

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 73 of 1988
T.A. No.

199

DATE OF DECISION 18.12.1990.

Shri Satwinder Singh through LRs

Smt. Rash Pal Kaur & Ors.

Petitioner

Shri A.K. Aggarwal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? -
2. To be referred to the Reporter or not ? ☒ yes
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 ? -

(AMITAV BANERJI)
CHAIRMAN
18.12.90.

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PRINCIPAL BENCH: NEW DELHI

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SHRI SATWINDER SINGH THROUGH LRS

SMT. RASH PAL KAUR & ORS. APPLICANTS

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI A.K. AGGARWAL, COUNSEL

FOR THE RESPONDENTS

SHRI K.C. MITTAL, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Shri Satwinder Singh has filed this application under Section 19 of the Administrative Tribunals Act, 1985 as the respondents have not paid him pension and gratuity due, although he had put over 33 years' of service. He retired on attaining the age of superannuation on 31.12.1986.

2. The relevant facts of the case are that the applicant was employed as a Charge Mechanic (direct) in the Military Engineering Service (Ministry of Defence) w.e.f. 11.11.1953. He was transferred on 10.8.1968 from Delhi to Jodhpur but due to various problems e.g. sickness of wife, education of children he could not carry out the order and made a representation to the respondents. He also submitted that he did not carry all India transfer liability in terms of the conditions of his service. As he did not get a positive response from the respondents, he challenged the transfer order in the High Court of Delhi vide writ petition 507/1970. The same was, however, dismissed by the High Court on

12.4.1972. Thereafter he requested the respondents for an early posting order to enable him to resume duty. According to him the respondents illegally and with malafide intention delayed in issuing of his posting orders till 22nd March, 1976 (Annexure-B). Since the applicant had been absent for a long time and had also been pursuing his case in the High Court, the Engineer-in-Chief considering his circumstances, issued an order vide Annexure 'C' which is extracted below:-

"No.:90237/9/EIC(i)

Army Headquarters,
Engineer in Chief's Br
DHQ PO New Delhi-11.
4 Sep'75

To

Chief Engineer, Southern Command, Pune

REINSTATEMENT IN SERVICE, SHRI SATWINDER SINGH,
CHARGE MECHANIC"

Reference further to this HQ No.90237/9/EIC(i) dated 21 August'75

The case has been examined by Ministry of Defence in consultation with legal adviser (Defence). The following action may please be taken immediately:-

- a) The individual has to be deemed in service;
- b) Agreeable to the principle of 'No work no pay' he will not be paid for this period, he has not worked;
- c) He may be directed to report for duty in a station in Southern Command where a vacancy may be existing. The period between the date of his being SOS from GE Engr Park Delhi cantt and the date of his joining duty be treated as dies non under appropriate Government orders. On rejoining duty, the statement of case may be forwarded through the audit authority.

3. The address of Shri SATWINDER SIGNH CH/Mech is appended below:-

No.L 351828 Shri Satiwander Singh Ch Mech
10/1 19 Poultry Farm Delhi cantt.

(MS SETHI)
LT. COL SC I (C)
FOR ENGINEER-IN-CHIEF"

In accordance with the above order, ~~order~~ the period of his absence was to be treated on the principle



of 'no work no pay' and the period between his being Struck of Strength (SOS) from Garrison Engineer Park Delhi Cantt and the date of his joining duty as dies-non under appropriate Government orders. Despite this order, however, on his retirement on 31.12.1986 he was not paid any terminal benefits.

In the meantime, the applicant died on 13th April, 1989 and on consideration of MP No. 1471/89 the Tribunal vide order dated 27.7.1989 allowed the names of his legal heirs listed below:-

Smt. Rash Pal Kaur	Widow
Shri Kuldeep Singh	Son
Shri Amarjit Singh	"
Shri Nonihal Singh	"
Smt. Narinder Kaur	Daughter

to be substituted

3. The respondents in their written statement raised some preliminary objections; first that the applicant had not been declared in permanent service and therefore he was not entitled to pension. Secondly, his posting in 1975 was treated as fresh appointment and it was due to the break in service he was not eligible for pension. He was, however, paid a sum of Rs. 7995/ on account of gratuity and a further sum of Rs. 8,991/ on account of Indian Ordinance Factory Worker's Provident Fund (IOFWPF).


On a query from us Shri K.C. Mittal, learned counsel for the respondents conceded that the Engineer-in-Chief's letter dated 4.9.1975 wherein the period of absence was ordered to be treated as dies-non holds good.. In fairness the learned counsel agreed


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that after having communicated the order dated 4th September, 1975, Annexure 'C' there was no ground for revising the said order as stated in the written statement treating the period of absence as causing break in service.

We have heard the learned counsel of both the parties and considered the record carefully. We observe that there has been a failure by the respondents in carrying out the orders dated 4.9.1975 of the Engineer-in-Chief. The period treated as dies-non neither counts as service nor can be deemed as break in service. In the circumstances, we order and direct that the period of absence between the date the deceased Shri Satwinder Singh, Charge Mechanic was stuck-off-strength from Delhi Cantt and the date he joined duty be treated as dies-non. Accordingly, his entire service excluding the period treated as dies-non as above, would constitute as qualifying service. The respondents shall calculate the DCRG, Pension and other terminal benefits, if any, in accordance with the above directions and shall make payment accordingly to the legal heirs of the deceased applicant within 8 weeks from the date of communication of this order. The respondents shall also pay interest at 10% ^{p.a.} on the additional amount of gratuity and any other non recurring terminal amount due from 1.3.1987 to the date of actual payment.

There shall be no orders as to costs


(I.K. RASGOTRA)
MEMBER(A)


(AMITAV BANERJI)
CHAIRMAN

/SKK/