CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1824/97
with
O.A. No. 199/97

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New Delhi this the 7th Day of October, 1998

Hon'ble Mr. R.K. Ahooja, Member (A)

O.A. No. 1824/97

Shri Nagina Mishra,
Son of Late Shri Kalp Nath Mishra,
R/o at C-329 Yojana Vihar,
Delhi-110 092.
Retired as Railway Station Master,
Indara Junction, Distt. Mau, U.P. Applicant

(By Advocate: Shri S.K. Bisharia with R.R. Rai)

-Versus-

1. Union of India, service to be effected through
The General Manager,
North Eastern Railway,
Gorakhpur, U.P.

2. The Divisional Railway Manager,
North Eastern Railway,
Varanasi, U.P.

3. The Senior Divisional Personnel,
North-Eastern Railway,
Varanasi, U.P. Respondents

(By Advocate: Shri B.S. Jain)

O.A.No. 199/97

1. Shri Nagina Mishra,
Son of Late Shri Kalp Nath Mishra,
C/o A-138 Yojana Vihar,
Delhi-110 092. Applicant

(By Advocate: Shri S.K. Bisharia with R.R. Rai)

-Versus-

1. Union of India through
the General Manager,
North Eastern Railway,
Gorakhpur, U.P.

2. The Divisional Railway Manager,
North Eastern Railway,
Varanasi, U.P. Respondents.

(By Advocate: Shri P.S. Mahendru, proxy for
Shri D.S. Mahendru)

ORDER

These two O.As filed by the same applicant and, in substance, involving the same facts are being disposed of by this common order. The applicant retired from the Railways as Station Master on 31.7.1988. On the basis of a disciplinary proceeding, he was awarded punishment of removal from service w.e.f. 9.4.1988. This order was challenged before the Tribunal in O.A. No. 150/91. The O.A. was allowed and the order of the disciplinary authority was quashed. Thereafter, the respondents went in appeal before the Hon'ble Supreme Court amd the latter were pleased to remand the case back to the Tribunal. While the case was being re-heared by the Tribunal, the railway authorities dropped the disciplinary proceeding vide DRM letter No. CON/DRM/83/9 dated 12.7.93. On that basis the Tribunal disposed of the O.A. as having become infructuous. The railway authorities thereafter issued orders to grant pension and other retiral benefits to the applicant w.e.f. 31.7.1988. He was deemed to have superannuated from the service. The applicant was sanctioned a monthly pension of Rs. 1207/- per month and a gratuity amount of Rs. 40,425/-.

2. The grievance ofthe applicant in O.A. No. 199/92 is that the respondents have not made the payment of gratuity, arrears of salary, and other dues along with interest @ 18% per annum. In O.A. No. 1824/97 his grievance is that the respondents are illegally seeking to make recovery of the amount of Rs. 1,69,802.20 from his gratuity, pension and other retiral benefits due to him.

3. I have heard the counsel on both sides. In so far as the payment of retiral benefits is concerned, the applicant has himself stated in Annexure A-3 to O.A 1824/97 that some of the dues have since been paid to him. According to this statement, the PF amounting to Rs. 15,654 has been paid to him on 10.1.1994, G.I.S. amounting to Rs. 1,524/- has also been paid to him on 19.5.1994, the leave encashment amounting to Rs. 6,731/- for 67 days has been paid to him on 6.4.1995, the arrears of pension amounting to Rs. 1,72,435/- has been paid to him on 31.7.1995 and arrears of salary of the suspension period has been paid to him on 27.9.1994 amounting to Rs. 3,446/-. However, gratuity and arrears of salary between 9.4.1988 to 31.7.1988, the leave encashment for remaining period and arrears of salary for the period of proforma promotion are according to him yet to be paid. At the same time the applicant's claims interest @ 18% per annum for delayed payment in respect of dues which he has already received.

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4. In so far as the case of the applicant for leave encashment for further period is concerned, the respondents have stated that no other leave was due to him. I am not ready to go into a dispute of fact nor am I ready to accept the argument that since the applicant had been deemed to be in service for the period between 1984-1988, the earned leave he would have been otherwise entitled to during this period, be credited to his account. As regards his claim to interest on the delayed payment I find that all the payments, in question, have

been received by him well before the filing of these two OAs in 1997. The claim of the applicant for the payment is, therefore, barred by limitation.

5. Now the question remains regarding the payment of gratuity and arrears of salary. Herein, I come to the main issue raised in O.A. No. 1824/97. The respondents submit that the applicant while he was working as Station Master at Amila Station on 24/25-10 1983 was responsible for a revenue loss to the railways amounting to Rs. 1,69,802.50. The letter of the respondents copy of which is at Annexure A-1 merely states that the applicant was responsible for this loss and therefore the loss be adjusted from the pensionary benefits of the applicant. It is well settled that no recovery can be made from pension of the whole or part of any pecuniary loss caused to the Government without a departmental inquiry or judicial proceedings resulting in finding of grave misconduct during the period of service. The Supreme Court has observed in JT D.V. Kapoor Vs. Union of India & Ors. JT 1990(3) SC 407 as follows:

> "As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence int he discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60/-."

6. In the present case there is no averment on the part of the respondents that any such departmental enquiry or judicial proceeding was conducted. Even the allegation of the applicant that the applicant was not given even a sembalance of opportunity to show cause has not been denied by the respondents. It is also strange, to say the least that the respondents should have produced this letter relating to an incident of 1983 in 1997. On the face of it the letter does not even state as to how the loss was incurred. Under the circumstances, the action of the respondents cannot be sustained.

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7. The respondents have tried to take the plea that the applicant should have first exhausted the departmental remedy by filing a representation against the proposed recovery. I am inclined to agree with the applicant that no departmental remedy was sought as he had not been even informed of the letter Annexure A-1 which was addressed to the Divisional Personnel Manager. The applicant was aggrieved ~~But~~ his gratuity was not being paid to him and only when he had made representations as to why this was not being paid he came to know of this internal communication. The applicant being a retired person has been representing to the respondents for release of his retiral benefits. It does not therefore correct for the respondents to say that the applicant has not exhausted the departmental remedies available to him as a pensioner.

8. In the result I allow O.A. No. 1824/97 to the extent that the rspondents are restrained from making any recovery from the pensionary benefits of the applicant including arrears of salary without first taking disciplinary actionas per on the pension rules. They will also release the arrears in respect of salary, pension and gratuity with 18% interest from the date of retirment of the applicant till the date of actual payment. I also find that as per the statement of the applicant the interest on GPF has been paid only upto the date of retirement and not upto the date of actual payment. The respondents will therefore also pay the normal interest on GPF for the remaining period, if delayed payment for the GPF. These directions will be complied with within a period of three months from the receipt of a copy of this order.

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9. The applicant is also entitled to costs which I set at Rs. 2,000/-.

(R.K. Ahooja)
Member (A)

Mittal

Central Administrative Tribunal
केन्द्रीय प्रशासनिक अधिकरण

प्रशासनिक अधिकरण
दिनांक .....
CERTIFIED TRUE COPY
Dated.....
16/11/98
अनुभाग अधिकारी (न्या.-I)
Section Officer (J-I)
के द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi