

09-5-2011

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OA. 427/2009

Mr. Dharmendra Jain, Ad. counsel for applicant.
Mr. Anupam Agarwal Ad. counsel for respondent.

Heard Ad. counsel for the parties, the OA stands disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K. S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 09th day of May, 2011

ORIGINAL APPLICATION NO. 427/2009

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

M.L. Grover son of Jindaram, aged about 77 years, resident of 80/312, Mansarovar, Jaipur, was working as Ex. Station Superintendent, Western Railway, Bharatpur.

.....Applicant

(By Advocate: Mr. Dharmendra Jain)

VERSUS

1. Union of India through Secretary to the Government, Indian Railway Board, Ministry of Railways, New Delhi.
2. General Manager, West Central Railway, Jabalpur.
3. Divisional Railway Manager, West Central Railway, Kota Junction, Kota (Rajasthan).

.....Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

This is the fourth round of litigation. Briefly stated facts of the case are that the applicant was initially appointed as Traffic Signaler in the year 1950 in the erstwhile Bombay Baroda Central Indian Railway vide letter dated 21.05.1950 by the General Manager and thereafter posted as Station Master in the grade of Rs.205-280/- and subsequently in the grade of Rs.325-425/-. The later post was based on seniority cum suitability and controlled by the Headquarter office and the promotion was given by the order of General Manager. In the year 1976, the applicant was further subject to a selection to the post of Station Superintendent grade of Rs.700-900/- by Selection Board at



headquarter office and was empanelled in the panel dated 20.10.1976 for the post of Station Superintendent in the grade of Rs.700-900/-.

2. The applicant was issued with a charge sheet dated 22.05.1980. The inquiry proceedings were concluded and finally an order dated 11.10.1985 imposing the penalty of removal from service was passed against which the applicant preferred a departmental appeal, which was rejected vide order dated 18.09.1986.

3. The applicant challenged his removal order by way of filing OA No. 27/1987 before the Jodhpur Bench of the Central Administrative Tribunal (CAT) and Jodhpur Bench of the CAT vide its order dated 23.05.1988 set aside the order of removal from service.

4. An order dated 05.10.1998 was issued by the DRM, Kota by which the applicant was communicated with the decision to hold fresh inquiry into the allegations against the applicant and also deemed to have been placed under suspension from the date of his removal till further order. After conclusion of the inquiry, finally an order dated 12.10.1992 was served to the applicant. By that time, the applicant crossed the age of superannuation i.e. 31.08.1990 and the applicant was being paid provisional pension vide order 14/30.01.1991. The President had considered the report of the denovo inquiry conducted arising out of charges framed against the applicant vide Western Railway's Memorandum dated 22.05.1990. The Present had considered the representation dated 12.02.1991 submitted by the applicant in respect of the finding of the inquiry. The President had held that the charges against the applicant adequately proved. The President had,

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therefore, decided that 50% of the monthly pension otherwise admissible to the applicant may be withheld for a period of five years.

5. The applicant challenged the order dated 20.12.1992 by filing OA No. 138/1998 before this Bench of the Tribunal and this Tribunal vide order dated 02.07.2002 set aside the order dated 20.12.1992 and held that applicant shall be entitled for all consequential benefits and further directed to comply with the order within a period of three months from the date of receipt of a copy of this order.

6. The applicant had submitted an application dated 02.07.2002 alongwith the copy of this order to the General manager, Western Railway, Churchgate, Mumbai and Divisional Railway Manager, Western Railway, Kota on 20.10.2002. Having considered the application and judgment passed by the CAT, the respondents sent a letter dated 05.12.2003 alongwith a cheque amounting to Rs.40,210/-. Since the substantial compliance has been made, Contempt Petition filed by the applicant stands disposed of vide order dated 09.01.2004 but liberty was given to the applicant that in case he feels aggrieved on account of non payment of full payment, he may file a substantive OA that behalf. On the basis of liberty granted by this Tribunal, applicant filed OA No. 558/2004. During the pendency of the aforesaid OA, the applicant came to know that against the order dated 02.07.2002 passed by the Tribunal, Department had filed a DB Writ Petition No. 538/2003 before the Hon'ble Rajasthan High Court, Jaipur Bench. Hence the applicant made a prayer before the Tribunal to withdraw OA No. 558/2004 with liberty to file fresh OA and vide order dated 22.09.2008, the OA stands disposed of as having been



withdrawn with liberty to file fresh OA. The DB Writ Petition No. 538/2008 was dismissed for non prosecution vide order dated 10.09.2008. Therefore, this present OA has been preferred by the applicant seeking relief that difference of salary for the period from 01.05.1985 to 11.10.1985 (date of removal) due to non fixation on the basis of granting stagnation increment. By way of this OA, he has prayed for the following reliefs:-

- "(i) The Hon'ble Tribunal may kindly allow the appeal and declare the applicant entitled to get amount as per Schedule-A.
- (ii) The Hon'ble Tribunal may direct the respondents to pay 12% interest on the above amount (As per Schedule A).
- (iii) The Hon'ble Tribunal may direct the respondents to pay 12% interest on Rs.40,200/- (which is sent by the respondents vide DD dated 05.12.2003).
- (iv) The Hon'ble Tribunal may direct the respondents to issue new revised PPO of the applicant.
- (v) Cost may be quantified in favour of the appellant."

