Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Original Application No. 330/01162/2017

Dated: This the 09th day of September 2019.

HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. K.N Upadhyaya aged about 54 years, son of Late Vidyananda Upadhyaya, resident of Quarter No. L/57/E, Jatepur Railway Colony, Gorakhpur, presently posted as Khalasi Ticket No. S-484, Under the Deputy Chief Materials Manager, North Eastern Railway, Gorakhpur – U.P.
2. Uday Chandra Sinha, aged about 54 years, son of Late Ram Chandra Prasad, Resident of Quarter No. T/55/C, Bauliya Railway Colony, Gorakhpur. Presently posted as Khalasi Ticket No. S-07, Under the Deputy Chief Materials Manager (Depot), North Eastern Railway, Gorakhpur UP.
3. Rajendra Gupta, aged about 54 years, son of Sri Jagannath Gupta, Resident of Quarter No. 562/H, Bichiya Railway Colony, Gorakhpur, Presently posted as Khalasi, Ticket No. S-528, under the Deputy Chief Materials Manager (Depot), North Eastern Railway, Gorakhpur U.P.

..... Applicants

By Advocate: Shri Shyamal Narain

Versus

1. The Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Chief Materials Manager (General) North Eastern Railway, Gorakhpur.
3. The Deputy Chief Materials Manager (Depot), North Eastern Railway, Gorakhpur.
4. The Assistant Personnel Officer (Depot), North Eastern Railway, Gorakhpur.

.....Respondents

By Advocate: Ms. Shruti Malviya

O R D E R

1. Applicants K.N.Upadhaya and others seek the quashing of impugned order No. 47 dated 27.09.2013 as corrected vide Corrigendum dated 10.01.2014, which wrongly accorded the applicants, benefit of regularisation on the post of Khalasi w.e.f. 27.09.2013 instead of the

date from which the services of their juniors were regularised in the year 1992 and to grant them the consequential benefits like salary, seniority etc due to them as per their regularisation.

2. It is the case of applicants that on the verge of their services being regularised, disciplinary proceedings were initiated against them. In the said disciplinary proceedings, punishment of reduction to lower scale of pay for a period of 6 months with cumulative effect was imposed upon applicant No. 1 and 2 whereas applicant No. 3 was awarded punishment of reduction to a lower stage for a period of three years with postponement of future increments.

3. As per the OA, vide order dated 1.5.2009 (Annexure A4), the services of the applicants were terminated which was challenged by way of OA No. 1080/2009 which was disposed off vide order dated 17.9.2009 directing the respondents to consider the representation of the applicants against the order of termination dated 1.5.2009. The representation was rejected by CGM vide order dated 6.5.2010. Applicants challenged both the orders of termination of their services and rejections of their representations in O.A. No. 729/2010 which was allowed vide Order dated 25.9.2012 whereby impugned orders were set aside with the direction that the applicants shall be entitled to consequential benefits. The concluding paragraph of order dated 25.9.2012 in OA No. 729/2010 reads as below:

> "10. Mindful of the above citations, we feel that the facts of present O.A. are almost identical to the facts of above cited cases. Once a punishment of major penalty had been imposed upon the applicants despite the existence of Railway Board's Circular dated 20.07.1993, it would not be inconformity with reason and principles of fair play on the part of respondents to visit the applicants with a second punishment for the same set of charges. If such an action on the part of the authorities is permitted, it would leave scope for any authority to exercise its powers arbitrarily thereby creating a non-conductive working environment detriment to functioning of the Organisation. The facts of present OA evidently attract the principle of double jeopardy and the action of respondents in terminating the services of applicants after having imposed a major penalty in

the year 2000, is unfair and arbitrary and therefore, unsustainable in the eye of law".

4. Since no action was taken by the respondents to implement the order passed by the tribunal, Civil contempt application No. 93 of 2013 was filed.

5. It is the further case of applicants that the respondents issued order dated 27.9.2013 and corrigendum dated 10.1.2014 whereby the services of applicants were regularised w.e.f. 27.9.2013 with consequential benefits. In these circumstances, the contempt application was disposed off vide order dated 27.5.2014 with the observation that the order dated 25.9.2012 in OA No. 729/2010 has been substantially complied with.

6. Applicants challenge the order dated 27.9.2013 and corrigendum dated 10.1.2014 on the ground that 27.9.2013 which is the date of their regularisation has been whimsically assigned by the respondents and there is no underlying rationale, base or logic in fixing the date of regularisation to be 27.9.2013 and applicants ought to be regularised from the year 1992 when their juniors were regularised. Therefore the impugned orders being devoid of reason for fixing the illogical date of regularisation deserve to be set aside and the services of applicant be regularised from the year 1992 with consequential benefits.

