

(2024) 04 CAT CK 0010

In the Central Administrative Tribunal

Case No : Original Application No. 1826 Of 2012

R.P. Nigam

APPELLANT

Vs

Union Of India, Through The General Manager, North Central
Railway, Allahabad & Ors.

RESPONDENT

Date of Decision : 05-04-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2024) 04 CAT CK 0010

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : M.K Upadhyay, Bablu Singh

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present original application has been filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

“(a) This Hon’ble Tribunal may graciously be pleased to quash the order dated 13.09.2012 passed by the respondent No.2 (Annexure No.A-1 to this original application).

(b) This Hon’ble Tribunal may graciously be pleased to direct the respondents to re-fix the pay scales, pay and pension of the applicant since the date of suspension to date of retirement and respondents be directed to pay the retiral dues and other benefits to the applicant accordingly along with 18% interest per annum from the date of due to the date of actual payment including leave encashment, difference between revised pension and pension already paid, salary from the period of 1985 to 30.06.1994, bonus and TA/DA claims of applicant pending with the respondents which were also required to be paid after retirement.

(c) This Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the pay scale of Rs. 2000-3200 w.e.f. 13.05.1994 whichever given to junior person to Sri S.D. Sharma.

(d) This Hon'ble Tribunal may graciously be pleased to direct the respondents to after fixation of all above payments issue new revised pension, payment order in favour of the applicant.

(e) Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

(f) Award cost of the original application in favour of the applicant".

2. The brief facts of the case are that applicant was retired from service in the year 1994. A departmental proceedings is initiated against the applicant in which applicant has been exonerated from all the charges. During the period from 10.07.1985 to 12.01.1987, applicant was suspended. Pay of Shri S.D. Sharma, who is junior to applicant has also been restored in the pay scale of Rs. 2000-3200, therefore applicant is also entitled for the same benefit as has been given to afore-mentioned junior of the applicant. Director Establishment (D & A) Railway Board in its order dated on 30.03.2011 mentioned that Hon'ble President has held that the charges levelled against the applicant do not constitute grave misconduct that would warrant any cut in his pension, as brought out in the Commissioner's advice dated 25.01.2011 for the detailed reasons mentioned therein and has therefore decided that the disciplinary proceedings initiated against applicant be dropped and he be exonerated of the charges levelled against him. In pursuance of letter dated 05.04.2011 on behalf of Divisional Railway Manager (Commercial) North Central Railway, Allahabad sent a letter to the applicant by which he has clearly mentioned in his order that the competent authority has considered the case in consultation with UPSC and decided that the disciplinary proceedings initiated against applicant be dropped and he be exonerated of the charges levelled against him. On 05.08.2011, the Deputy Chief Traffic Manager passed an order on the representation of applicant that the disciplinary proceedings case has been finalized by the competent authority and he has been exonerated of charges levelled in this case, it is also written in the letter that the suspension period from 10.07.1985 to 12.01.1987 has now been regularized as per rules. Just after receiving of the aforesaid letter, the applicant sent a representation on 15.11.2011 by which the applicant has clearly mentioned that he sent several representation for unpaid dues i.e. salary from May 1985, on the NBR basis Gratuity, Bonus, Leave Encashment, fixation of revised pension on the basis of last 10 months salary. It is also clearly mentioned that the pension of the applicant was wrongly fixed. In his representation, the applicant prayed that DCRG calculated by the respondents is also not correct and they have given only 20% D.A. while it should 104%. Respondents have given leave encashment only for 176 days while it should have been for the full period of 240 days. The applicant finally requested recheck and modify the aforesaid payments according to NBR basis. When the respondents have not considered

the genuine grievance of the applicant, then the applicant has filed an O.A. No. 604/2012 before this Hon'ble Tribunal, in which after hearing both the parties the Tribunal decided the aforesaid Original Application on 16.05.2012 with the following direction:-

"Accordingly, O.A. is disposed of with a direction to the respondent No.2 to consider and decide the representation of the applicant dated 16.03.2012 in the light of order No. E(D&A)2009 AE 15-I dated 30.03.2011 within a period of two months from the date of receipt of copy of this order. No costs".

Even after aforesaid judgment, when the respondents have not complied with the order dated 16.05.2012, the applicant filed Contempt Petition No. 131/2012 before this Tribunal in which after issuing notice to the respondents, the respondents have filed compliance affidavit before this Tribunal alongwith the order dated 13.09.2012. After perusal of the aforesaid order dated 13.09.2012, it is proved that the respondent No.2 has not passed speaking order as per direction of the Tribunal dated 16.05.2012 and he has again reiterated same order, which has already been passed on 01.11.2011, therefore only on this ground the order dated 13.09.2012 is not sustainable in the eye of law. Thus, applicant has filed this OA assailing the order dated 13.09.2012.

