

24

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No. 1808/95

New Delhi: this the 25th September, 1997.

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

HON'BLE DR. A. VEDAVALLI MEMBER (J)

Shri Shiva Nand Sharma,
S/o Late Pt. Bhaskaranand,
r/o 7/70, Bhim Gali Vishwas Nagar,

Shahdara,
Delhi - 110032 Applicant.

(By Advocate: Shri B.S. Oberoi)

Versus

1. Govt. of NCT Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Director of Education,
Directorate of Education,
Old Secretariat Delhi- 11007.
3. Shri B.D. Jain Accounts Officer
through Office of the Deputy Director
of Education at District East,
Rani Garden,
Gita Colony,
Delhi - 110031 Respondents.

(By Advocate: Mrs. Jyotsna Kaushik)

JUDGMENT

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

Applicant claims interest @ 24% per annum on account of delayed payment of retiral benefits together with release of recoveries alleged to have been made illegally from his retiral benefits with interest thereon.

2. Admittedly applicant who was earlier working in the Kripa Ram Bansal Middle School (aided), and on being declared surplus from there was absorbed as a Librarian under Delhi Administration w.e.f. 7.1.85, submitted a notice on 25.7.89 for voluntary retirement w.e.f. 1.11.89, while working in Govt. Boys Secondary School, Mandawali.

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23

Because of non-verification of applicant's services, incompleteness of his service book, lack of applicant's correct address, his alleged failure to hand over charge of the library and alleged lack of co-operation by him, applicant's prayer appears to have remained pending between the office of the Director of Education and the Principal GBSS Mandowal. Eventually the orders for voluntary retirement of applicant w.e.f. 30.9.89 was issued on 18.7.95, and after some further delay, applicant's pension was finally cleared on 13.11.95.

3. Respondents contend that they are not at fault for the delay which was caused by applicant's non-cooperation in completion of his service book and non handing over charge of Library, and also because he was not traceable after 21.8.89.

4. Applicant in rejoinder denies any non cooperation on his part. He points out that the responsibility of updating the service book is that of respondents, and further states that upon being directed by Dy. Director (E) to cooperate with the Principal of his School for completion of his service book vide Memo dated 4.2.91 he complied with the said letter immediately and got the service book completed. On 2.11.94 he stated that his service book had been completed and he had also handed over charge of Library and he may be paid his pensionary dues.

5. We have heard Shri Oberoi for applicant and Shri Ajesh Luthra for respondents. We have also perused the materials on record and given the matter our careful consideration.

2

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6. While it is no doubt true that it is respondents' responsibility to maintain and update applicant's service book, he in his OA himself claims to be deemed to be on active service till 18.4.95 (para 5.1) i.e. he himself is not sure whether his voluntary retirement took effect from 1989 or not, because further down in that para he states that he must be deemed to have voluntarily retired on 18.4.95 and not on 30.9.89, with the issuance of letter dated 18.7.95. This para has not been amended in the MA filed to amend the OA. When applicant himself is not sure when his date of compulsory retirement took effect, and having submitted the notice of 25.7.89 for compulsory retirement, did not pursue the matter vigorously enough with respondents to get the same processed in time, respondents cannot entirely be saddled with the responsibility for delay in processing the same. Hence the prayer for interest on retiral benefits from 1989 to 1995 is rejected.

7. We note that Rs. 53395/- has been recovered from applicant's pensionary benefits as given below:

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| i) Loss of Library Books | Rs. 22537/- |
| ii) Recovery on account of loans. | Rs. 10288/- |
| iii) Recovery of over payment of pay and allowances. | Rs. 20560/- |
| | <hr/> |
| | Rs. 53395/- |
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8. Liability in respect of each of these sums has been contested by applicant's counsel during hearing. In respect of Recovery on account of Library books, it has specifically been contended by applicant that they had separately been written off, but despite that recoveries to the tune of Rs. 22537/- have been made from his

27

pensionary benefits. No show cause notice was given to applicant to explain his position before recoveries were ordered. Respondents contend that show cause in respect of (ii) and (iii) were not necessary and themselves admit that show cause in respect of (iii) above was not issued. They state that loans in respect to (ii) above relates to cooperative loans, but no documents on the basis of which respondents were called upon to make recoveries in respect of these cooperative loans were shown to us. As these recoveries involved civil consequences, applicant should have been given a reasonable opportunity of showing cause, before these recoveries were ordered. Hence respondents' action in ordering recoveries to the tune of Rs. 53395/- without giving applicant an opportunity to show cause against such action cannot be sustained.

9. Under the circumstance we dispose of this OA with a direction to respondents to refund Rs. 53395/- in question together with interest @ 12% p.a from 13.11.95 till the actual date of refund, upon applicant furnishing surety of equal total amount to respondents' satisfaction, within 2 months from the date of receipt of a copy of this judgment, without prejudice to respondents' right to make recoveries from applicant for the full or part of the said amount after giving him an opportunity of showing cause, and in accordance with law.

10. This OA is disposed of in terms of para 9 above. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

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

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