

(2007) 09 RAJ CK 0092

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 81 and 183 of 1999

Prabhu Dayal

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 25-09-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Railways (Disciplinary and Appeal) Rules, 1968 — Rule 14(2)

Citation : (2008) 2 WLN 256

Hon'ble Judges : P.B. Majmudar, J; Deo Narayan Thanvi, J

Bench : Division Bench

Judgement

Deo Narayan Thanvi, J.—The petitioners have filed aforesaid two writ petitions against the judgment date 07.12.1998 passed by the Central Administrative Tribunal, Jodhpur Bench Jodhpur whereby the applications filed by them u/s 19 of the Central Administrative Tribunal Act, 1985 were dismissed being devoid of any merit and also barred by law of limitation.

2. Since the facts and law involved in both these petitions are similar, therefore, the same are being disposed of by this common judgment.

3. The facts giving rise to these petitioners are that the petitioners were dismissed from the Railway services under Rule 14(2) of the Railway (Disciplinary and Appeal) Rules, 1968 for having participated in the Loco Staff Strike of 1981. Later on, the petitioners were reinstated in services in view of the judgment dt. 05.08.1993 delivered by the Hon'ble Supreme Court in the case Union of India and Ors. v. R. Radappa and Anr. Civil Appeal No. of 4681/4682 of 1992. The relevant extract of judgment dt. 05.08.1993 reads as under:

(1) Employees who are dismissed under Rule 14(2) for having participated in the Loco Staff Strike of 1981 shall be restored to their respective post within a period of three months from today (05.08.1993)

(ii)(a) Since more than three years have elapsed from the date the orders were

found to be bad on merits by one of the Tribunals, it is just and fair to direct the appellant to pay the employees compensation equivalent to three years salary inclusive of dearness allowance calculated on the scales of pay prevalent in the year, the judgment was delivered i.e. in 1990.

(b) This benefit shall be available even to those employees who have retired from service. In those cases, where the employees are dead, the compensation shall be paid to their dependents. The compensation shall be calculated on the scale prevalent three years immediately before the date of retirement or death.

(iii) Although the employees shall not be entitled to any promotional benefit they shall be given 'Notional Continuity' for the purpose of calculation of pensionary benefits. This benefit shall be available to the retired employees as well as those who are dead by calculating the period till the date of retirement or death.

4. In pursuance of judgment of the Hon'ble Supreme Court dt. 05.08.1993, the respondents fixed the pay of the petitioners allowing all increments that fell due during the period between their dismissal from service and reinstatement. So far as petitioner Shyam Lal is concerned, he was reinstated in service while so far as petitioner Prabhu Dayal is concerned, he was paid his retiral dues. Accordingly arrears of pay and allowance were paid to the petitioners. In respect of petitioner Prabhu Dayal, pensionary benefits were also calculated and paid to him. Subsequently, the respondents on a clarification received from the Railway Board, re-fixed the pay of the petitioners without allowing increments for the period from the date of their dismissal and reinstatement/retirement and accordingly amount of Rs. 64,201.90/- and Rs. 97,829/- was worked out respectively as over payment made to the petitioners. The petitioners submitted number of representations, but to no avail. Hence, they filed original applications before the Tribunal.

5. The learned Tribunal dismissed the original applications filed by the petitioners on the ground of delay and also on merit by observing that retiral benefits can be given only when the employee is on duty. The Tribunal has also observed that the impugned order of re-fixation of pay was passed in July, 1994 and the original applications were filed in the year 1997, therefore, the original applications were time barred.

6. In our view, this cannot be ground for rejecting the original application. The recovery orders were issued in the year 1996 and petitioners were regularly submitting the representation, but the same were not decided and ultimately, when the petitioners lost hope, they filed original application. That apart, the cause of action raised by the petitioners in the original applications is recurring cause of action, which accrues to them every month when they get less pension. Therefore, it cannot be said that the original applications filed by the petitioners were hopelessly barred by limitation.

7. So far as merit of the case is concerned, the petitioners were reinstated in service in compliance of the directions of the Hon'ble Supreme Court and the

Hon?ble Supreme Court has directed that the respondents to pay compensation to the employees equivalent to three years salary inclusive of dearness allowance calculated on the scales of pay prevalent in the year, the judgment was delivered i.e. in 1990. In compliance of the directions of the Hon?ble Supreme Court, the respondents fixed the pay of the petitioners allowing all increments that fell due during the period between their dismissal from service and reinstatement/retirement, but later on, in view of the clarification of the Railway Board, the pay of the petitioners was refixed without allowing increments for the period from the date of their dismissal and reinstatement/retirement.

8. In our view, the action of the respondents in refixing the pay of the petitioners without allowing increments from the date of their dismissal till the date of reinstatement/retirement is contrary to the established principle of service law and in fact, is in violation of directions given by the Hon?ble Supreme Court. The Hon?ble Supreme Court has clearly directed that the employees shall be given notional continuity from the date of termination till the date of restoration for the purpose of calculation of Pensionary benefits. Thus, the petitioners are entitled to get fixation of their pay treating them to be in continuous service and are also entitled to get fixation of their pay from the date of termination till the date of retirement by adding increments and accordingly they are also entitled to get pensionary benefits on the pay after allowing increments.

9. We are also fortified in our view by the judgment of Hon?ble Supreme Court in the case of Babulal Jain Vs. State of M.P. and Others, In the said judgment, the Hon?ble Supreme Court has observed as under:

15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law....

10. Thus, we are of the view that the clarification issued by the Railway Board is contrary to the directions of the Hon?ble Supreme Court. Even no recovery can be effected from the petitioners as there was no mistake, fraud or misrepresentation on the part of the petitioners.

11. Consequently, the present writ petitions as well as original applications are allowed. The judgment of the Central Administrative Tribunal as well as the impugned orders refixing the pay of the petitioners as also directing recovery of excess payment from the petitioners are set aside. The respondents are directed to revise the pension of the petitioners as per earlier pay fixation made prior to the clarification of the Railway Board, within a period of three months from the date of supply of certified copy by the petitioners. Cost is made easy.