

Reserved
(On 04.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 5th day of July 2018

Original Application No 330/00200 of 2015

Hon'ble Mr. Justice Vishnu Chandra Gupta, Member – J
Hon'ble Mr. Gokul Chandra Pati, Member – A

Umesh Kumar Gupta, S/o Shri Dervendra Nath Gupta, R/o 158 Muftipur Nakhsh Chuak, Qusba & Pargana – Haveli, Tehsil Sadar, District Gorakhpur. Presently working as Senior Section Engineer, (Carriage and Wagon) Cariage and Wagon (Samadi) Depot, North Eastern Railway, Gorakhpur, Lucknow Division.

.. .Applicant

By Adv: Sri Arvind Srivastava

V E R S U S

1. Union of India through Chairman, Railway Board, New Delhi.
2. General Manager, North Eastern Railways, Gorakhpur.
3. Senior Deputy General Manager, North Eastern Railway, Gorakhpur.
4. Senior Divisional Mechanical Engineer (Carriage and Wagon), Izzat Nagar Division, North Eastern Railways, Bareilly.
5. Divisional Railway Manager (Personnel), Eastern Railways, Izzat Nagar Division, Bareilly.
6. Divisional Railway Manager (Personnel), North Eastern Railways, Lucknow Division, Lucknow.

... . Respondents

By Adv: Sri Arun Kumar Gupta and Shri A.K. Sinha

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member - A

The present OA is preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- i) The Hon'ble Tribunal may be pleased to set aside the impugned order dated 13/16.09.2013 (Annexure 1 to the Compilation I of O.A.) passed by the respondent no. 5 and 17.05.2013 (Annexure No. 2 of compilation I) passed by respondent No. 4.*
- ii) The Hon'ble Tribunal may be pleased to issue necessary directions to the respondent nos. 4, 5 and 6 treat the applicant in service for the period from 29.05.2007 to 01.09.2008 and make payment of salary for the said period.*
- iii) Any other order as may be deemed necessary under the facts and circumstances of the case.*
- iv) To award cost to the applicant."*

2. The facts in brief in this case are that the applicant challenged his transfer from Gorakhpur to Divisional office Izzat Nagar, Bareilly in OA No. 613 of 2007 and this Tribunal passed an interim order directing the respondents to maintain status quo in respect of the applicant's transfer. But the applicant was relieved on 24.5.2007 in pursuance to the transfer order. The applicant states in OA that he was not allowed by the respondents to join in his previous place as per the interim order of this Tribunal. The OA was disposed of with direction to the Railway Board to consider the grievance of the applicant. The Board rejected the representation of the applicant, after which the applicant joined at Bareilly on 2.09.2008, thus complying the transfer order. He also challenged the decision to transfer him in another OA No. 869 of 2008 which was disposed of with direction to Railway Board to take a fresh decision in the applicant's case. Board re-considered the matter and the applicant was transferred back to Lucknow division. For the period from 25.05.2007 to 1.09.2008 when the applicant did not join in the place of transfer after being relieved, the respondents did not release the salary of the applicant and his service for this period was not regularized in spite of representations submitted by the applicant. Vide order dated 13/16.09.2013 (Annexure No. 1 to the OA), the respondents withdrew one increment of the applicant on the ground that one excess increment was allowed to the applicant.

3. Above decisions of the respondents have been challenged by the applicant in this OA, mainly on the following grounds:-

- The impugned orders amounted to punishment without following the procedure as per the rules for which these are not sustainable under law.

- In pursuance to the interim order of this Tribunal to maintain status quo, the applicant was not allowed to join in his parent department. He kept on waiting for a decision and after Railway Board decided to uphold the transfer order, he immediately joined in Bareilly. Hence, the applicant cannot be held guilty for this.
- The impugned order rejecting the representation is non-speaking and cryptic.
- The impugned order to withdraw the increment already sanctioned in his favour and recovery from him has been issued without giving any opportunity of hearing to him.

4. Upon notice, the respondents filed their Counter Affidavit stating that the period from 25.05.2007 to 1.09.2008 when the applicant did not perform any duty was treated as period with no work no pay. The period of absence was regularized as EOI (without pay) by the respondents, for which the pay fixation of the applicant was also revised, causing reduction of one increment and recovery.

5. The applicant filed Rejoinder in reply to the Counter Affidavit filed by the respondents. It is stated that the recovery ordered from the applicant is misconceived as it is against the judgment of Hon'ble Apex Court in the case of Rafiq Masih as it is the case of wrong payment made to the applicant by the respondents. The applicant also reiterated other averments made in the OA.

