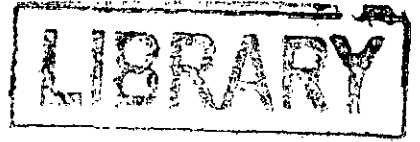


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH



O.A/350/1410/2018

Reserved on 23.04.2019

Date of Order: 3.5.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ashis Kumar Ghosh, son of late Ranjit Kumar Ghosh,
residing at Quarter No. 55/A, Street No.23, P.O. & P.S.
Chittaranjan, District: Burdwan, working for gain at Clerk
Grade-II at Chittaranjan Locomotive Works at Chittaranjan,
District: Burdwan, Pin: 713331.

.....Applicant

Vrs.

1. Union of India, service through the General Manager,
having his office at Chittaranjan Locomotive Works,
P.O. Chittaranjan, District: Burdwan, Pin: 713331.
2. The General Manager, having his office at Chittaranjan
Locomotive Works, P.O. Chittaranjan, District:
Burdwan, Pin: 713331.
3. Chief Material Manager (P), having his office at
Chittaranjan Locomotive Works, P.O. Chittaranjan,
District: Burdwan, Pin: 713331.
4. Chief Personnel Officer, having his office at
Chittaranjan Locomotive Works, P.O. Chittaranjan,
District: Burdwan, Pin: 713331.
5. District Controller of Stores (EL), having his office at
Chittaranjan Locomotive Works, P.O. Chittaranjan,
District: Burdwan, Pin: 713331.
6. Deputy Controller of Stores (P), having his office at
Chittaranjan Locomotive Works, P.O. Chittaranjan,
District: Burdwan, Pin: 713331.
7. The District Controller of Stores (G), having his office
at Chittaranjan Locomotive Works, P.O. Chittaranjan,
District: Burdwan, Pin: 713331.
8. District Controller of Stores (RB), [being the Enquiry
Officer], having his office at Chittaranjan Locomotive
Works, P.O. Chittaranjan, District: Burdwan, Pin:
713331.

.....Respondents

For the Applicant(s): Mr. J.Gupta & Mr. B.Mullick, Counsel

For the Respondent(s): Mr. P.Bajpayee, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred to seek the following reliefs:

"a) The respondent authorities be directed to forthwith pay the applicant's entire back wages i.e. from 2nd August, 1994 to 18th March, 2013 and to give all other consequential benefits including due promotions which the applicant is entitled as per rules i.e. presently to be promoted as Office Superintendent (O.S.) by cancelling and/or withdrawing the impugned order dated 15th June, 2018 by considering the admitted fact that the applicant was not employed in any other organization during the period from his alleged dismissal till the date of his reinstatement in service;

b) The General Manager, Chittaranjan Locomotive Works be directed to pass an appropriate order so that the applicant can get the back wages with regard to his service from 2nd August, 1994 to 18th March, 2013 and to give all other consequential benefits including due promotions which the applicant is entitled as per rules i.e. presently to be promoted as Office Superintendent (O.S.)

c) Pass such other or further order....."

2. The admitted facts of the case are that the applicant had assailed an order dated 01.10.2002 passed by this Tribunal in O.A. No. 304/1995, in WP.C.T. No. 361/2003, which was disposed of in the following manner:

"The original application is remanded to the Tribunal only for the limited purpose of ascertaining on affidavits, which may be filed by both the petitioner and the respondents, as to whether the petitioner is entitled to back wages and other consequential benefits from 2nd August, 1994 till the petitioner is reinstated in service.

The parties are directed to file affidavits within four weeks from today on this limited issue only. The Tribunal will consider this issue in accordance with law within eight weeks from the date on which the affidavits are filed.

The writ petition is disposed of accordingly."

Consequent to the remand, O.A.No. 304/1995 was heard out and disposed of on 27.11.2015 with the following orders:

".....O.A. is disposed of with a direction upon the respondents to give a personal hearing to the applicant, ascertain whether he served any organization after his dismissal from service till the date of his reinstatement and on the basis of available materials consider and pass appropriate reasoned and speaking orders in accordance with the decisions rendered in *The Commissioner, Karnataka Vs. C.Muddaiah [(2007) 2 SCC(L&S)-748]*, within two months from the date of communication of this order.

9. No order as to costs."

Although, in terms of the direction of the Hon'ble High Court, the Respondents were required to consider the grant of consequential benefits upon reinstatement, omission in the Tribunal's orders of a direction to consider consequential benefits was taken advantage of by the Respondents while issuing their reasoned and speaking order on 15.06.2018, operative portion of which reads as under:

"Whether the applicant served any organization after his dismissal from service till the date of his re-instatement. In personal hearing, Shri Ashis Kumar Ghosh has confirmed that he was not employed in any other organization during the period he was dismissed from Railway service, i.e., 02.08.1994 to the date of his re-instatement, i.e., 18.03.2013.

