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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5381/2015

UNION OF INDIA & ANR.

..... Petitioner

Through: Mr. N. Prashant Nair with Ms.
Soumya Kumar, Advs.

versus

RAJENDER SINGH

..... Respondent

Through: Mr. Manjeet Singh Reen, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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18.02.2016

The Union of India through the General Manager, Northern Railway has filed the present Writ Petition impugning the order dated 24.11.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in O.A. No. 329/2014, whereby they have been directed to pay arrears in the scale of Diesel Assistant (Tech. Grade-III) for the period from 29.05.2002 to 24.04.2012 to Rajender Singh, the respondent herein. The respondent it has been held would be entitled to benefit of pay fixation and seniority with effect from the date of his regular appointment in the grade of Substitute Loco Cleaner, i.e., 30.11.1988.

The respondent who was working as substitute loco cleaner

with effect from 29.11.1988 was charge-sheeted and punished with the penalty of removal from service, with effect from 15.07.1991. The Tribunal by their order dated 03.12.1998 had set aside the order of removal from service with the direction that the respondent shall be reinstated to the post of Loco Cleaner with all consequential benefits.

The petitioners had challenged the said order by way of Writ Petition No. 755/1999 which was disposed of vide judgment dated 18.10.2001, the operative portion of which reads as under:

“However, we do not find any justification in granting the delinquent full back wages for the period he was kept out of service. The delinquent was removed from service on 7th October, 1994. Since then he has not been working with Railways. The enquiry proceedings are found vitiated basically on the ground that the Disciplinary Authority had not given cogent reasons for disagreeing with the findings of the Enquiry Officer, who had exonerated the delinquent. There was also an imputation against the delinquent that he failed to maintain absolute integrity and acted in a manner unbecoming of railway servant. Be that as it may, in the facts and circumstances of this case, we do not find it expedient to direct the payment of back wages. Accordingly, the order of the Tribunal is modified as under:

“The impugned orders of the Disciplinary Authority of respondent No.1’s removal from service followed by the orders of the Appellate and Revisional Authorities are quashed. Respondent No.1 is directed to be reinstated in service within one month from the date of this order without back wages.””

The High Court thus did not interfere with the directions given by the Tribunal for reinstatement in service and the respondent's entitlement to all consequential benefits except to the extent that the respondent would not be allowed back wages.

Subsequent thereto, the respondent was reinstated in service with effect from 29.05.2002 but was placed in the pay scale of Rs.2610-3540/-, whereas earlier, at the time of removal, he was drawing the pay scale equivalent to the replacement pay scale of Rs.2750-4540/-. The respondent protested and when the petitioners did not accept and agree to his placement in the earlier pay scale, filed O.A. No.364/2004, that was allowed vide order dated 21.09.2005, with the following directions:

“9. We do not agree with respondents that reinstatement in the case of applicant as he was a substitute loco cleaner would mean fresh appointment without benefit of any past service. Applicant had been screened for absorption in Group ‘D’ but in view of the disciplinary proceedings was not absorbed as such in this backdrop it cannot be accepted that applicant would have continued as a substitute.

10. At this stage, basically in tune with the spirit of Court orders as also Annexure A-9 applicant should be imparted training of diesel assistant and his services should be utilized as diesel assistant to the drivers in the equivalent scale to the scale of loco cleaner. If this is absolutely impossible, applicant should be deployed on a post having an equivalent scale to that of diesel assistant, i.e., Rs.2750-3500 giving notional benefit of all his past service. The import

of the aforesaid court decisions is that he must be given all consequential benefits excepting the arrears of pay. His pay should be notionally fixed in the pay scale of diesel assistants with actual benefits from the date of reinstatement.”

The petitioners have accepted the said order and did not impugn and challenge this order and the directions given therein. The aforesaid directions have attained finality. Thus, the respondent had to be posted as a Diesel Assistant to the Drivers or if this was absolutely impossible, in an equivalent scale to that of the Diesel Assistant, i.e., Rs.2750-3500 giving notional benefit of past service. There was a specific direction and mandate that the respondent's pay should be notionally fixed in the pay scale of diesel assistants with actual benefits from the date of reinstatement.

The petitioners notwithstanding the clear directions, treated the said direction as effective only from 24.04.2012 and not from the date of reinstatement, i.e., 29.05.2002. This led to the third round of litigation, when the respondent filed O.A. 329 of 2014 which has been allowed by the impugned order dated 24.11.2014. The aforesaid order merely executes and ensures compliance with the directions which were earlier given in the order dated 03.12.1988 in O.A. No. 831 of 1997 and the High Court's order dated 18.10.2001 in CWP 755/1999, by which the order of removal from service was set aside with the direction of reinstatement and all consequential benefits without back wages and the second order dated 21.09.2005 passed in O.A. No. 364 of 2004, the operative portion of which has been quoted above. This order dated 21.9.2005 gives clear and specific direction

that the respondent's pay should be notionally fixed in the pay scale of diesel assistants with actual benefits from the date of reinstatement. The said order dated 21.09.2005 would operate *res-judicata* and would be binding on the petitioners.

In these circumstances, we do not find any merits in the present Writ Petition and the same is dismissed accordingly.

SANJIV KHANNA, J

NAJMI WAZIRI, J

FEBRUARY 18, 2016/acm