

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No.O.A.350/00195/2015

Date of order : 26.08.2016

Present : Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

PRADIP KR. ROY

VS.

UNION OF INDIA & ORS.
(E. RAILWAY)

For the applicants : Mr. N.M. Mukherjee, counsel
Ms. A. Banerjee, counsel

For the respondents : Mr. A.K. Guha, counsel

ORDER (Oral)

Per Justice V.C. Gupta, J.M.

Heard Id. counsel for the applicant and Id. counsel for the respondents.

2. In this case, the applicant prays for setting aside the order dated 08.04.2014 which was communicated vide letter dated 10.04.2014(Annexure A-I).

The order sought to be set aside is reproduced herein below:-

"Sri Pradip Kr. Roy, Commr. Clerk/KLKR filed above Court Case for full pay and allowances during the period from 30.04.2003 to 19.04.2010 and to give all consequential benefits which he also claimed vide his appeal dt. 4.10.12. Sri Prada Kr. Roy was removed from service during above period and re-instated in service on 20.4.2010.

Hon'ble CAT/Calcutta vide judgment dt.13.12.13 directed Sr. Divl. Commr. Manager to dispose of his representation dt.04.10.12 upon giving an opportunity to hear the applicant within a period of two months and reasoned decision to be communicated within a fortnight thereafter.

To comply with above judgment, Sri Prada Kr. Roy was called for on 11.02.14 for his hearing with Sr. Divl. Commr. Manager/Sealdah.

Lastly, his appeal dt.04.10.12 has been disposed of as per rules of Railways in terms of IREC/Vol.II, Para 1343 (FR 54). Sri Pradip Kumar Roy is not entitled for back wages from 30.04.03 to 19.4.2010 and the period has been treated as "Dies -Non".



3. The applicant is aggrieved by the order by which the period of 30.04.2003 to 19.04.2010 has been treated as dies non.

4. The brief facts are that the applicant was subjected to a departmental proceeding and he was punished with the order of removal from service dated 29.04.2003. Appeal against the same was also dismissed. Consequently the applicant challenged both the orders by filing the Original Application No.949/2005 before this Tribunal which was decided on 12.11.2009. The relevant portion of the order dated 12.11.2009 in O.A.949/2005 is set out below:-

“6. We have carefully considered the submissions made from either side and gone through the order of the Disciplinary Authority and the Appellate Authority. Since the said orders are not reasoned orders we quash both the orders. Matter is remanded to the Disciplinary Authority for fresh consideration in accordance with the rules from the stage of the submission of the representation to the enquiry report, after giving a personal hearing to the applicant, within a period of three months from the date of receipt of the copy of this order.

7. With the above observation the OA is allowed to the extent as indicated above. No order as to costs.”

5. The matter was considered again by the respondents in pursuance of the order of the Tribunal dated 12.11.2009. A fresh order of punishment was passed on 09.07.2010 whereby the applicant was reverted to the lower post of Commercial Clerk for a period of five years after passing of the order by the Tribunal. The order of removal from service was set aside and the applicant was reinstated in service and resumed his duties on 20.04.2010.

6. The punishment order is not in dispute in this case. The period commencing from 30.04.2003 to 19.04.2010 is the period for which the applicant had not served the department due to existence of an order of removal from service, which was subsequently set aside after reconsideration of the matter in pursuance of the direction of the Tribunal and the punishment of removal was reduced to order of reversion to a lower post. When the authorities have not

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3

taken any decision for payment of the dues for the aforesaid period, the applicant filed another Original Application having No.O.A.907 of 2013. The same was decided by this Tribunal vide order dated 13.12.2013 and the respondents were directed to decide the representation of the applicant within two months with regard to the admissible amount payable to the applicant. In pursuance thereof the impugned order has been passed.

7. The Id. counsel for the respondents after relying upon the pleadings given in the reply has solely based their case on a decision of the Tribunal dated 06.05.2005 rendered in O.A.No.654/2003 (Subrata Biswas vs. Union of India & Ors.), copy of which has been placed on record. The operative portion of that judgment is extracted herein below:-

8. "12. In view of what has been said and discussed above, the impugned order dated 17.09.1998 and 15.12.1999 are modified to the extent that the penalty of dismissal from service shall be substituted with reduction to the lower grade from scale Rs.4000-6000 to 3200-4900 for a period of five years. He shall be also entitled to all the consequently benefits including reinstatement of service but without any back wages. This order shall be complied with within a period of three months from the date of receipt of copy of this order. No costs."

