tribunal for restoring the applicant back on his post of Fireman and for calculating the amount of pay and other benefits, such as gratuity etc. and for payment of the same as a result of the quashing of the order of removal by the Hon'ble Tribunal. The applicant, therefore, filed a contempt petition for disobeying the order of the Tribunal by the respondents. The said contempt petition ~~was~~ bearing No. 16 of 1995 was dismissed ~~as~~ vide order dated 9.3.2000 in view of the circumstances of the said Contempt petition.

2.2 The applicant submitted representations dated 5.10.1991, 8.2.1992 and 18.9.1992 for giving effect to the Tribunal's order. The respondents submitted order regarding calculation of amount payable to the applicant after the decision of the OA No. 527/1987 but the same was not in compliance with the order passed by the Tribunal in the said O.A. The applicant raised dispute regarding implementation of the order of Hon'ble Tribunal but the legal entitlement of proper pay fixation and other emoluments still remain undecided. The applicant submitted further representation dated 23.7.2001 onwards but nothing has been done till now. The letter/order dated 13.10.2001 was sent to the applicant by the respondents regarding fixation of pension etc. which was not as per rules and in confirmity with the order of the Hon'ble Tribunal passed in OA No. 527/1987. Hence, this O.A. is filed for seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that the respondents have not complied with the order of the Tribunal passed in OA No. 527/1987 on 8.4.1991. It is further argued that despite several representations having been given to the respondents, he was not placed in a post for which he was legally entitled and no consequential benefits were given to him. Thereafter the applicant filed a contempt petition no. 16/95 against the respondent for non-compliance of the order of the Tribunal passed on 8.4.1991 which was disposed of vide order dated 9.3.2000. Thereafter the respondents issued another letter/order dated 13.10.2001 regarding fixation of pension etc. but the same was not in accordance with rules and in confirmity with the order of the Tribunal passed on 8.4.1991. It is further argued that the applicant submitted a representation to the Divisional Railway Manager, Central Railway, Bhopal on 15.11.2003 for correct fixation of pension which is still undecided.

5. In reply, the learned counsel for the respondents argued that the respondents had duly complied with the orders of the Tribunal passed in OA. No. 527/87 on 8.4.1991 and the contempt petition was, therefore, dismissed with the following orders:

"5. In the circumstances, as stated above, this C.C.P. is rejected and the notices are discharged. No order as to costs."

According to the respondents' counsel in view of the order passed in the contempt petition, it cannot be said that respondents have not complied with the order passed by the Tribunal in OA No. 527/87. Learned counsel further argued that the applicant has deliberately hiding the facts to mislead the Tribunal. His case is also barred by limitation and also not maintainable on the principle of res-judicata. The applicant was served with a chargesheet and after detailed enquiry, the penalty of compulsory retirement was imposed upon the applicant vide order dated 22.8.1995. The penalty order was served on the applicant on 13.9.1995 hence he was retired with immediate effect. The applicant was asked to fill the pension papers but he refused to fill the same and filed OA No. 765/95 which was withdrawn by him, on 28.3.2000 (Annexure A-2) The applicant was again asked to file the pension papers vide order dated 4.4.2000 and when he submitted the said papers all his retiral dues and pension was released except the gratuity amount of with- Rs. 23,962/- which was held as the applicant did not vacate the railway quarter and was informed vide letter dated 13/03-10-2001. Hence the applicant himself is responsible for delay in payment of retiral dues as well as for pension as he has not filled the pension papers and filed the original Application No. 765/95, which was dismissed as withdrawn on 8.3.2000.

6. After hearing the learned counsel for the parties and careful perusal of the record, we find that the applicant had filed OA No. 527/87 which was allowed vide order



dated 8.4.1991 and the respondents had complied with the said order but the applicant was not satisfied and he filed contempt petition no. 16/95 which was rejected by the Tribunal on 9.3.2000. It is seen that the applicant has not sought any remedy against the said order passed in the Contempt Petition. Thereafter he filed another O.A. No. 765/95 but the same was withdrawn by him on 8.3.2000 and he has again filed the present O.A. for the reliefs, as prayed for. So far as compliance of the order dated 8.4.2001 passed in O.A. No. 527/87 is concerned, the same has been accepted by the Tribunal also while passing orders in the contempt petition. Hence, the applicant cannot now claim any relief on the same issue by way of filing the present O.A. Hence, the O.A. deserves to be dismissed and the same is accordingly dismissed. No costs.


(Madan Mohan)
Member (J)


(M.P. Singh)
Vice Chairman

प्राप्तिकर्ता सं ओ/ज्या.....जवहरलाल, दि.....
प्रतिलिपि दायरे दिन:-
(1) समिति, उच्च न्यायालय वाले प्रभारीहाथा, जवहरलाल
(2) वकेल श्री/श्रीमती/एहु के जारीसाल *AK Shrivastava*
(3) प्रधारी श्री/श्रीमती/एहु के काउसल *MC Bhandari*
(4) चंद्रपाल, उद्योगी, जवहरलाल न्यायालय
सूचना एवं आवश्यक कागदोंहाँ देतु *Bejan Dar*

उप रजिस्ट्रर *30.6.04*

Issued
On 30.6.04
By *BB*