7. In reply, the factual position given in the O.A. has not been denied by the respondents. The respondents, however, take the plea that the present O.A. is barred by principle of res-judicata. The specific plea by the respondents is averred in paragraph No. 46 and 47of their Counter Affidavit which are quoted as below:

> "46. That the contents of paragraph No. 4.44 of the original application are totally incorrect and hence denied. However, in reply it is submitted here that the Hon'ble Tribunal after taking the cognizance of the letter dated 27.9.2013 dropped the contempt proceedings against the respondents in presence of the counsel for the applicant, so there is no occasion left to challenge the letter/order before this Hon'ble Tribunal on which the contempt

proceeding have been dropped after being satisfied by the Hon'ble Tribunal.

47 That it is further submitted here that in view of the above facts the original application seeking relief of quashing of order dated 27.9.2013 and 10.1.2014 cannot be granted being barred by the principle of resjudictata and estoppels".

8. I have heard and considered the arguments of the learned counsel for the parties and gone through the material on record.

9. It has been argued by learned counsel for respondents that as per the order dated 27.5.2014 in the contempt application, the contempt application was disposed off with the observation that the order dated 25.9.2012 in OA No. 729/2010 has been substantially complied with by passing of the order 27.9.2013 and corrigendum dated 10.1.2014 whereby the services of the applicants have been regularised from 27.9.2013.

10. In other words, the contention of learned counsel for respondents is that by virtue of the order dated 27.5.2014 disposing of the Contempt Application, the matter in dispute has been finally and conclusively decided and the applicants are precluded from challenging the said order dated 27.9.2013 and 10.1.2014 in the present O.A. by applicability of principle of res-judicata.

11. On the other hand, learned counsel for applicant submitted that a finding in the contempt application cannot be contemplated as a final adjudication of the matter. The scope of order dated 27.5.2014, it has been argued by learned counsel for applicants was limited i.e. whether the order dated 25.9.2012 in OA No. 729/2010 was complied with or not and so, the legality of orders dated 27.9.2013 and 10.1.2014 were never the subject matter of adjudication in the contempt application and even so, the tribunal has not given any finding on the correctness or otherwise of the said two orders. Therefore, learned counsel for applicant would submit that the principle of res-judicata is inapplicable in the present case. Applicants have the right and they have exercised the same to challenge the said orders in a separate proceeding i.e. the present OA.

12. Section 11 CPC reads as below:-

> "Res judicata
> No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Explanation I - The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto."

13. It would be pertinent to note the gist of the two orders dated 27.9.2013 and 10.1.2014 as below:

> Order dated 27.09.2013
> **"Ekkuuh; dVd bykgkckn }kjk vk , l- 729 lu 2010 d- ,u-mik/;k; ,o vU; cuke Hkkjr l?k ,o vU; e fn;s x;s fu.k; fnukd 25-09-2012 d vuqikyu e bl dk;ky; d v/khu dk;jr Jh d-,u-mik/;k; i= Lo- fo kukFk mik/;k; ,oth [kykl fV-l- ,l@528 dk** consequential benefits **d lkFk fu;fer fd;k tkrk g tk ekuuh; gkbZdkVZ bykgkckn e nkf[ky flfoy fjV fifV"ku l0 4769 lu 2013 ;fu;u vkQ bf.M;k ,o vU; cuke d- ,u- mik/;k; ,o vU; d vfUre fu.k; d vkykd e ifjorZuh; gkxkA**
>
> **mijkDr ij mi eqdnek@fMik dk vkn'k ikfr gsA"**

> Order dated 10.01.2014
> **"ekuuh; dVd bykgkckn }kjk lh lh , l 93@2013 d lEcU/k e fnukd 11-11-2013 d ikfjr vkn'k d vuqikyu e bl dk;ky; }kjk tkjh dk;ky; vkn'k l0 47 lel[;d i"Bkdu fnukd 27@09@2013 d rgr bl dk;ky; d v/khu dk;jr Jh d- ,u-mik/;k; i= Lo- fo/kkukFk mik/;k; ,oth [kykl fV l- ,l@484] Jh mn; pUn flUgk i= Lo jke pUn ikln ,oth [kykl fV- l- ,l@07 ,o Jh jkt Un xqIrk i= Jh txUukFk xqIrk ,oth [kykl fV- l- ,l@528 dh** consequential benefits **d lkFk fu;fer dh x;h lok ¼rRdky ikHko l½ dk;ky; vkn'k tkjh dju dh frfFk fnukd 27-9-2013 l ikHkkoh gkxhA**
>
> **mijkDr ij mi eqdnek@fMik dk vkn'k ikfr g"**

14. On the basis of order dated 27.9.2013 (Annexure A1), Civil Contempt Application No. 93/2013 was disposed vide order dated 27.5.2013 by holding that:

> "We have gone through the order dated 27.09.2013 and convinced that there is substantial compliance of the order of the Tribunal dated 25.9.2012 passed in O.A. No. 729/2010. Therefore, we do not find any justification to continue the present contempt proceeding."

