

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 557/1988. 198
~~T.A. No.~~

DATE OF DECISION 2.6.1989.

Arun Kumar Datta Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri S.N. Sikka Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, Member (A).

The Hon'ble Mr. G. Sreedharan Nair, Member (J).

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

MGIPRRND-12 CAT/86-3-12-86-15,000

(G. Sreedharan Nair)
Member (J)

(Ajay Johri)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 557/1988

DATE OF DECISION: 2.6.1989.

Arun Kumar Datta Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. Ajay Johri, Member (A).
Hon'ble Mr. G. Sreedharan Nair, Member (J).

Applicant in person.

Respondents through Shri S.N. Sikka, Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Ajay Johri, Member (A).)

JUDGEMENT

This is an application received under Section 19 of the Administrative Tribunals Act, 1985. The applicant is aggrieved by the payment made by the respondents for his pension and gratuity etc. in pursuance to an order of this Tribunal in O.A. 174/1986 made on 26.11.1987 wherein it was mentioned that if the applicant finds that Pension and Gratuity due to him has not been correctly calculated and paid, it is open to him to make a proper application under Section 19 of the Administrative Tribunals Act.

2. The brief history of the case is that after having joined the Eastern Railway on 25.2.1958 as Apprentice Assistant Inspector of Works and having been confirmed on the post of Assistant Inspector of Works on 26.7.1962, the applicant joined the Border Roads Development Board on 30.11.1966 and served there upto 28.3.1974 during which period, his lien was retained in the Eastern Railway. He submitted his resignation to the Eastern Railway on 15.2.74 as he was selected by the Hindustan Steelworks Construction Limited - a public sector undertaking. His resignation was accepted on 15.3.1974. The applicant's case is that he has been denied all the ~~retiral~~ retirement benefits available

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to a permanent railway employee who is absorbed in a Public Sector Undertaking as required by the Railway Board's circular No. E(NG)II 72 AP/12, dated 2nd August, 1972. It was with this grievance that he had filed O.A. 174/86 before this Tribunal. The applicant was ultimately handed over a cheque for Rs.883.75 towards DCRG. The applicant's grievance now is that the arrear pension which had actually been calculated on lower salary deliberately reducing the quantum of pension and gratuity etc. had actually been credited to his accounts as late as in January, 1988 and the commuted pension has not been paid at all. The respondents have also not taken any action to check up the salary bills of the applicant to find out his Provident Fund amount. The calculations of pension and DCRG submitted by the respondents had many mistakes inasmuch as they had considered the salary of the applicant in the post of Asstt. Inspector of Works taking advantage of an illegal transfer/^{and reversion} order dated 5.7.1966. According to the applicant, he was working as Inspector of Works from 29.7.63 after due selection and thereafter he had further qualified in June, 1964 in a suitability test and was placed in a higher grade with effect from 9th February, 1965 and he was working against a permanent vacancy of IOW/Tubewell; but by an order dated 5.7.1966, he was transferred away from that Organisation and reverted by two steps, which according to him, is totally illegal. He represented against his reversion in July, 1966 but it had not been heeded. It is the applicant's case that he should have been given retiral benefits on the pay which he was drawing immediately before his retirement and in respect of those who are on foreign service, it would be the pay which he would have drawn had he not been on foreign service. Thus, he would have been continued as I.O.W. till his promotion in August 1972 to the post of Assistant Engineer and the average emoluments would have been worked out to Rs.855/-. The applicant says that he was promoted to the

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post of Assistant Engineer with effect from 4.8.72 vide order placed at Annexure I, but since he was not given any posting order, he could not revert back to the Eastern Railway. His subsequent request to come back to the Eastern Railway was turned down and ^{acceptance of his resignation} was held void by the Railway Board. According to him, had he joined the Eastern Railway as Assistant Engineer, he would also have been promoted as Divisional Engineer in the year 1978 and Deputy Chief Engineer in 1987. He has not been paid the pension though he left HSCL in January, 1983. He has, therefore, prayed that his transfer order of 5.7.1966 may be treated as void and he should be considered as continuing in the post of IOW Tubewells during his deputation to Boarder Roads till his promotion as Assistant Engineer in August, 1972 and his last emoluments be fixed keeping in view his last pay in 1966 and his pay in August 1972 when he should be refixed as an Assistant Engineer with review of his pay on 1.1.1973 and that his pension should be calculated on that average emolument, which according to him now works out to Rs.234/- and not Rs.123/- as worked out by the respondents. He has also claimed that gratuity should be paid to him on the basis of his last basic pay of Rs.860/- per month instead of the payment made to him on Rs.545/- per month. He has also claimed interest on the gratuity from July, 1976 to the date of payment and payment of arrears of pension from 3.3.1983 i.e., the date when he left HSCL.