7. Learned counsel for the respondents submitted that the present OA is barred by limitation. The cause of action for the relief has arose to the applicant when the benefits as claimed by him were denied i.e. when he was paid provisional pension in 1991 or when the learned Tribunal vide order dated 02.07.2002 set aside the impugned order and the applicant was entitled for all consequential benefits. It is also contended that the payment pertaining to stagnation increment for the period from 01.05.1985 to 11.10.1985 since claimed after more than 24 years is clearly barred by limitation. With regard to the payment pertaining to suspension period i.e. from December, 1985 to May, 1988, the respondents submitted that the applicant was entitled for subsistence allowance only which was paid to him. The other claims such as fixation in terms of IVth Pay Commission, payment for the



period June, 1988 to August, 1990, enhanced pension from September, 1992 to October, 2004 are not only devoid of merit but also barred by limitation. The respondents further contended that the learned Tribunal nowhere directed to pay such claims to the applicant and the applicant has also failed to file any application for condonation of delay.

8. We have heard the rival submission of the respective parties and upon perusal of the material available on record as well as judgment passed by the Hon'ble Tribunal and Hon'ble High Court. Earlier the applicant filed OA No. 27/1987, which had been decided by the Jodhpur Bench of the CAT, where in this aforesaid OA, the applicant challenged the removal order passed by the competent authority and the Tribunal vide its order dated 23.05.1998 directed the respondents to proceed in accordance with law and thereafter to make fresh orders in accordance with law within a period of six months from the date of the order. After having considered the plea raised by the applicant pursuant to the aforesaid order, the respondents initiated fresh inquiry into the allegation against the applicant and passed impugned order dated 12.10.1992. The said impugned order was challenged by filing OA No. 138/1998. This OA was allowed and the impugned order dated 12.10.1992 was quashed and set aside and the applicant was allowed for all consequential benefits. This order has further been challenged by the respondents by filing Writ Petition before the Hon'ble High court but the said Writ Petition was dismissed by the Hon'ble High court for non prosecution. Thereafter Contempt Petition was preferred before this Tribunal and the same was decided vide order dated 09.01.2004. This Tribunal vide its order dated 09.01.2004 observed that liberty was



given to the applicant to verify the fact whether the order of this Tribunal has been fully complied with or not but the applicant was not in a position to verify whether the order of this Tribunal has been fully complied with or not. The Contempt Petition stands disposed and notices issued to the respondents were discharge as substantial compliance has been made by the respondents and liberty was given to the applicant that in case the applicant feels aggrieved on account of non-payment of full payment, he may file a substantive OA in that behalf.

9. This present OA has been filed claiming relief that as the order was quashed by the Tribunal vide order dated 02.07.2009, now this Tribunal may call for the record. After considering its validity and legality, we find that the impugned order was quashed and set aside instead of direction of increment and arrears etc. Now the relief claimed by the applicant in the present OA regarding difference of salary for the period from 01.05.1985 to 11.10.1985 is covered by this present OA and whether difference of salary from 12.10.1985 to 31.05.1998 is payable to the applicant even after the claim has been raised after such a belated stage. The impugned order dated 12.10.1992 has been challenged in OA No. 138/1998 by which President had decided 50% of monthly pension otherwise admissible to the applicant may be withheld for a period of five years. This impugned order dated 20.12.1992 has been quashed and set aside vide order of this Tribunal dated 02.07.2002. It is not disputed that the applicant had attained the age of superannuatory on 31.08.1990 prior to passing of the impugned order dated 20.12.1992 and the applicant has no where asked for any claim of difference of salary for



the period from 01.05.1985 to 11.10.1985 due fixation on stagnation increment and taking advantage of the fact that this Tribunal vide its judgment dated 02.07.2002 quashed and set aside the order dated 12.10.1992. Therefore, in our considered view, allowing consequential benefits means after setting aside the impugned order, the applicant is entitled to receive all the consequential benefits as if this impugned order has not been passed but so far as claim, which is now raised by the applicant with regard to the year 1985, this was not the subject matter before the Tribunal in the OA No. 138/1998 preferred by the applicant and not with regard to the full salary including the fixation during the period of suspension as subsistence allowance was paid to the applicant. Thus salary for the period 01.06.1988 to 31.08.1990 is also not payable to the applicant. The applicant cannot take the advantage of the liberty given by the Tribunal in CP NO. 14/2003 decided on 09.01.2003 that in case the applicant feels aggrieved on account of non payment of full payment, he may file a substantive OA. Thus taking advantage of the liberty, the applicant is redressing his grievance from the year 1985, which is at such a belated stage, is not permissible. Further this claim was not the part of the relief sought by the applicant in OA No. 138/1998. Consequently, we find no merit in the OA and the same deserves to be dismissed.

9. With these observations, the OA is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S.Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

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