3. We have heard learned counsel for the parties and perused the record.

4. Submission of the learned counsel for the applicant is that as per FR 54-B, the applicant is entitled for all consequential benefits when the suspension order was wholly unjustified. Learned counsel further submitted that the disciplinary authority dropped the charges levelled against the applicant and exonerated to the applicant from the charges on 30.03.2011, therefore, the applicant is entitled for all consequential benefits from the date of suspension to the date of retirement and thereafter pensionary benefits are liable to be revised after revision of refixation of pay and grant of periodical increment till the date of retirement. Learned counsel for the applicant further submitted that according to the provision of Railway Servants (Discipline and Appeal) Rules, 1968 after the revocation of suspension orders, the Railway employees are entitled for payment of salary during the suspension period. Learned counsel also contended that no order under Rule 54 (B) (i) fundamental Rule has been passed. The applicant has placed reliance upon the provision contained in F.R. 54-B (I). Learned counsel for the applicant also argued that the suspension period be treated as on duty and the department concerned be directed to pay the difference amount of suspension period

5. Learned counsel for the respondents argued that in compliance of direction of Tribunal passed in OA No. 604/2012, the representation of the applicant has been decided by passing a speaking order dated 13.09.2012. Learned counsel further argued that last pay at the time of retirement of applicant was fixed as Rs. 1640/-, which has been taken into account for calculation of pension and settlement dues. He also submitted that as per available records total number of

leave balance in the applicant's leave record is 176. Accordingly, payment of 2393/- has been paid to the applicant. It has further been submitted that dearness allowance is payable on basic pension as per Rules prevailing at that time. It has also been submitted that in regard to payment of salary arrears, respondents have clarified that applicant did not perform duty during the suspension period, thus no arrear can be paid. Learned counsel for the respondents lastly submitted that no dues are pending before the respondents to be paid to the applicant. Accordingly, the instant OA be dismissed being devoid of merits.

6. We have considered the rival submissions advanced by the learned counsel for the parties and have gone through the entire record.

7. From perusal of record, it is evident that applicant while working in the respondents' department, a departmental proceedings was initiated against him, which was later-on dropped by the disciplinary authority. Applicant had been suspended from 10.07.1985 to 12.01.1987 and thereafter disciplinary authority dropped the disciplinary proceedings. During the pendency of disciplinary proceedings, applicant was retired from service in the year 1994. In this case, Applicant prayed for the payment of salary w.e.f. 10.07.1985 till the date of retirement with interest of 18 % per annum. Applicant filed several representation in which he had sought aforesaid requests. When his representation has not been decided, he filed OA No. 604/12 which was decided by this Tribunal in its order dated 16.05.2012 directing the respondents to decide the representation of the applicant in the light of order No. E(D&A) 2009AE 15-I dated 30.03.2011. When respondents have not complied with the aforesaid order of the Tribunal, applicant filed Contempt petition. In the compliance affidavit filed by the contemner, they have annexed the order dated 13.09.2012 whereby prayer of the applicant has been rejected. Applicant stated that as per para 54 B(1) of FR, he is entitled for full salary for the period from 10.07.1985 till the date of retirement with interest of 18 % per annum.

"9. Para 54 B (1) to (9) of F.R. are reproduced below:-

"When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) whole under suspension shall consider and make a specific order-

a. regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement) as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be

paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and

(3) the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalization of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note:- The order of the competent authority under the preceding proviso shall be

absolute and no higher sanction shall be necessary for the grant of –

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent or quasi permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53”.

8. In the case of Ashok Kumar Aggrawal Vs. Suniit Bose reported in LAWS (SC) 2014-2-79, Hon’ble Apex Court has held as under:-

“6. We are not able to agree with the submissions made by learned ASG as that the rule has no application to those cases where the suspension order is quashed by judicial or quasi-judicial body. Therefore,, we are of the opinion that the petitioner is entitled for his pay and other allowances w.e.f. 12th January, 2012.”

9. In the instant case, since applicant has been exonerated from all charges framed against him and thereafter suspension order has been revoked by the respondents but respondents have wrongly stated in the impugned order dated 13.09.2012 that applicant did not perform duty during the suspension period, thus he is not entitled for payment of arrears. From the perusal of FR 54-B, it is evident that if a Government servant, who has been suspended, is reinstated and thereafter he was retired, he is entitled for pay and allowances for the period of suspension ending with reinstatement or the date of his retirement, hence the shall be treated on duty during the suspension period. Thus, as per the case laws discussed hereinabove, applicant is entitled for salary and other allowances for the suspension period. Since applicant was retired from service in the year 1994 and disciplinary proceedings pending against the applicant has been dropped in the year 2011, therefore, applicant is also entitled for refixation of pension.

10. Accordingly, the O.A. is allowed and the impugned order dated 13.09.2012 is hereby quashed. Respondents are directed to pay full salary and allowances deducting the subsistence allowances if already paid to the applicant for the suspension period i.e. from 10.07.1985 till the date of retirement with other allowances and all consequential benefits with simple interest of 6 % per annum. Respondents are also directed to refix the pension of the applicant and pay arrear thereon with simple interest of 6 % per annum. These exercise shall be completed within a period of 3 months from the date of receipt of a certified copy of this order. No order as to costs. All associated MAs are also stand disposed of.