
(2023) 11 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 1180 Of 2013

Umkeshwar Singh

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 01-11-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 11 CAT CK 0001

Hon'ble Judges : Om Prakash, VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : S. Haldar, S. C Mishra

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

"i That the Hon'ble Tribunal may graciously be pleased to set aside/to quash the impugned order dated 8.4.2013, signed and issued by the Asstt. Personnel Officer, North Central Railway, Allahabad respondent No. 6, an incompetent authority, rejecting request of the applicant for correct fixation of his pay on the post of the Junior Engineer –II/Elect. Gr. 5000-8000/- as per Rules and Railway Board order resulting less fixation of pay and heavy recurring financial loss to the applicant since 2.4.2002, the date of joining this post by the applicant.

ii. That the Hon'ble Tribunal may graciously be pleased to direct Divisional Railway Manager, N.C.R., Allahabad respondent NO. 3 to issue necessary order for fixation of the pay to the applicant on the post of Junior Engineer –II, Electric as per Rule 903, 904 and 924 of IREM Vol-1 and Railway Board order dated 23.09.1959 by adding 30% pay element of basic pay while fixing his pay on the

post of Junior Engineer-II, Electric with effect from 2.4.2002 the date of joining this post by the applicant and thereafter regularly.

iii. That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, N.CR, Allahabad, Respondent No. 3 to issue necessary orders for making payment of arrear of pay by fixing his pay correctly as mentioned in aforesaid para with effect from 2.4.2002 to the date of pay fixation of pay correctly and paid to the applicant regularly.

iv. That Hon'ble Tribunal may graciously be pleased to allow interest @ 12% per annum on the amount of arrear of pay since 2.4.2002 the date of less payment of pay to the date it is actually paid to the applicant.

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

vi. 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 of the circumstances of the case".

2. The brief facts of the case is that husband of the applicant was initially appointed as Electric Asstt. Driver on 29.1.1992. While working as Electric Asstt. Driver, applicant appeared in the selection for the post of Junior Engineer -II (Electric) in pay scale of Rs. 5000-8000 (RSRP) under 25% General Departmental Competitive Exam Scheme and he was declared pass vide letter dated 27.3.2000 and he was sent for training. After completing 2 years training, applicant was posted under the Sr. Section Engineer OHE/N. Railway, Etawah by order dated 28.2.2002. After joining the post of Junior Engineer pay of the applicant was fixed wrongly. The applicant was working as Electrical Asstt. Driver (in running cadre) in the grade of Rs.3050-4590/- with basic pay of Rs. 4030/- at the time of his selection and posting on the post of Junior Engineer in the grade of Rs. 5000-8000/- on 2.4.2002. His pay was fixed at Rs. 5000/- on the post of Junior Engineer without considering 30% of the basic pay of the running staff in the nature of pay representing the pay element in the running allowance resulting less fixation of pay of the applicant. Applicant of this O.A. is seeking the benefit of the decision of the Tribunal in Shubhasis Halder Vs. Union of India and others (O.A.No.130/2007) decided on 4.2.2011 whereby Tribunal has directed the respondents to restore the pay of the applicant as initially granted vide order dated 2.4.2002 and refund the money recovered in pursuance of the impugned order dated 26th April 2004 from him with interest @ 9% per annum from the date recovery of the entire amount till the date of payment.

3. We have heard Shri Shubhasis Halder, learned counsel for the applicant and Shri S.C. Mishra, learned counsel for the respondents and perused the records.

4. Learned counsel for the applicant contended that pay of the similarly situated employee of the Divisions was restored by the respondents which was initially granted vide order dated 2.4.2002 and recovered amounts has been refunded to

the applicant of that OA. but applicant has been deprived from giving the same benefit. It is further submitted that order of the Tribunal has been upheld by the Hon'ble High Court, Allahabad in writ petition No. 33309/2011. Learned counsel further contended that nature of appointment, work and responsibility of the post of the applicant is exactly the same as the applicant of that OA. to whom the order of the Tribunal has already been implemented. Hence applicant is also entitled for the similar benefits.

5. Learned counsel for respondents has submitted that applicant has preferred this OA in the year 2013 whereas he is seeking benefit of judgment delivered in the year 2007, thus he had been sleeping over his rights for all these years and only when the Hon'ble High Court has upheld the order of the Tribunal dated 4.2.2011 passed in O.A.No.130/2007 approached the Tribunal. Learned counsel further submitted that since the aforesaid order has not been passed in rem, hence it will not be applicable to the present applicant. It is further stated that applicants were never a part of the litigations.

6. We have perused the arguments of learned counsel for the parties and also perused the written submission submitted by the respondents' counsel.

7. From perusal of record, it is evident that respondents have not denied that applicant of the instant OA is similarly situated employee to those of O.A. No. 130/2007 which was decided by this Tribunal vide order dated 04.02.2011 and was affirmed by the Hon'ble High Court. We have seen the order of the Tribunal dated 4.2.2011 in which applicant of that OA was claiming the pay scale of Rs. 4500-7000 taking into account 30% running allowance which was available to him when he was functioning as a running staff. In the present case also, applicant is claiming pay scale of Rs. 5000-8000/-by adding 30% pay element of basic pay when he was working as running staff. Thus, we are of the view that the applicant of the present OA is also entitled for the similar benefits as has been given to the applicant of OA No. 130/2007. Since cause shown in the OA is recurring in nature, right of the applicant in OA No. 130/2007 was decided by the Hon'ble High Court in the year 2011, therefore, the OA cannot be dismissed on the ground of delay.

8. In the case of State of Karnataka & Others vs. C. Lalitha, (2006) 2 SCC 747, Hon'ble Apex Court has held as under:-

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

9. Considering the facts and circumstances of the case and in the light of the observation made by the Hon'ble Apex Court, when judgment and order dated 4.2.2011 passed by the Tribunal has been upheld by the Hon'ble High Court and same has attained finality, therefore, respondents ought to have extended the benefit to all the similarly situated employees. Thus, we are of the view that

impugned order passed by the respondents suffers from illegality and arbitrariness. Hence, O.A. is liable to be allowed. Accordingly, O.A. is allowed and impugned order dated 8.4.2013 is quashed. Respondents are directed to grant the similar benefits to the applicant of this O.A. which was granted to the applicant of O.A. No. 130/2007. No order as to costs. All associated MAs are disposed of.