

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 1164/89
T.A. No.

199

DATE OF DECISION 13-9-1991.

Shri S. Joginder Singh Petitioner Applicant

Shri B.S. Mainee Advocate for the Petitioner(s) Applicant

Union of India Versus Respondent

Shri O.P. Kshetriya Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. S. Gurusankaran, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

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VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A. NO. 1164 OF 1989

DATE OF DECISION: 13-9-1991.

S.Joginder Singh.

.. Applicant.

Vs.

Union of India and another.

.. Respondents.

Shri B.S.Mainee, counsel for the applicant.

Shri O.P.Kshtriya, counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

JUDGMENT

(ORAL)

Hon'ble Mr.G.Sreedharan Nair, Vice-Chairman:

The applicant who was a Depot Store Keeper under the respondents, retired on superannuation on 31-7-1987. Before that on 11-6-1987, a memorandum of charges was issued against him alleging negligence and resultant loss of Rs.94,515/- to the respondents. It is alleged, ^{that} an inquiry was conducted, but, though the Inquiry Officer submitted his report in January, 1988, the proceedings have not been completed. The grievance of the applicant relates to the non-payment of leave encashment, the computation value of the pension and Death-cum-Retirement Gratuity ('DCRG'). It is stated that despite repeated representations, the same has not been paid and that the action of the respondents is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

2. In the reply filed by the respondents, it is contended that the disciplinary proceedings against the applicant are under final examination of the Disciplinary Authorities and that orders will be issued shortly. In respect

of the leave encashment and the DCRG, it is contended that pending final decision in the disciplinary proceedings they are being withheld in accordance with law. It is pointed out that the Provident Fund dues, the Group Insurance amount and pension at the rate of Rs.1364/- p.m. plus D.A. have already been paid.

3. On 9-1-1990, a Bench of this Tribunal passed an interim order, that there is no justification for withholding the amount towards the leave encashment and directed the respondents to pay the applicant, the amounts outstanding on account of the leave encashment within a period of one month. It appears that since the amount was not paid within the prescribed period, the applicant filed a petition for initiating contempt of Court proceedings against the respondents (C.C.P 54 of 1990) and that when the petition came up for consideration, it was observed that a cheque dated 12-4-1990 has been issued for the amount due towards leave encashment and on that account, the petition was dismissed.

4. The counsel of the applicant submitted that since there is a claim in the original application for payment of interest at the rate of 18 per cent per annum on the leave encashment and since the question relating to the interest was not considered at the time of passing/interim order, the applicant should be allowed the interest claimed. In respect of the claim for interest, the respondents have replied in paragraph 12 of their reply that leave encashment can be withheld pending final decision of the disciplinary proceedings. At the time of hearing, counsel of the respondents invited our attention to the copy of the letter of the Railway Board dated 29-12-1983 which provides that in the case of a Railway servant who retires from service on attaining the age of retirement, while disciplinary proceedings are pending against him, & if there is a possibility of some money

becoming recoverable from him on the conclusion of the proceedings against him, the competent authority may withhold the whole or part of the cash equivalent of the leave at his credit. In the instant case, disciplinary proceedings against the applicant involved loss to the Railway administration to the extent of Rs.94,515/- stated to be on account of the negligence of the applicant. As such, the non-payment of the leave encashment cannot attract liability on the part of the respondents for payment of interest as claimed by the applicant.

5. In respect of the DCRG claimed by the applicant, the same has been withheld in view of the provision contained in paragraph 2308-A of the Railway Establishment Code, Vol.II, where it is provided that in a case of this nature, no gratuity or DCRG shall be paid to the Railway servant until the conclusion of the departmental proceeding and the issue of the final orders thereon. Admittedly, final orders have not been issued in the departmental proceedings. However, it was stressed by the counsel of the applicant that when the proceedings commenced in June, 1987 and the applicant retired on superannuation in July, 1987, there is absolutely no justification on the part of the respondents in not issuing the final orders in the departmental proceedings. Indeed, we are of the view that in a case of this nature, the Railway administration has to be as diligent as possible to issue the final orders in the proceedings at the earliest since the retiral benefits due to the Railway servant are being held in abeyance.

6. Reference was made by counsel of the applicant to a decision of the Bench of this Tribunal sitting at Hyderabad in A.SANEEVA RAO v. UNION OF INDIA 1991 (2) ATJ 228 7

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where the Tribunal went to the extent of holding that in a case of this nature, the provision contained in Rule 2308-A should be deemed to be relaxed and the amount of DCRG becomes payable. Though, with respect, we are not prepared to hold to that extent, the necessity for urgent disposal of the departmental proceedings has to be highlighted.

7. In view of the discussion above, we are of the view that the interests of justice will be met by the issue of a direction to the respondents to issue final orders in the departmental proceedings within a period of two months from the date of receipt of the copy of this order. We do so. We would further hold that in case the final orders are not passed as above, the amount of DCRG due to the applicant shall be paid, and on failure to do so, the amount shall bear ~~an~~ interest at the rate of 18 per cent per annum from that date till the date of payment.

8. The original application is disposed of as above.

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13/9/1991
MEMBER(A)

Dr. S. V. S.
13-9-1991
VICE-CHAIRMAN