3. This application has been opposed by the respondents on the ground that it is barred by Section 20 of the Administrative Tribunals Act, 1985 as the applicant has not exhausted the departmental remedies available to him. It has also become infructuous because the applicant had resigned from service on 15.3.1974. They have denied that the applicant was promoted as Assistant Engineer in August, 1972. The territorial jurisdiction of this Tribunal

has also been challenged by the respondents.

4. The main facts of the case are not in dispute. The respondents have said in their reply that after the judgement in O.A. 174/86, necessary steps were taken to give all the benefits and he has been paid settlement dues as admissible to him, but the provident fund money could not be arranged as the old records were not traceable and the bill preparing unit and the Accounts Department have expressed their inability in the absence of the Account Number. They have also not been able to certify whether the Provident Fund had been recovered from the applicant. The applicant has also not supplied his Account Number and any other relevant details or any statement of Provident Fund relating to the period for which he has made the claim. It is also the respondents' case that if a Government servant resigns from the service, he is deemed to have severed all connections with the Railways. Hence his pensionary benefits have been calculated under the rules in vogue at the material time treating him as on railway service upto 15.3.74 on the basis of his presumptive pay that would have been drawn by him had he been in Railway service upto 15.3.74. The period of service with the Border Roads Organisation was also taken into consideration for determining his pay in the Railways. It is also stated in the reply that in the absence of the Provident Fund Account Number, it is difficult to establish that the Provident Fund money had actually been recovered and in spite of repeated requests to the applicant to supply the details, he has not been able to supply the same as indicated in his letter of June, 1988. In regard to commutation of pension, they have said that since he retired more than 13 years ago, it is necessary for him to get his medical examination done before commutation can be allowed and the C.M.O., Eastern Railway, has been requested to get him examined. The pension of the applicant

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has been calculated in the grade of A.I.O.W because from the service records, it is seen that though he was put to officiate as I.O.W., he was reverted to his substantive post of A.I.O.W. Before carrying out the orders of his reversion, the applicant had, however, joined the Border Roads Development Organisation. Had he not gone on deputation, he would have continued to work as A.I.O.W. only. So, they have rejected his claim for calculation on the basis that he was working as I.O.W. The question of his promotion to the post of Assistant Engineer also did not arise because though he was empanelled, since he never reverted back to the Railways, he could not be posted as AEN. The respondents have said that commutation of pension will be allowed and the Provident Fund arranged to be paid as and when the applicant supplies the detailed information.

5. We have heard the applicant in person, and Shri S.N. Sikka, learned counsel for the respondents. The applicant confined his arguments to the pleas taken by him in his application and reiterated his prayer for being given the pension on his deemed promotion as AEN after his selection in August, 1972 as well as for payment of interest on the delayed payment made to him and for relief in regard to commutation of his pension. The submissions made by the learned counsel for the respondents were that the applicant is not entitled for any interest because it was only after the decision in O.A. 174/86 given by this Tribunal on 26.11.1987 that the payment of his retiral benefits in the shape of pension and gratuity were made though, according to rules, the applicant was not admissible any such relief and the payments were made only in terms of the judgement given by this Tribunal. Therefore, the administration was not at fault in ^{or not} paying him and so the interest is not due. In regard to the Provident Fund and commutation of pension, the learned counsel for the respondents submitted that

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since details are not available, the onus for supplying the details in respect of Provident Fund lies on the applicant and as far as the commutation of pension was concerned, the orders have already been issued and as and when the applicant will get himself medically examined, action will be taken to allow him commutation.

6. We have gone through the case file. The applicant has admitted that he was given a reversion order in July, 1966 and that he had represented against the same, but since he had gone to the Border Roads, he could not pursue the matter further and, therefore, he has raised the matter only now. According to him, cause of action arose when the payments of the pension were calculated by the respondents on the basis of the salary he was drawing as A IOW and not as AEN. It is, therefore, admitted by the applicant himself that he was reverted from the post of I.O.W. in July, 1966 and if he was so reverted, though he made a representation as alleged by him, he did not pursue the matter to its finality; neither did he seek the protection of any court of law if the action of the respondents in reverting him was incorrect. We, therefore, feel that this matter had become final and cannot be agitated now. It is barred by limitation. The applicant stood reverted as A IOW and if the respondents have calculated his pension on the basis of his pay that he was drawing^{A IOW,} the action of the respondents cannot be faulted now.