6. We proceeded with the hearing of the case on 4.07.2018 and to decide it ex parte under the rule 16 of the CAT (Procedure) Rules, 1987, in absence of the respondents' counsel since this is an old case and there is an interim order of this Tribunal dated 18.05.2015 by which the

impugned order dated 13/16.09.2013 was kept in abeyance and the case was ready for hearing since 2017. Accordingly, we proceeded to hear the learned counsel for the applicant, who reiterated the contentions mentioned in the pleadings of the applicant. He argued that in view of the interim order to maintain status quo, the applicant should have been allowed to join at the post where he was working before being relieved after issue of transfer order. He further informed that the applicant submitted representations and also requested for sanction of leave as due, which was not considered by the respondents. Over and above, the impugned order was passed for reduction of his pay by one increment without extending any opportunity of hearing to the applicant. Hence, it was submitted that the impugned order is not sustainable. Learned counsel for the applicant had also filed a written arguments on 18.02.2016, in which it was mentioned that the transfer of the applicant to a different division other than his parent division is illegal, for which the authorities had finally cancelled the transfer order and the respondents did not comply with the interim order by not allowing the applicant to join. It was also stated that subsequent revision of the pay fixation of the applicant by reducing one increment has been done by the respondents without any opportunity of hearing to the applicant who has been adversely affected by the impugned order dated 13/16.09.2013.

7. Although the learned counsel for the respondents was absent, it is noted that the respondents' counsel had filed his written submissions earlier, which was considered by us. In the written submissions, it is stated that since the applicant was not on duty from 25.05.2007 to 1.09.2008, it was not justified to regularize the period or release salary for the period. However, the period was treated as per the no work no pay principle and the absence was regularized as EOI without pay. It was submitted that the applicant is not entitled to any other relief.

8. We have carefully gone through the pleadings, the documents furnished by the parties and also considered the oral and written submissions of the parties. The grievance of the applicant is two fold, i.e. reduction of the pay by one increment vide the impugned order dated 13/16.09.2013 (Annexure no. 1 to the OA) on the ground that excess increment was wrongly allowed to the applicant and the order dated 17.05.2013 (Annexure no. 2 to the OA), rejecting the representation of the applicant and treating the period from 25.5.2007 to 1.9.2008 as absent since no application for leave as due has been received from the applicant in spite of instructions.

9. It is seen that the impugned order dated 13/16.09.2013 (Annexure no. 1 to the OA) just states that by mistake one excess increment was allowed to the applicant. No details have been furnished as to how this excess increment could be sanctioned. For the averment of the applicant in the OA that this order was issued without giving any opportunity to the applicant of being heard, the respondents in their pleadings have not furnished any evidence to show that the applicant has been given opportunity of being heard. Since the order dated 13/16.09.2013 is non-speaking, without giving any details as to how the mistake occurred while granting one excess increment to the applicant and the said order has been issued without giving any opportunity to the applicant of being heard, we are of the view that the aforesaid order dated 13/16.09.2013 (Annexure no. 1 to the OA) has been passed in violation of the principles of natural justice. Hence, the said order is not legally sustainable.

10. Regarding the order dated 17.05.2013 (Annexure no. 2 to the OA), we are not able to accept the contention of the applicant that by virtue of the status quo order of the Tribunal, he should have been allowed to join in his pre-transfer work place. It is clear from the record that the applicant was relieved immediately after issue of transfer on 24.5.2007 and there is

no pleading that the order relieving the applicant was stayed by this Tribunal. Hence, the status quo order did not automatically imply that the applicant was entitled to be taken back at his place of posting prior to transfer. Moreover, if the applicant was aggrieved by the decision of the respondents for not being allowed to join, he could have moved the Tribunal through an appropriate proceeding as per law. It is not the case of the applicant that he moved the Tribunal against the decision of the respondents not to allow him to join in pre-transfer place of posting. Hence, just because an interim order was passed by this Tribunal to maintain status quo or the transfer order was ultimately cancelled by the authorities, the period of absence cannot be treated as the period of duty automatically. Further there is no evidence furnished by the applicant to prove that he had submitted any application for leave covering the period of his absence. Hence, we do not find adequate justification for interfering with the impugned order dated 17.05.2013.

11. In the circumstances, the impugned order dated 13/16.09.2013 (Annexure no. 1 to the OA) is set aside and quashed as it is passed in violation of the principles of natural justice since no opportunity of hearing was allowed to the applicant before passing the order which also non-speaking. However, the respondents are at liberty to initiate fresh action under the rules for correcting the pay fixation of the applicants, in case there is a mistake in such fixation and pass a fresh order in this regard under the rules after giving an opportunity to the applicant of being heard in the matter. We note the contentions in para 9 of the Counter Affidavit filed by the respondents stating that the period of absence has been regularized as EOI without pay, which, in other words implies that the applicant's service from 25.05.2007 to 1.09.2008 has been regularized with sanction of the extra ordinary leave without pay. If not, then the aforesaid period in applicant's service shall be deemed to be regularized and shall be counted as qualifying service for pension. It is further directed

that in case the applicant submits an application for leave as due for the period from 25.05.2007 to 1.09.2008 as per the rules applicable to the applicant within one month from the date of receipt of a copy of this order, then the respondents shall consider such application to sanction the leave applied as per the rules by passing an appropriate speaking order to be communicated to the applicant within two months from the date of receipt of such application for sanction of leave from the applicant.

12. The OA is allowed in part in terms of the directions in para 11 above. There will be no order as to the costs.

(Gokul Chandra Pati)
Member (A)

/pc/

(Justice Vishnu Chandra Gupta)
Member (J)