

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.1765 of 1996 decided on 30th June, 1997.

Lakshman Singh
(By Advocate : Shri U.S. Bisht)

...Applicant

Vs

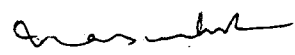
Union of India & Ors.
(By Advocate : Shri Rajeev Sharma)

...Respondents

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO


(N. Sahu)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1765 of 1996

New Delhi, this the 30th day of June, 1997.

Hon'ble Mr. N. Sahu, Member(A)

Lakshman Singh
S/o late Ganpat Singh,
Gali No.6, Nangloi,
Delhi.

.....Applicant

(By Advocate : Shri U.S. Bisht)

Versus

1. Union of India
through
Chairman,
Railway Board,
Rail Bhawan,
New Delhi - 110 011.

2. General Manager,
Northern Railways,
Baroda House,
New Delhi

3. Divisional Railway Manager,
Northern Railways,
Moradabad

...Respondents

(By Advocate : Shri Rajeev Sharma)

JUDGEMENT

Hon'ble Mr. N. Sahu, Member(A)

The applicant was a Gang Mazdoor and served as a Gang Mate at Dhampur Railway Station until 19.12.1986. He joined Railway service on 28.03.1949. The grievance of the applicant is that he was entitled to be paid Rs.17,325/- towards death-cum-retirement gratuity but he was only paid Rs.8,440/-. He claims that withholding of balance of gratuity is illegal. The respondents state that the applicant worked beyond the age of superannuation from 01.04.1986 to 19.12.1986. After small amount of recoveries a sum of Rs.8,781/- was withheld because pay, not legally due, was drawn from 01.04.1986 to 19.12.1986. The

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respondents propose to adjust the same pay illegally drawn against the gratuity amount. The respondents state that the applicant was to retire from service on 30.04.1986 but due to administrative error the dealing clerk failed to inform the date of his retirement allowing the applicant to continue in service upto 19.12.1986.

2. --- Learned counsel for the applicant, Shri U.S. Bisht cited the decision of the Supreme Court in 1990 Vol.3 SLR page 5-- B.V. Kapoor Vs. Union of India. He also cited the decision of the Supreme Court in Bhima Bhatt and another JT 1996(2) page 236. He further cited a decision of the CAT, Principal Bench in OA No.1882/96 dated 19.02.1997.

3. --- The learned counsel for the respondents cited the latest decision of the Supreme Court in JT 1997(4) SC 116. In that case the Government servant continued in service for three more years without any order of re-employment or extension. His plea for payment of salary and perks for this period of unauthorised working was denied. It was held by the Apex Court that when he is not to be continued in service as per law he has no right to claim the salary, therefore, no illegality was committed in rejecting his request.

4. --- I have considered the rival submissions. I am satisfied that the respondents did not commit any illegality in withholding the gratuity. Salary paid to the applicant for a period of roughly nine months is not legally due to him because the extended period

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was not covered by an extension order or a re-appointment order. Payment of such salary has to be recovered and the respondents are fully within the rights to withhold a part of the gratuity and adjust the same against the payment of salary for the period of nine months.

5. The applicant, it is submitted, is illiterate and he is a lowly paid worker. He states that he had no role to play in staying beyond the date of superannuation. The respondents' counsel however, states that the Establishment Officer will be penalised for his inaction in not notifying the retirement of the applicant well in advance. Although on merits, this application fails, considering the status of the applicant who is a Mazdoor, a lowly paid employee, ignorance of his date of retirement cannot be considered to be improbable. It is admitted that the failure is on the part of the administration to notify the applicant's date of superannuation in time. It is also admitted that the applicant had put in his labours as a Gang Mate for nine months. One way is for the applicant to make out a representation to the Chairman, Railway Board, Rail Bhawan, New Delhi who is the respondent No.1 through the General Manager, respondent No.2, stating the facts and seek validation of his service either by extension or by re-appointment. It is true that the power to re-appoint/extend the services of railway servant given to the GMs earlier has been withdrawn vide OM No.E(P&A)1-82/EM-1/36 dated 23.05.1983. Respondent No.2 shall consider and forward the applicant's case

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to respondent No.1 with his recommendations. There are rules in the Establishment Manual for re-employment or extension to superannuated employees. Even otherwise, respondent No.1 may consider the applicant's claim and subject to the existing rules dispose of the representation within a period of three months from the date of the submission of the same to the General Manager.

With the above observations, OA is dismissed.



(N. SAHU)
Member(A)

/Skant/