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CAT/Kolkata has directed the respondents that a personal hearing of the applicant should be done, and speaking orders should be given. Therefore, in the instant case, no court has ever passed any position direction to the respondents for payment of back wages. Therefore, the subject case differs from the case of *"The Commissioner, Karnataka Vs C.Muddaih [(2007)] SCC (L&S)-748"* on this account. In the subject case there appears no specific ground to consider payment of back wages to the applicant, in the light of the fact that no such directive has so far been given by any court of law, and since the applicant was not prevented from working during this period as established in Para 3 above.

6. In the light of above, the payment of backwages can not be agreed to on following grounds reiterated again:

i) No conclusion can be drawn whether the applicant was willing to work; as brought out in Para 2 above.

ii) The applicant was not prevented from working by CLW administration, as concluded in Para 3 above.

iii) In the case of "The Commissioner, Karnataka Vs C.Muddaih [(2007)] SCC (L&S)-748" the Hon'ble Court had given the orders to the authorities (respondents) to pay the back-wages to the applicant, but in the instant case, no such order has been passed by any Court of Law."

It is this order dated 15.06.2018, which is under challenge in the present O.A.

3. Ld. Counsel for the applicant, at hearing, would submit that although the applicant was reinstated in 2013, in 2015 when his juniors were considered for promotion to the post of Sr. Clerk in the Pay Band Rs. 5200-20,200/- + Grade Pay Rs. 2800/- , the applicant was not kept in the select list dated 14.07.2015, but it was specifically mentioned that "the list was provisional, subject to interpolation of one name in the select list whose name could not be included in the select list due to non-receipt of decision of the Hon'ble High Court/Kolkata in CAN No.4861/2013 (in the matter of UOI & Ors. -Vs- Ashis Kumar Ghosh)" and that "the select list was valid w.e.f. 18.06.2015" and "it had the approval of the Competent Authority". Hence, upon disposal of the application pending before the Hon'ble High Court, the applicant's name ought to have been interpolated as specifically mentioned in the select list in accordance with the seniority at the material time when the promotion was given to his juniors and as such the applicant ought to be bestowed with consequential benefits of such promotion from the date such promotion was accorded to his juniors. Ld. Counsel would further submit that such promotion was wholly on the basis of seniority and scrutiny of working report. The select list of

14.07.2015 did not reflect any adverse remarks in the CR of the applicant, which would disentitle him of the promotion.

4. It appears from the record that, an application being CAN 4861 of 2013 was pending before the Hon'ble High Court for recalling the order dated 18.12.2012 rendered in W.P.C.T.No. 361/2003, due to which, this Tribunal was constrained to adjourn the O.A. 304/1995 *sine die*. The said application was dismissed on 09.07.2015 by the Hon'ble High Court. Further, on 09.07.2015 itself, the Hon'ble High Court allowed CAN 5218/2013 condoning the delay in preferring CAN No.4861/2013 and further dismissed CAN 4861/2013 as, by way of recalling, the Respondents had sought for a review of the order dated 18.12.2012 passed by the Hon'ble High Court. Since as on this date, no application is pending before the Hon'ble High Court, Ld. Counsel for the applicant would strenuously urge that the applicant be included in the select list by suitably interpolating his name, as indicated in the select list dated 14.07.2015 itself. Further, Ld. Counsel would submit that since the applicant was not gainfully employed anywhere, which fact has been admitted by the Respondents in the speaking order, he should be allowed to draw salary for the period between his dismissal to reinstatement.

5. Ld. Counsels were heard and materials on record were perused.

6. We note that the applicant was dismissed from service in the year 1994, which he challenged by way of an O.A. in 1995 but, strangely enough, did not press for hearing of the O.A. until October, 2002 when the O.A. was dismissed. The order was assailed in W.P.C.T. No. 361/2003, which was disposed of in 2012 remanding the matter back to the Tribunal on the limited issue of back wages and consequential benefits from 02.08.1994. In the present backdrop of the case and in view of the decision of the Hon'ble Apex Court rendered in the case of *Union Territory, Chandigarh Vs. Brijmohan Kaur, (2007) 11 SCC 488*, wherein the

Hon'ble Apex Court held that "the direction of the Tribunal which is affirmed by the High Court, in our view, is against the old canons of law directed by this Court. It is settled law that when an incumbent does not discharge any duty, the principle of "no work no pay" would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any government servant who does not discharge his duty should not be allowed to draw pay and allowances at the cost of public exchequer", ^{we feel that} the principle of no work no pay would apply in the present case. Further, without a specific order of reinstatement, there was no occasion for the Respondents to take the applicant back to service. Therefore, the prayer in regard to back wages is disallowed.

7. However, in regard to the prayer of the applicant for consequential benefits following his reinstatement, in view of the specific explicit stipulation in the panel dated 14.07.2015 that it was provisional subject to interpolation of applicant's name which could not be included in the select list due to non-receipt of decision of the Hon'ble High Court in CAN No. 4861/2013, which stipulation made it imperative for the Respondents to interpolate the applicant suitably as per seniority in the panel once the application was decided, we direct the authorities to interpolate the name of the applicant and to accord appropriate financial benefits by refixing his pay with effect from the date his juniors were allowed such promotion, grant him arrears of salary and revise his pension accordingly. The benefits be extended to the applicant within a period of three months from the date of communication of this order.

8. O.A. is, accordingly, disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member(J)

RK/PS