15. So, by no stretch of imagination it can be said that the by way of passing the order dated 27.9.2013 in the contempt application, the tribunal had heard and finally decided the legality or otherwise of the orders (Annexure A-1 and A-2) laying down the date of regularisation of the services of the applicants. It cannot be said that the date of regularisation of services of applicants was a matter directly and substantially in issue in a former suit (Contempt proceedings) between the same parties, and has been heard and finally decided by the Tribunal so as to be hit by the principle of res-judicata. Applicants have a right to challenge the legality of the said orders by way of present O.A. and the same is not barred by principle of res-judicata.

16. Coming to the merits of the case. In the present O.A., as per, paragraph No. 5 B and 5 E, applicants have challenged the order dated 27.9.2013 and corrigendum dated 10.1.2014 on the ground that 27.9.2013 which is the date of their regularisation given in the aforementioned orders has been whimsically assigned by the respondents and there is no underlying rationale, base or logic in fixing the said date of regularisation to be 27.9.2013 and they ought to be regularised from the year 1992 when their juniors were regularised and respondents have not given the consequential benefits awarded to them in the previous O.A.

17. On the aspect of the case regarding the lack of rationale in fixing the date of regularisation of services of applicant as projected in the O.A. and the services of their juniors being promoted before the applicants, the respondents are singularly silent in their counter affidavit. They have not taken any defence or given any reason or basis for fixing the date (27.9.2013) to be the date of regularisation of the services of the applicant.

18. Respondents have not specifically denied the allegations made in paragraph 5 of the O.A. and so the assertions levelled in the O.A. would be deemed to be admitted. In this regard, I may refer to Kesar Singh v. The State of Punjab, AIR 1988 Punjab and Haryana 265 wherein the Hon'ble High Court held that:-

> "22. His first submission is devoid of any merit. In para 3 of the petition, it is specifically averred that the petitioner had regular service, without any break of a single day, right from 1951 to the date of his superannuation in the year 1977. In the corresponding para of the written statement, this assertion has not been denied but the only plea taken is that his qualifying service for pension and gratuity starts from 15th August 1972, i.e., the day from which he was brought on regular cadre; and that his service in the work-charged establishment does not count for pension under R. 3.17(ii) of the Rules. The plea that he has been in continuous service has not been denied. It appears that on the completion of one project, the petitioners were engaged in another project either with break in service or without any break. Every plea raised in a petition has to be specifically denied and in the absence of a specific denial, the assertions made in the petition will normally be deemed to have been admitted or at least the court can proceed on the basis that it is an uncontroverted fact. Since there is no denial by the respondents that the petitioner has been in continuous service since 1951, it would be presumed that he has been in continuous service till the date of superannuation."

19. In the present O.A. what was the rationale for fixing the particular date has nowhere been spelt out in the counter affidavit. Respondents seem to have pulled the date out of thin air and made it the date of regularisation. Even during the arguments, respondents could not spell out as to what the basis for the date of regularisation to be 27.9.2013, so, fixed in the impugned orders.

20. However, a date is required to be fixed as being the date of regularisation of the services of the applicant. Applicants submit that the date of regularisation should fall in the year 1991-92 when their

juniors were regularised. Respondents have been unable to come up with any plea/suggestion regarding the date of regularisation controverting this plea of the applicants.

21. As per the applicants, the services of their juniors were regularised vide order No. 15 dated 24.2.1992 (Annexure No. A9 at page 89 of the OA. There is no reason, why the applicants should be denied the date of regularisation which was accorded to their juniors. Therefore, applicants are entitled to the relief that their regularisation should be from the date the services of their juniors were regularised along with consequential reliefs as directed by the CAT Tribunal, Allahabad vide order dated 25.9.2012 in O.A No. 729 of 2010.

22. In view of the facts and circumstances of the case, the impugned orders dated 27.9.2013 and 10.1.2014 are quashed and set aside to the extent that the date of regularisation of services of applicants would be w.e.f. the date their juniors were regularised vide order No. 15 dated24.2.1992 (Annexure No. A9 at page 89 of the OA) and entitled to consequential benefit of arrears of regular pay scales and grade pay as per the applicable Pay Commissions starting from IV Pay Commission and ACP/MACP with effect from the date of regularisation of their services as directed above keeping in view the penalty of reduction in increment etc as imposed upon the applicants. This exercise will be completed within 3 months from the date of receipt of a certified copy of this order with intimation to the applicants. Accordingly, the O.A. is allowed. No costs.

(**RAKESH SAGAR JAIN**)
Member (J)

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