

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.235/2016

in

O.A.No.1097/1993

Order Reserved on: 11.05.2016

Order pronounced on 16.05.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Dr. B. K. Sinha, Member (A)

Radhey Shyam

S/o Late Sh. Ram Lal

R/o Near Sheer Sagar Hotel

Bapu Colony, Jaipur

M.I.Road, Jaipu

Rajasthan.

.... Applicant

(By Advocate: Shri R.K.Shukla)

Versus

1. Union of India

Through General Manager

North West Railway

Near Jawahar Circle

Malviya Nagar, Jaipur

Rajasthan-302017.

2. The Divisional Railway Manager

Jaipur Division, N.R.Railway

Jaipur, Rajasthan.

3. The Senior Divl. Mechanical Engineer

Loco, North West Railway

Jaipur, Rajasthan.

... Respondents

(By Advocate: Mr. J.P.Tiwary for Mr. Shailendra Tiwary)

ORDER

By V. Ajay Kumar, Member (J):

Heard Shri R.K.Shukla, the learned counsel for the miscellaneous applicant and Shri J.P.Tiwary, the learned proxy counsel of Shri Shailendra Tiwary, the learned counsel for the miscellaneous respondents.

2. The Miscellaneous Applicant is the Original Applicant in OA No.1097/1993. He filed the said OA mainly praying for quashing of the removal Order dated 06.01.1992 read with appellate authority's Order dated 18.06.1992.

3. This Tribunal, after hearing both sides, allowed the OA by its Order dated 05.02.2013, as under:

"24. In view of the above discussion of law and fact, the impugned order of removal dated 06.01.1992 read with Appellate order dated 18.06.1992 are hereby quashed and set aside. Consequently, the order of the reviewing/revisory authority dated 15.07.1992 passed by the DRM, Jaipur is also held to be illegal and null and void. The respondents are directed to reinstate the applicant as a temporary Railway servant from the date of his illegal removal, i.e., 06.01.1992 with all consequential benefits with continuity of service etc. However, in the peculiarity of the facts and circumstances of the case we direct the respondents to pay only 50% of the total back wages which he would have been entitled to, had he not been illegally removed w.e.f. 06.01.1992 till the date of payment. Respondents are also directed to take steps to consider and regularize the temporary services of the applicant from the date when a similarly situated junior of the applicant was also considered and regularized. Respondents are further directed to do the needful within a period of 03 months from the date of receipt of a certified copy of this order. The OA thus stands allowed in terms of the above directions. In the facts and circumstances of the case, there shall be no order as to costs."

4. The respondents in the OA preferred RA No.68/2013 against the aforesaid Order in the OA, however, the same was dismissed by an Order dated 29.10.2013. The respondents again preferred WP(C)

No.951/2014 in the Hon'ble High Court of Delhi and the same was disposed of by an Order dated 06.08.2014 as under:

"We have considered the materials on record and the submissions. As is evident from the extract of the inquiry report, there is no categorical finding that the petitioner was responsible for furnishing incorrect particulars. At best, the inquiry officer was of the opinion that there was some doubt as to whether he had worked. The disciplinary authority appears to have gone one step further and held that based on the evidence the charge was proved. The latter was clearly an erroneous assumption. This Court further notices that though the inquiry report suggests the verification of the record, in fact, there was no such procedure adopted; the entire matter appears to have been based on more or less on adhoc basis.

Whilst, it may be a fact that the signatures of the employee were not found on the pay book, equally it is undeniable that such document is within the possession of the employer. Consequently, no inference either way, or atleast one damaging the employee could have been positively taken without noticing him and granting him an opportunity of representation. As a result, we are of the opinion that the conclusion of the Tribunal with regard to the findings of inquiry proceedings are not erroneous, and do not call for interference. However, the above conclusion are not dispositive of these proceedings.

The respondents omission to prosecute the application before the Tribunal which led to its dismissal in 1998 and the eventual restoration on 15.01.2010 could not have resulted in a windfall for him, as it appears to have happened. The Tribunal, in our opinion, clearly fell into error in holding that the respondent ought to be paid 50% back wages for the entire period. We, accordingly, modify the operative directions of the Tribunal to the extent that the respondent shall not be entitled to the benefit of back wages, arrears of salary etc. for the period 23.09.1998 to 15.01.2010. In all other respects, the order of the Tribunal is affirmed.

The petitioner shall comply with the order of the Tribunal in its modified form, and its consequential orders with regard to fixation of pay and release of other benefits within eight weeks from today.

Petition stands disposed of in the aforesaid terms."

5. Complaining non-implementation of the OA order dated 05.02.2013, as modified by the Hon'ble High Court's order dated 06.08.2014, the applicant filed CP No.541/2015. This Tribunal after hearing both sides, dismissed the said CP by order dated 13.10.2015, as under:

"Heard.

In view of the compliance affidavit and annexed documents, the instant Contempt Petition is dismissed as having been rendered infructuous. Notices issued to the respondents stand discharged."

6. The applicant again filed the present MA seeking the following relief(s):

(a) direct the respondents to implement the judgment dated 05.02.2013 in its letter and spirit.

(b) direct the respondents to produce comparative chart regarding pay fixation of the applicant by which the applicant pay has been fixed as on 01.07.2015 treating at par with juniors.

(c) direct the respondents to consider promotion of the applicant at par with his juniors as he gets, had he not been removed from service illegally or the respondents may also be directed to grant financial upgradation under the MACP Scheme treating at par with his juniors.

c. pass any other or further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

7. In short, the applicant is seeking execution of the Order dated 05.02.2013 in OA No.1097/1993 as modified by an Order dated 06.08.2014 in WP (C) No.951/2014, which was, in fact, has already been implemented, as held by this Tribunal in CP No.541/2015 dated 13.10.2015.

8. In the circumstances, the present MA, being frivolous and abuse of the process of the Court, is dismissed. Though the applicant deserves to be imposed with exemplary costs, however, we restrain ourselves from doing so in view of the peculiar circumstances of the case. No costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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