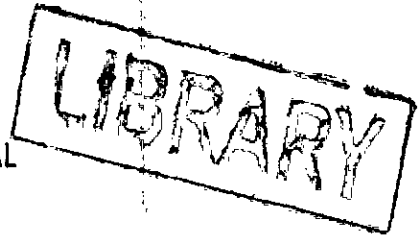


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



O.A.No.508 of 2012

Coram : Hon'ble Mr. Sushanta Kumar Pattnaik, Judicial Member

Hon'ble Dr.(Ms.) Nandita Chatterjee, Administrative Member

Shri Ram Chandra Prasad, son of
Late Tori Prasad, aged about 66 years,
worked as Switchman under S.S. Gaya,
Bihar, Mugalsarai Division, Eastern Railway,
since retired, residing at 86, Beltala Road,
Calcutta-26 & Permanent address at Vill.
Mundipur, P.O.Vazirgunj, Dist.Gaya,
Bihar, Pin-805 131.

.....Applicant

- Versus -

1. Union of India, service through the General Manager, Eastern Railway, Fairlie Place, Kolkata-1;
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata-1;
3. The Chief Operations Manager, Eastern Railway, Fairlie Place, Kolkata-1;
4. The General Manager, East Central Railway, Hazipur, Bihar
5. The Chief Personnel Officer, East Central Railway, Hazipur, Bihar
6. The Sr. Divisional Operation Manager, Mugalsarai Division, East Central Railway, Bihar;
7. The Divisional Railway Manager, Mugalsarai Division, East Central Railway, Bihar

.....Respondents

S. S. Chatterjee
28/7/12

For the applicant : Mr. S.K. Datta, counsel
Mr. J.R. Das, counsel

For the respondents : Mr.S.K. Das, counsel

ORDER

Heard on : 27.07.2017

Order on : 28th July 2017

Mr. S.K. Pattnaik, Judicial Member

In a second round litigation the applicant seeks for a direction to the respondents to recalculate and refix his pension and other retiral benefits to be effected from 09.12.1996 onwards.

2. Earlier the applicant had approached this Tribunal in O.A.236/2000 with a grievance that she was not given promotion to the post of Goods Guard and the person junior to him i.e. Respondent No.7 was given promotion to the said post. This Tribunal after analysing the facts allowed the O.A. with the following observations:-

"6. Consequently, the O.A. is allowed. The respondents are directed to give promotion to the applicant to the post of Goods Guard from the date the respondent No.7 got the promotion. He shall get all consequential benefits of the promotion. It is further directed that the official respondents shall pay the applicant Rs.2000/- as costs. Compliance of this order be made within a period of one month from the date of communication of this order."

3. In compliance of the aforesaid order of the Tribunal the respondents issued promotion order for the post of Goods Guard to the applicant and his pay was fixed on proforma basis w.e.f. 02.04.1997 i.e. when private respondent No.7, Shri Ram Sevak Saw took up independent duty and gave him monetary benefits w.e.f. 23.05.2003 when the applicant took up independent duty as Goods Guard.

4. The respondents have given a balance sheet of the service career of the applicant where it has been stated as follows :-

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- (i) The applicant was punished with stoppage of increment for one year vide P/notice No.T/TMS/Pari/85 dated 06.12.1985;
- (ii) The applicant was again punished with the punishment or stoppage of increment for two years vide P/Notice No.TMS/Pari/87 dated 16.04.1987;
- (iii) Again he was censured vide P/Notice No.T/Opt GC-BD/93 dt.22.04.1993;
- (iv) Again his one set privilege pass had been stopped when due Vice P/Notice No.T/Joint Insp/MGS/99 dated 15.12.1999;
- (v) Again he was again punished with the punishment of stoppage of increment for 3 years vide P/Notice No.T/TMS/Pune/MGS/03 dated 21.04.2003 and on his appeal the above punishment dated 21.04.2003 had been reduced to stoppage of increment upto 30.04.2005 vide E/Appeal/T&C/MGS/03/500 dated 23.12.2003.

The above punishments suggest that the service of the applicant during his tenure was not satisfactory and not unblemished.

5. The moot question for determination of this Tribunal is whether the applicant shall get arrear pay retrospectively and whether his pay fixation granted notionally was correct.

6. Admittedly the applicant retired from service w.e.f. 28.02.2006. The Tribunal's order in the last O.A. was passed way back on 07.01.2002. The applicant did not challenge his pay fixation in his promotional post before his retirement and only claiming such relief after his retirement. No doubt this Tribunal had directed the respondents to give promotion to the applicant to the post of Goods Guard from the date the Private Respondent No.7 got promotion, which they have complied in letter and spirit. The other direction was that the applicant shall get all the consequential benefits of promotion. Nowhere the Tribunal directed to pay backwages or to pay salary for the period he was not allowed to work in the promotional post. So, naturally the applicant got the salary of the promotional post from the date he took charge of the promotional post i.e. w.e.f. 23.05.2003. In such back background, no fault can be found in the

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action of the respondents in fixing the pay of the applicant notionally from the date his junior got such promotion and in paying the actual salary of the promotional post from the date he took over the charge of the promotional post i.e. w.e.f. 23.05.2003. Things which have not been categorically adjudicated in the earlier O.A. or decided in the earlier O.A., cannot be directed to be adjudicated in this subsequent O.A. as it is barred by constructive res judi cata.

8. That apart, since the applicant retired in 2006 and left with the order of fixation of pay for all these years his very claim by filing the present O.A. in 2012 is hopelessly barred by limitation. The O.A. is accordingly dismissed being devoid of any merit as there is nothing wrong in the pay fixation order. No costs.


(Dr. Nandita Chatterjee)
Administrative Member
sb

(Sushanta Kumar Pattnaik)
Judicial Member