

Central Administrative Tribunal
Principal Bench.

O.A. 2051/94

New Delhi this the 6th day of November, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Pooran Chand Chhatwani,
S/o Shri Ramandas Chhatwani,
AF/84-C, Janta Flats,
Shalimar Bagh,
New Delhi.

..Applicant.

By Advocate Shri B.S. Mainee.

Versus

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Railway Manager,
Central Railway,
Bhopal.

..Respondents.

By Advocate Shri H.K. Gangwani.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who has retired from service as Chief Inspector of Works (M), Bhopal, w.e.f. 31.3.1993 has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the respondents to pay him the retirement benefits with interest.

2. The respondents have filed a reply and Shri H.K. Gangwani, learned counsel for the respondents has also been heard. When the case was heard on the last date, i.e. on 16.9.1996, it was observed that although the applicant has filed the rejoinder, the respondents have not cared to verify the facts and place on record

23

the necessary file/letters for proper adjudication of the matter. In these circumstances, four weeks time was allowed to the respondents to file an additional affidavit to clarify the position regarding the facts brought out in the rejoinder. Unfortunately, the respondents have not complied with these directions. As the case deals with the matter of payment of retiral benefits to the applicant who has retired from service more than three years back, I have proceeded to hear the learned counsel for the parties and have also perused the records.

3. Shri B.S. Mainee, learned counsel for the applicant, has submitted that the applicant had not been paid the wages for the month of March, 1993 and other dues, as given in para 4.10 of the O.A. amounting to Rs.1,83,743.70. He has also laid stress on the fact that in spite of several representations made by the applicant, including the notice issued by Registered AD through his Advocate on 18.4.1994, the respondents did not give any reply or pay the retirement dues. He has ~~also~~ relied on the judgement of this Tribunal in S.K. Khanna Vs. Union of India & Ors. (O.A. 1223/92), decided on 23.5.1994 (copy placed on record). He has also relied on the note from the ADRM Bhopal dated 15.7.1993 (Annexure A-5) which refers to the payment of all dues to the applicant. His main contention is that the applicant was posted at Bhopal from February, 1989 till his date of retirement. He submits that having regard to the provisions of Rule 2308 of the Indian Railway Establishment Code (Vol.II) since the

respondents are withholding his pensionary benefits in respect of the matter which is more than four years old as the stock verification related to 1988-89 i.e. a period prior to the taking over of the charge at Bhopal, the respondents cannot withhold the payments.

4. The respondents have in their reply submitted that while the amounts of NCPF have been passed for payment to the applicant on 6.5.1993, they have withheld the same towards his future debit for an amount of Rs.1,25,661/-. This amount is in respect of Commutation Value, Leave Salary, GIS and Wages as given in detail in paragraphs 4.10 and 4.11 of the reply. Their main contention is that the applicant has not been cooperating with them in spite of the several letters issued by the Administration from 7.9.1992 regarding the outstanding amount which involves the shortage of stock in the register of Rs.13,72,933.10. The respondents have further submitted that they have not released the withheld amounts on the ground that the applicant has not responded to their letters advising him to attend the office of Divl. Railway Manager in connection with his outstanding stock verification and settlement of his retirement dues amicably. It is, however, seen that excepting one letter of 26.5.1994 asking the applicant to give the explanation, no other correspondence in this regard has been placed on record. The learned counsel for the applicant has submitted that till date no disciplinary proceeding by way of chargesheet has been instituted against the applicant and none had been instituted while he was

in service also. He, therefore, submits that even assuming that the respondents were checking the stock verification for the period from 1988-89, as shown in the fact finding enquiry report (Annexure-I to the rejoinder) since it was more than four years old, no disciplinary proceedings can be instituted under the provisions of Rule 2308 of the Indian Railway Establishment Code. The learned counsel has further submitted that the judgement of this Tribunal in S.K. Khanna's case (Supra) is in all fours with the present case in which the Tribunal has held as follows:

"...The learned counsel for the applicant has produced for our perusal the Volume-2 of the Indian Railway Establishment Code (5th reprint) published in 1974. Chapter-23 contains the Railway Pension Rules. Rule 2308 corresponds to rule 9 of the Central Civil Services Pension Rules, 1972. The rule makes it clear that the President alone is competent to withhold or withdraw a pension if in a departmental proceeding the pensionary is found guilty of grave misconduct or negligence. Clause (b) of the proviso to this rule stipulates that no such departmental proceeding not initiated before retirement shall be instituted except with the sanction of the President and that it shall not be in respect of any event which took place more than 4 years before such institution. As on date, the alleged loss sustained in 1986 and 1987 cannot be recovered even if the proceedings are initiated against the applicant...."

The respondents have also failed to show what further action, if any, they have taken after 1994 to finalise the stock verification for which they had required the applicant to submit his explanation. The judgement

26

of the Tribunal in S.K. Khanna's case (supra) has become final and binding. In the facts and circumstances of the case and having regard to the aforesaid judgement of the Tribunal, therefore, this O.A. is disposed of with the following directions:-

The respondents are directed to pay the withheld amount of retirement benefits otherwise due to the applicant in accordance with the rules after deduction of house rent, income-tax and ~~other dues~~ and any other government dues, with interest @ 12% per annum from 31.5.1993 until the payment is actually made, within a period of two months from the date of receipt of a copy of this order. Regarding the claims for TA/DA, conveyance, etc. as mentioned in paragraphs 8(vi) to 8(xii), the respondents are directed to consider the same and make the due payments within the same period mentioned above.

5. O.A. is disposed of, as above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'