7. It is also seen from Annexure 'G' to the application that in respect of some representation made by the applicant who was at that time working with HSCL, the Railway Board had decided that the resignation submitted by the applicant on his ^{ing} join/ HSCL should be considered as void and his lien should be retained for a period of two years from the date he joined HSCL. The service contributions for the period had to be paid either by HSCL or by the applicant himself. The Railway Board had also decided that the question of extending retiral benefits to him for his railway service on his permanent absorption in HSCL may be decided in terms of the

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Ministry's letter of 2.8.1972. It is also seen that the HSCL had informed the Eastern Railway that the applicant had not been absorbed permanently and that he had resigned from the service of the Company on 17.1.83. The applicant had actually joined HSCL in 1974. His lien could be kept by the Railways only till 1976. There is nothing that has been brought to our notice to indicate that the applicant had entered into any correspondence with the respondents in regard to his further retention of the lien, but the fact that he had resigned from HSCL in 1983 would go to indicate that the applicant had not sought any permission or was in contact with the respondents Eastern Railway where his lien was to be kept for two years from 1974. Therefore, since the applicant was not absorbed permanently in HSCL - a public sector undertaking - the provisions of the 1972 letter of the Railway Board did not come into play. They would have been applicable only on his permanent absorption in that organisation. There is no doubt that the applicant was selected for promotion to the post of AEN, but unless he took over charge of the post of AEN, he could not be considered as having become a member of the service and, therefore, his prayer for considering him as having been promoted as AEN in 1972 has no locus standi.

8. The only relief which, therefore, remains in this application is in regard to payment of Provident Fund to the applicant and the commutation of pension which has been sanctioned to him on the basis of his posting as AION on his reversion in July, 1966. In regard to Provident Fund, the applicant sent a letter dated 2.3.1988 to the Chief Personnel Officer, Eastern Railway, showing certain calculations on the basis of which he is claiming a balance of Rs. 7587.54 upto 1987-88. His own statement shows that he had contributed to the Provident Fund only upto July, 1966 i.e., upto the time when he left for the Border Roads Organisation. The Provident Fund calculation upto July,

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1966 including interest upto 1966-67, according to the applicant, works out to Rs.1309.67 and thereafter he has only added the interest earned on this figure for each year upto the date of submission of the statement. It is the respondents' case that since the applicant has not given Provident Fund Number as well as copies of the statements of Provident Fund, which are normally supplied to each employee every year, they are unable to find details of the Provident Fund subscriptions which the applicant had made during the period 1961-62 to July, 1966. The averments made by the respondents are that the Provident Fund Number of the applicant is not available and in the absence of the same, no payment could be made to the applicant. The whole issue is revolving round the fact that the Chief Accounts Officer (PF), Eastern Railway, has not been able to identify the applicant as a subscriber to provident fund and it is not possible to trace the Provident Fund Account Number of the applicant and that the onus should lie on the applicant to produce copies of his salary bills or annual statements of the Provident Fund Account relating to the period 1961-62 to 1966-67. He has, however, submitted only a statement prepared by him, but the basis on which it has been drawn has not been indicated. Be it as it may, we direct the respondents to examine the statement submitted by the applicant in regard to calculations made by him of the balance that should have been in his Provident Fund Account. This account must have existed because the applicant was a permanent employee. They should do this within a period of three months from the receipt of this order and arrive at a final conclusion in regard to the admissibility of the amount shown in the statement which has been submitted by the applicant to them on 2.3.1988 and which is placed at Annexure 'N' to the Application. In regard to commutation of pension, we feel that if the applicant has got himself medically examined, the respondents

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should take immediate action on the same and if the applicant has not got himself examined, he is given a period of two months from the date of issue of this order to get himself examined by the competent authority nominated by the respondents and thereafter, the respondents will allow him commutation within a period of two months after the date of his medical examination.

10. We dispose of this application with the above directions rejecting the other reliefs asked for by the applicant except for the reliefs in respect of Provident Fund amount and the commutation of pension. We leave the parties to bear their own costs.

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26/6/89
(G. SREEDHARAN NAIR)
MEMBER (J)

अजय जोशी
(AJAY JOHRI)
MEMBER (A)

2.6.1989.