8. A rejoinder affidavit has been filed wherein the applicant relied upon a judgment rendered by the Principal Bench of this Tribunal in O.A.2609/2010.

9. Both the judgments of the Tribunal relied upon by the applicant and the respondents are of equal strength of Bench.

10. The applicant has also relied upon Rule 1343 and Rule 1344 of Indian Railway Establishment Code Vol.II which are also extracted herein below:-

"1343 (F.R.54).-(1) When a railway servant who has been dismissed, removed or compulsorily retired is re-instated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement, the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the railway servant for the period of his absence from duty including the



period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order re-instatement is of opinion that the railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated the railway servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the railway servant had been delayed due to reasons directly attributable to the railway servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the railway servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay only such amount of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the railway servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in no case shall exceed 60 days from the date on which the notice has been served as may be specified in the notice.

(Authority letter No.F(E)III/91/PN-1/44 dt.13-4-92)

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding the dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specific purpose; provided that if the railway servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the railway servant.

19

NOTE:— The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary railway servant; and

(b) leave of any kind in excess of five years in the case of permanent railway servant.

(6) The payment of allowances under Sub-rule(2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso of sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 1342 (F.R. 53).

(8) Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of re-instatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the railway servant.

1344(F.R. 54 A).—(1) where the dismissal, removal or compulsory retirement of a railway servant is set aside by a Court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2) (i) Where the dismissal, removal or compulsory retirement of a railway servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 1343 (FR 54), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the railway servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(Authority letter No. F(E)III/91/PN-1/44 dated 13.04.92) □

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularized in accordance with the provisions contained in sub-rule (5) of rule 1343.

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(3) If the dismissal, removal or compulsory retirement of a railway servant is set aside by court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding, such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a railway servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. □ Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere nothing shall be paid to the Government servant." □ □

11. It has been contended by the ld. counsel for the applicant that Sub-Rule 20 of Rule 1344 is applicable in his case which categorically provides that the amount payable to the employee will be subject to the provisions of Sub-Rule 7 of Rule 1343.

12. Admittedly, in this case the order of removal from service was set aside and ultimate punishment awarded to the applicant is the punishment of reversion. If it is so, he cannot be punished further by treating that period as dies non because in that period he was legally not entitled to resume his duties. If the punishment of reversion was passed at the very initial stage, he should have been given the benefit of that period for which he worked. Therefore, we are of the firm view that the order of dies non is not sustainable.

13. So far as the judgment relied upon by the applicant is concerned, it is a detailed judgment referring all the relevant provisions of Indian Railway Establishment Code, their amendments and the consequences thereof. However, the judgment relied upon by the respondents was passed in a different scenario. While setting aside the punishment orders in a different set of circumstances and

while delivering judgment, penalty for dismissal from service has been set aside and the Court himself substituted the reduced punishment of reversion to the lower grade for a period of 5 years and also determined the question relating to back wages stating that reinstatement in service would be without any back wages. Though the power to award back wages is within the exclusive domain of the Disciplinary Authority but the Court exercised that power in a peculiar facts and circumstances of the case. The same cannot be used as a precedent because no ratio of law has been propounded.

14. In view of the above, we are in full agreement with the ratio propounded by the Principal Bench in Original Application No.2609/2010 which has been passed almost in the identical circumstances prevailing in the present case.

15. Hence, we allow this O.A. with direction to the respondents to decide the matter afresh after giving an opportunity of being heard to the applicant with regard to payment of dues for the period commencing from 30.4.2003 to 20.04.2010 as per the rules within a period of two months from the date of receipt of this order and the amount if any accrues to the applicant in pursuance of that order the same should also be paid within two months thereafter.

14. With these observations, the O.A. is allowed but with costs.

(J. Das Gupta)
Administrative Member

s.b

(Justice V.C. Gupta)
Judicial Member