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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.270/1998

New Delhi: this the 20th day of January, 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Ms. M. Yogambal,
D/o Late Mr. VSM Iyer,
R/O C-2/32, Pushpanjali Enclave,
Pitampura,
New Delhi

....Applicant.

(By Advocate: Shri J.K.Bali).

Versus

Union of India through

The General Manager,
Northern Railway,
Baroda House,
New Delhi

....Respondent.

(By Advocate: Shri P.S.Mahendru).

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant seeks payment of interest @ 10% p.a. upto the date of actual payment on the amounts which were payable to her on her wrongful retirement w.e.f. 30.6.95 (Category (i) of para 4.6 of OA) and on the amounts which became due to her consequent to the Tribunal's judgment dated 7.6.96 in OA No.2463/95 filed by her (Category (ii) of para 4.6 of OA).

2. It is not denied that applicant passed the 10th Class before her joining Northern Railway, as Staff Nurse in Central Hospital, New Delhi on 6.4.64. The certificate issued by the School for passing the 10th Class showed her date of birth as 12.6.37 and the same was entered in her service book as also duly countersigned by her. However, in the Higher Secondary Certificate her date of birth was shown as 12.6.38. Treating applicant's date of birth as

12.6.37 respondents issued order dated 6.12.95 retiring applicant retrospectively w.e.f. 30.6.95 with the proviso that the period of irregular retention in service beyond the age of superannuation i.e. 30.6.95 would be decided separately. Applicant challenged that order dated 6.12.95 in OA No.2463/95, which was allowed by order dated 7.6.96 (Annexure-A2), and respondents were directed to continue to treat applicant in service on the basis of her date of birth 12.6.38 with consequential benefits. A copy of the aforesaid order dated 7.6.96 was issued to the parties vide Registered letter dated 10.6.96.

3. Pursuant to the aforesaid order dated 7.6.96 respondents issued notice dated 16.11.96 (Annexure-I) retiring applicant w.e.f. 30.6.96 instead of 30.6.95, and the dates on which payments of various retiral and other dues were made to applicant have been furnished in para 4.7 of the OA which are not denied by respondents.

4. In so far as the claim of interest on the amounts which applicant contends was payable to her on her wrongful retirement w.e.f. 30.6.95 is concerned (Category (i) of para 4.6 of OA), these items would have been payable to her immediately after 30.6.95, only if she had actually retired on 30.6.95. It is applicant's own claim that any such retirement on 30.6.95 was wrongful, which claim was upheld in the order dated 7.6.96 in OA No.2463/95, and applicant not having retired on 30.6.95 but having continued in service till

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30.6.96 cannot legally claim release of retiral dues till 30.6.96. In this connection respondents have correctly pointed out in their reply that applicant's retiral benefits could not be finalised immediately after 30.6.95 as the matter of her retirement was subjudice before the Tribunal, and the same could be finalised only upon receipt of orders dated 7.6.96, by which her date of retirement was advanced to 30.6.96.

5. One line of argument in support of applicant's claim, is that her retiral benefits should have been calculated on the basis that she was to retire on 30.6.95 and payments kept ready, and upon disposal of OA No.2463/95 by orders dated 7.6.96, the retiral benefits could have been released immediately after 30.6.96, and the additional retiral benefits to which she had become entitled consequent to her age of retirement being determined to be 30.6.96, calculated and paid to her subsequently. This line of argument however cannot be accepted for the reason that when respondents' action in retiring applicant w.e.f. 30.6.95 had been challenged by her in OA No.2463/95 and the matter was subjudice before the Tribunal, and the challenge, as it turned out, was successful, respondents were under no legal obligation to calculate applicant's retiral benefits on the basis that she had retired on 30.6.95 and did the only thing which was reasonable, namely waited for the outcome of OA No.2463/95 before processing her case further.

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6. ^{These} For reasons the claim for payment of interest on amounts which were payable to her on her wrongful retirement w.e.f. 30.6.95 (Category (i) of para 4.6 of OA) fails.

7. Coming to the second part of her claims, namely interest on amounts which became due to applicant consequent to the Tribunal's order dated 7.6.96 in OA No.2463/95, applicant claims that what became due to her were further payments under Category (i); arrears of salary; arrears of pension because of non-payment of pension; and revised pension fixation consequent upon applicant's date of superannuation being determined as 30.6.96.

8. In so far as arrears of salary are concerned, there is no denial in any rejoinder to respondents' reply that after receipt of a copy of the judgment issued by Registered letter dated 10.6.96, applicant was required to report for duty but did not do so, and as she did not work, she is not entitled to any salary for the period 10.6.96 to 30.6.96.

9. In so far as the claim for interest on the amounts mentioned in para 7 are concerned, this presupposes that respondents were under legal obligation to work out and keep ready applicant's retiral dues on the basis that she would retire on 30.6.95 and upon the disposal of OA No.2463/95 on 7.6.96, make the payments forthwith and then recalculate and pay the addl. retiral dues consequent to applicant's date of retirement being fixed as 30.6.96, but no rule or

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instruction imposing such a legal obligation on respondents has been shown to me.

10. In this connection, my attention has been invited to Rule 79 Railway Servants (Pension) Rules which prescribes stages for completion of pension papers and calls upon the Head of Office to initiate action in this regard two years before the railway servant is to retire on superannuation. It is true that no materials have been shown by respondents to me to establish that they initiated action in regard to applicant's pension papers as per the schedule laid down in Rule 79 (supra), but no materials have been shown to me by applicant either, to establish that the pension forms were duly completed and made available to respondents, 8 months prior to the date of her retirement as required under Rule 79(c) ibid. In fact the first step taken by applicant in this regard was her representation dated 2.12.96 (Annexure-A1). During hearing applicant's counsel contended that applicant had verbally requested the respondents regarding her pensionary dues on several occasions before and after 2.12.96 but there is no averment to this effect in the OA. Furthermore the representation was also not supported by the requisite pension papers duly completed, because there is no denial in any rejoinder to respondents' specific assertion in their reply, that applicant submitted the requisite pension papers duly completed only on 23.3.97, that is nearly 9 months after her date of retirement.

11. In a case where applicant claims interest on the grounds of wanton and unconscionable delay

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in release of her pensionary and other dues, she herself has to establish that she acted with the necessary promptitude at all stages, despite which delay was caused at the hands of respondents. In the absence of any denial to respondents' specific assertion that applicant submitted the requisite completed pension forms as late as 23.3.97, applicant has not been successfully able to discharge this burden that was cast upon her, and having regard to the normal time required for processing applicant's pension papers from the date she submitted the same complete in all respects on 23.3.97, till the dates of actual release of various sums as contained in respondents' letter dated 3.11.98 (copy taken on record), there cannot be said to have been any undue or wanton delay, so as to compel respondents to pay interest to applicant for the same.

12. In this background, the various rulings relied upon by applicant's counsel, mention of which has been made in para 5 of the OA, are not applicable to the peculiar facts and circumstances of this particular case.

13. The OA therefore warrants no interference and is dismissed. No costs.

Madge
(S. R. ADIGE)
VICE CHAIRMAN (A).

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