

**(2024) 03 CAT CK 0038**  
**In the Central Administrative Tribunal**  
**Case No : Original Application No. 168 Of 2017**

Krishna Gopal S/o Sri Ambika Prasad

APPELLANT

Vs

Union Of India Through The General Manager, North Central  
Railway, Headquarter Office, Subedarganj, Allahabad And  
Others

RESPONDENT

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**Date of Decision :** 22-03-2024

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19

**Citation :** (2024) 03 CAT CK 0038

**Hon'ble Judges :** B.K. Shrivastava, Member (J); Dr. Sanjiv Kumar, Member (A)

**Bench :** Division Bench

**Advocate :** Ravi Sharma, Vijay Kumar Singh

**Final Decision :** Allowed

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## Judgement

B.K. Shrivastava, Member (J)

1. This Original Application has been filed on 16.02.2017 under Section 19 of the Administrative Tribunals Act, 1985 for the following relief stated in Para-8:-

“(i) That the Hon'ble Tribunal may graciously be pleased to set aside the impugned orders dated 4.9.2016 and 8.9.2016 being in violation to Hon'ble CAT order dated 27.3.1996 in OA No. 574 of 1989 Krishna Gopal Vs. Union of India & Others denying the benefit of Railway Service w.e.f. 27.10.1984 at par with 12 juniors as mentioned in Para 11 of the aforesaid order of the Hon'ble Tribunal dated 27.3.1996 resulting heavy recurring financial loss to the applicant on various account i.e., reinstatement w.e.f. 27.10.1984, regularization in the year 1988. seniority and promotion accordingly, benefit of MACP, benefit of VRS and appointment to his son at par with the 12 junior persons as mentioned in Para 11 of the Hon'ble CAT order dated 27.3.1996 being similarly situated person.

8.2 That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, NCR, Allahabad, Respondent No. 3 to allow benefit of Railway

Service to the applicant w.e.f. 27.10.1984. the date of termination of the applicant in compliance to Hon'ble CAT order dated 27.3.1996 at par with 12 junior persons as mentioned in Para 11 of the Hon'ble CAT order dated 27.3.1996 with direction to provide the same benefits to the applicant i.e. reinstatement w.e.f. 27.10.1984, regularization of services in the year 1988, seniority and promotions, benefit of MACP and benefit of VRS under LARSGESS and appointment to his son in Group 'D' post as allowed to the 12 junior persons as mentioned in Para 11 of the Hon'ble CAT order dated 27.3.1996, being similarly situated person.

8.3 That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, NCR, Allahabad, Respondent No. 4, to fix pay of the applicant in regular pay scale keeping in view his re-engagement w.e.f. 27.10.1984 and pay fixation in higher grades at par with his 12 juniors as mentioned in Para 11 of the Hon'ble CAT order dated 27.3.1996 with the payment of arrear of salary and payment of MACP at par with his juniors with interest @ 12% per annum on the amount of arrear so that the applicant may get justice.

8.4 That the Hon'ble Tribunal may graciously be pleased to allow heavy cost in favour of the applicant.

8.5 That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case."

2. It is an admitted fact that previously the applicant, Krishna Gopal, filed OA No.574/1989 before this Tribunal and the Division Bench of this Tribunal passed the final order on 27.03.1996 (Annexure A-3). It is also an admitted position that in compliance of the aforesaid order, the applicant has been reinstated on 02.11.1996.

3. As per the applicant's case, he was initially appointed as Substitute Khalasi on 01.07.1978 under the Loco Foreman, Loco Shed, Northern Railway and he was discharged from railway services. Thereafter, in compliance with the Circular dated 08.08.1979, the applicant was re-engaged on 27.08.1984 along with 18 other persons by the Competent Authority on the basis of their service prior to 01.08.1978. On 27.10.1984, the applicant and the other 17 Substitute Khalasi, were discharged from service on 27.10.1984, it means the 18 persons, who were reinstated on 27.08.1984 were again discharged on 27.10.1984. It is again submitted by the applicant that in the month of November, 1984 the respondents engaged another 17 Khalasi, who were discharged with the applicant on 27.10.1984 but they did not reinstate the applicant. The 17 persons, who were re-engaged, except the applicant, were reinstated. Out of the aforesaid 17 persons, 12 persons are junior to the applicant, therefore their names, serial numbers, and ticket numbers are mentioned in Para-4.5 of the OA.

