

(2022) 05 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00327 Of 2021

G. Bhaskara Jyothi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Citation : (2022) 05 CAT CK 0016

Hon'ble Judges : P. Madhavan, Member, J; K.V. Eapen, Member A

Bench : Division Bench

Advocate : T.C. Govindaswamy, O.M. Shalina

Final Decision : Disposed Of

Judgement

P. Madhavan, Member J

1. This is an Original Application filed by the applicant seeking the following reliefs:

“(i) Call for the records leading to the issues of Annexure A1 and A2 quash the same;

(ii) Direct the second respondents to allow the applicant to join duties forthwith all consequential benefits arising therefrom;

(iii) Direct the respondents to deem the applicant to have been reinstated in service w.e.f. 15.3.2021, with all the consequential benefits, including pay allowances arising therefrom;

(iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The applicant in this case was an Office Superintendent in the Trivandrum Division of Southern Railway. The applicant was compulsorily retired from service

by way of punishment on 2.11.2016. He filed an appeal and thereafter a revision petition as well. As per Annexure A4 order dated 15.3.2021 passed by the Chief Personnel Officer (revisional authority) the applicant was reinstated in service. According to him now the 2nd respondent i.e. Senior Divisional Personnel Officer has refused to allow him to rejoin his duties and demands that he should remit the entire amount of Rs. 34,41,591/- which was granted to him on retirement in 2016 for the purpose of reinstatement. So the applicant is aggrieved by the order of the Divisional Personnel Officer at Annexures A1 and Annexure A2 passed by him.

3. The respondents entered appearance and filed a detailed reply statement. According to them the applicant has filed this OA for a direction to permit him to join duties with all consequential benefits and also for a direction to consider him as reinstated in service with effect from 15.3.2021 with all consequential benefits. According to the respondents the applicant is not entitled for all these benefits. The applicant was imposed with a penalty of compulsory retirement with full pension and gratuity as per Annexure A3 order dated 2.11.2016 for proved misconduct. The applicant had not preferred any appeal within the stipulated period of 45 days and applied for retirement benefits including pension on 7.2.2017 i.e. after three months of compulsory retirement. Accordingly, the competent authority has sanctioned the same on 4.8.2017 and retirement benefits were paid to him including pension arrears. The total amount received by the applicant consequent to his retirement was Rs. 36,61,190/-. The applicant also started receiving pension from November, 2016 onwards and he had received pension till 27.5.2021. After a period of 2 years and 7 months the applicant had preferred an appeal on 16.6.2019. The appeal was submitted to a lower authority and it was returned. Thereafter, he again re-submitted an appeal on 22.10.2019 and the appellate authority after a detailed consideration of the facts and circumstances of the case, upheld the punishment of compulsory retirement on 8.1.2020. Thereafter on 3.3.2020 the applicant filed a revision petition before the Chief Personnel Officer/Admin. who is the revisional authority and the revisional authority passed a modified order as per Annexure A4 dated 15.3.2021. The revisional authority has reduced the punishment "with a penalty of reduction from Level-6 to Level-5 with pay of Rs. 39,200/- for a period of 5 years with recurring effect. Intervening period from the date of compulsory retirement to the date of reinstatement is treated as Dies-non". Immediately thereafter, the applicant submitted a request to permit him to rejoin duty as the penalty was modified with effect from 4.11.2016. The Divisional Office examined the records and found that the applicant had received the entire pensionary benefits and the applicant was asked to refund the pensionary benefits and pension obtained by him till the date of joining the duty. According to the respondents as per Rule 1343 of IREC Volume-II sub clause (8) it provides that "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 reinstatement. 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". So accordingly, the respondents had asked the applicant to refund the amount received by him from the respondents.

4. The applicant had also filed a rejoinder in this case and he invited our attention to FR 54, 54A and 54B. An additional reply statement was also filed by the respondents in this matter.

5. We have gone through the various contentions raised in the pleadings and arguments put forward by the respondents in this case. It appears that the applicant had not preferred any appeal or revision immediately after the order of compulsory retirement was passed. After a few months when he received all the retirement benefits, he filed an appeal before the appellate authority. The appellate authority considered his appeal and rejected the same confirming the penalty imposed on him. Thereupon the applicant filed a revision petition before the revisional authority and revisional authority has taken a lenient view in the case of the applicant and passed a modified order on sympathetic grounds and reduced the penalty to reduction from Level-6 to Level-5 with pay of Rs. 39,200/- for a period of 5 years with recurring effect. The intervening period from the date of compulsory retirement to the date of reinstatement was treated as dies-non. However, the revisional authority has not stated anything regarding the retirement benefits which the applicant has already taken after the compulsory retirement. It appears that the revisional authority has not considered this matter when Annexure A4 order was passed on 15.3.2021. There is no specific rule available in the IREC regarding reinstatement of a person who was compulsorily retired and obtained monetary benefits before reinstatement and how it has to be dealt with. But it appears that the applicant has filed an appeal after much delay and it was because of that the respondents had to pay the retirement benefits to him. He applied for the pensionary benefits on 7.2.2017 and it was granted to him by the respondents on 4.8.2017. Subsequently, he filed an appeal and thereafter a revision petition after 1½ years. The said revision petition was allowed by the revisional authority but no specific orders relating to the recovery of the amount already received by the applicant was made therein.

6. In view of the above situation, we hold that it is for the revisional authority to pass a considered order on merit as to how the reinstatement has to be implemented in this case. Accordingly, the revisional authority will hear the applicant and pass a speaking order as to how the monetary benefits already given to the applicant has to be recovered, when he is reinstated. The above exercise shall be completed by the revisional authority within a period of three months from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. No order as to costs.