

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. 1495/90.

DATE OF DECISION: January 22, 1991.

Shri Parma Nand Arora Applicant.

V/s.

Union of India & Ors. Respondents.

COURT: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri B.S. Maine, Counsel for the Applicant.
Shri O.N. Moolri, Counsel for the Respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches of the Tribunal?

J.P. Sharma
(J.P. Sharma)
Member (J)

P.C. Jain
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Member (A)

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Shri O.N. Moolri, Counsel for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

The applicant, who retired as Goods Supervisor from the Western Railway, on 31.5.1989, has filed this application under Section 19 of the Administrative Tribunals Act, 1985. He has prayed for a direction to the respondents to complete the disciplinary proceedings by the specified date, keeping in view the target time allowed by the Railway Board, and for payment of 90% of the gratuity without any further delay with interest at the rate of 18% per annum, as also to pay his transfer allowance as admissible.

2. Before his retirement on 31.5.1989, the applicant was served with a Memorandum of charge-sheet dated 21.10.1988 for major penalty in connection with loss/theft of some money value books, which were in his custody. He has denied the charges. The inquiry is yet to be completed. In the meantime, his D.C.R.G. has been fully withheld, and according to the applicant, his transfer allowance on retirement has also not been paid. He alleges inordinate delay in completion of the disciplinary proceedings. He has also stated that the Inquiry Officer nominated by the respondents had started the inquiry and examined two witnesses and recorded their statements, but no date has been fixed by the Inquiry Officer for further proceedings. The respondents

on the other hand, have stated in their reply that the dates fixed in the inquiry proceedings were 20/21.10.89, 2/3.1.90, 23/24.7.90, 4/5.9.90, and 9 to 11th October, 1990. The respondents have also stated that the delay is due only to the non-assistance of the applicant, as he has been avoiding the inquiry on the dates mentioned. In his rejoinder, however, the applicant has stated that although he had been seriously ill, yet he had been fully cooperating with the Inquiry Officer with a view to getting the disciplinary proceedings completed as soon as possible. The respondents have, however, stated in their reply that the inquiry is at its final stage and is not likely to take more than two to three months at the most. Another point which needs to be mentioned is that while, according to the applicant, the amount of gratuity due to him comes to nearly Rs.86,000/-, the respondents have worked this amount as only Rs.37,950/-.

3. We have perused the material on record and have also heard the learned counsel for the parties.

4. The fact of retirement of the applicant with effect from 31.5.1989 and that disciplinary proceedings initiated against him before his retirement, are still pending, are not in dispute. It is also admitted by the respondents that his entire gratuity has been withheld. According to the Railway Rules, gratuity can be withheld if disciplinary proceedings are pending against a Railway servant. We are, therefore, unable to uphold the contention of the applicant that the respondents have no right to withhold the entire amount of gratuity except 10% thereof. At the same time, it has to be noted that the disciplinary proceedings have not been finalised by the respondents even though a period of more than

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two years has already expired, while the intention of the Railway Board has been that the disciplinary proceedings should normally be completed within 150 days as per the administrative instructions. Even though these instructions are directory and not mandatory, the spirit of these instructions is that such proceedings should not be allowed to linger for long periods. In view of all this, there is justification for a direction to the respondents to complete the pending disciplinary proceedings against the applicant latest by 28.2.1991. The respondents themselves have stated in their reply that these are not likely to take more than two to three months at the most. This reply was filed in the third week of November, 1990.

5. As regards the prayer for payment of transfer allowance in accordance with the rules, the respondents have stated that this will be arranged on receipt of the report of his vacation of the quarter. The applicant has stated that he is living in his own house at Panipat. This shows that the applicant is not in occupation of the Government quarter. The respondents have also not specifically stated that the applicant has still not vacated the Government quarter allotted to him while in service. They could not give any such information even at the time of oral hearing. In view of all these facts, the applicant is also entitled to payment of his transfer allowance on his retirement as due to him in accordance with the rules.

6. The applicant has also prayed for a direction to the respondents to pay 90% of the gratuity due to him without any further delay with interest at the rate of 18% per annum. In view of the seriousness of the Articles of Charge as levelled against the applicant and also the fact that the respondents are directed to complete the disciplinary proceedings within a specified period, we do not consider it appropriate on the facts and in the circumstances of the case to order release of 90% of the (less)

gratuity which shall be due to the applicant. The question of payment of interest at this stage also does not arise, as it will have to be dealt with in accordance with the relevant rules on finalisation of the disciplinary proceedings.

7. In view of the foregoing discussion, the application is disposed of in terms of the following directions: -

- (1) The respondents shall pass appropriate orders in the disciplinary proceedings in pursuance of the Memorandum dated 21.10.1988 (Annexure A-1 to the application) latest by 28th February, 1991, under intimation to the applicant.
- (2) The respondents shall process the claim of the applicant for transfer allowance on retirement and pay the amount due to him on this account within one month from the date of receipt of a copy of this order.
- (3) The prayer of the applicant for release of 90% of the gratuity with interest at the rate of 18% per annum is disallowed on the facts of the case.

Parties are left to bear their own costs.

J. P. Sharma
(J.P. SHARMA)

Member (J)

C. C. Jain
(P.C. JAIN)
Member (A)

09/02/91
Filed