4. The applicant again submitted that he filed the representation before the Competent Authority but no action was taken, his services prior to 01.07.1978

were verified by Sr. Divisional Mechanical Engineer, Northern Railway, Allahabad vide letter dated 20.06.1984 and 16.10.1984. The applicant wants the same benefit which was given to the other 17 Khalasi, who were terminated along with the applicant. When the relief was not granted, the applicant filed the OA No.574/1989 before the Tribunal and the same was decided on 27.03.1996 (Annexure A-3), the OA was allowed and after the order of OA, the applicant was reinstated on 02.11.1996 under RSO, North Central Railway, Kanpur. The applicant was not allowed the benefit of the order as directed by the Tribunal in Para-11 of the aforesaid order, in which the direction was given to give the same treatment to the applicant as given to any person below the applicant from Sl. Nos. 7 to 18. It is submitted by the applicant that 12 persons junior to him were re-engaged in the month of November, 1984 and were regularized in the year 1988 on the post of Khalasi in the Mechanical Branch. As per the CAT Order the same benefit should be granted therefore, the applicant filed this OA for the relief stated Para-1 of this order.

5. The respondents opposed the prayer of the applicant and filed the Counter Affidavit on 11.01.2023. It is submitted by the respondents that the applicant was appointed on the post of Substitute Khalasi in pursuance of the order dated 27.03.1996 of the CAT, Allahabad, and letter dated 01.11.1996 of DME, Allahabad. The applicant was given the benefit of First MACP, after completion of 10 years on 01.09.1988. As per the respondents, the date of appointment of the applicant is mentioned in his Service Book as 02.11.1996, therefore, any benefit cannot be granted to the applicant. Upon the aforesaid grounds, the respondents pray to dismiss the OA.

6. If we perused the entire pleadings of both parties then it is transpired that the applicant claimed the relief to implement the order dated 27.03.1996 passed by the Division Bench of this Tribunal in OA No.574/1989. The said OA was filed by the applicant himself. In paras 10, 11 and 12 of the Tribunal observed and directed as under:-

"10. In view of the above, facts, we have no option but to accept the contention of the applicant. His case was similar to that of 17 others who were terminated in October 1984. Annexure-2 to the O.A. shows applicant at Sl. no.6 and the Ticket no. of the applicant was 396 while other 12 persons below him have Ticket nos. which come after the Ticket no. of the applicant. Therefore the contention of the applicant that juniors to him have been regularised because respondents have themselves admitted that 10 persons have been regularised is also accepted. The respondents have not come up clean with the facts in their counter-reply.

11. The respondents are directed to give the same treatment to the applicant as they have given to any person below him from Sl. no.7 to Sl. no.18. The names of the persons in Annexure-2 are given below for ready reference:-

Sl.No.

Ticket

No.

Name

7

428

Waid Hussain

8

441

Munawwar Abbas

9

456

Dilawar Khan

10

398

Fateh Mohammad

11

407

Nizamuddin

12

418

Ali Ram

13

440

Mohd. Feim

14

467

Bahadur Singh

15

468

Madan Mohan

16

462

Shamsuddin

17

446

Kanti Prasad

18

465

Shamshad

12. The directions shall be complied with within a period of four months from the date of the communication of a copy of the judgment by the applicant. There shall be no orders as to costs."

7. The main contention of the respondents is about the date of appointment of the applicant. As per the respondents in their official record, the date of appointment of the applicant is mentioned as 02.11.1996. Any party cannot be permitted to rebut his contention which was taken in the earlier case pending before the court. If any question has been decided by a competent court, then the party has no any right to say against the aforesaid observation or the decision of the Court. In this case, the entire order passed in the previous OA shows that all points have been considered.

8. On 12.09.1996, the court granted the opportunity for submitting the appropriate documents with the remark that in case of failure, the adverse inference will be drawn. It was contended in the previous OA by the respondents that the service record to prove the work of the applicant prior to 01.08.1978 has not been filed by the applicant and the working period up to 01.08.1978 is not available in the record of Railway Station. The aforesaid contention was rebutted by the Rejoinder. In Paras-7 and 8 of the aforesaid OA, the aforesaid facts are mentioned in the following word:-

"7. The respondents have mentioned in their supplementary counter reply that the question of regularisation of applicant's engagement was raised through various meetings but the same could not be finalised for want of necessary materials and orders of competent authority. It is said that the applicant should produce service card to prove his work prior to 1-8-78. It is also stated that the working period upto 1-8-78 is not available in the records of the Railway Station and the applicant also could not produce any record. It is also stated that only 10 persons out of 18 were re-engaged. It is also stated that the enquiry of Vigilance/ Intelligence could not be produced at this stage by the applicant.

8. The applicant in his supplementary rejoinder-affidavit has alleged that there was favouritism shown in re-engaging and regularising other workers engaged alongwith the applicant in July/August 1984 and terminated in December 1984.

The applicant has stated that others who have been regularised have been so treated because the respondents considered secondary evidence about their engagement prior to 1-8-78. The applicant demanded that Inquiry/Investigation report should be produced before the Tribunal."

9. After mentioning the aforesaid fact, the Court also quoted the order sheet dated 12.09.1995 in para-8 as under:-

"Shri R.K. Nigam, counsel for the applicant and Shri D.C. Saxena, counsel for the respondents are present, The Tribunal had directed the respondents on 18-4-95 to produce vigilance/intelligence report and other documents which were mentioned in Misc. application no.2204/94 but they have not been produced as yet. Shri Saxena informs that the letter was written to the department but no reply has been received. He, however, seeks one more chance. Allowed. It shall be the last opportunity. In case the respondents fail to produce the documents, the necessary inference under law shall be drawn against them. Let the matter be fixed for final hearing because the pleadings are complete, on 21-11-95. Copy of the order be given to the parties."

Therefore, it appears from the aforesaid observation that the chance was given to the respondents for producing the record and the condition was mentioned in the aforesaid order that in case the respondents failed to produce the documents the necessary inference under law shall be drawn. In this regard the court mentioned in Para-9 as under:-

"9. Civil Misc. Application no.2204 of 1994 prays that the respondents be directed to produce vigilance/intelligence report and relevant records on the basis of which 10 of the 18 persons had been verified. The Bench of the Tribunal had directed the respondents to produce these records by way of last opportunity and also provided for an adverse inference in case of non-production of records. The learned counsel for the respondents stated that no vigilance report was available."

10. Therefore, it appears that the previous case was decided on merit after given the proper opportunity to the respondents also but the respondents did not avail the aforesaid opportunity and the case was decided on merits. Therefore, the respondents are bound to comply with the aforesaid order as it is. They reinstated to the applicant from the date 02.11.1996. The direction was given for the same treatment to the applicant as they have given to any person below him from Sl. No. 7 to 18. The court also mentioned the name of the aforesaid 12 persons in Para-11 of the OA. Therefore, in the aforesaid situation, the benefit should be given to the applicant from which the benefit has been given to any of his juniors between Sl. No. 7 to 18 of Annexure A-2 of the previous OA (the name also mentioned in the order of the previous OA in Para-11). It is made clear that the notional seniority should be given to the applicant but he will not be entitled to any arrears on the principle of 'No work no pay'. After giving the notional seniority as given to the junior of the applicant, the other subsequent benefit will also be given to the applicant except the arrears up to the period of

02.11.1996.

11. Looking to the discussion, the OA is allowed. The respondents are directed to give the complete benefit of the order dated 27.03.1996 passed by Central Administrative Tribunal, Allahabad in OA No.574/1989 and give the notional seniority to the applicant and also give all subsequent benefits which are given to the other junior employees to the applicant. The applicant will not entitled to the arrear up to the period of 02.11.1996, but he will entitled to other promotional benefits counted from the date of initial appointment i.e. 01.07.1978.

12. All pending M.As, if any, shall be treated as disposed of. Registry will take appropriate action in this regard for removing the M.As.

13. There shall be no order as to costs.