

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

(a)

Regn. No. OA 2532/1991

Date of decision: 19.02.1993

Shri Rukan Singh

...Applicant

Versus

Union of India through its
Secretary, Ministry of Education
and Others

...Respondents

For the Applicant

Shri U.C. Chaudhary, Counsel

For the Respondents

Shri Vinay Sabharwal, Counsel

CORAM:-

HON'BLE SHRI P.K. KARTHA, VICE CHAIRMAN(J)

HON'BLE SHRI B.N. DHOUDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgement? *Y*
2. To be referred to the Reporters or not? *Y*

JUDGEMENT (ORAL)

(of the Bench delivered by Hon'ble Sh. P.K. Kartha

Vice Chairman(J)

We have heard the learned counsel of both parties and have gone through the records of the case carefully. The applicant who has worked as a Trained Graduate Teacher under the Directorate of Education, Delhi Administration, has prayed in this application that the impugned order dated 27.08.1991 issued by the respondents be set aside and quashed and that they should be directed to release his pay and allowances as well as retirement benefits with interest at the rate of 12% per annum.

(a)



admitted *alpha*
2. The factual position is that the applicant was due to retire on 31.01.1991 on attaining the age of superannuation of 60 years. The impugned order dated 27.08.1991 itself states that the applicant had worked in the School upto 14.05.1991 and that salary has already been paid upto April, 1991. The stand of the respondents is that it is obligatory on the Government servant who is due to retire to intimate the office about his date of retirement. In the instant case, the applicant did not do so. On this ground the respondents have withheld the pension and other retirement benefits and called upon the applicant to refund to them the salary paid for the months of February, March and April, 1991.

3. On 01.11.1991, the Tribunal passed an interim order directing the respondents to release the PF amount lying in the account of the applicant together with upto date interest to the applicant without any pre-condition. We have been informed at the time of hearing that the respondents have complied with this direction.

4. Several contentions have been advanced by both the parties in support of their respective stands. The learned counsel for the applicant stated that the applicant had been reminding the school authorities to issue the orders regarding his retirement but the respondents did not do so. He also draws our attention to the counter-affidavit filed by the respondents in which it has been submitted that the pensionary benefits were withheld as the matter regarding the retirement of the applicant could not be taken up by the Department in time.

5. The learned counsel for the respondents relied upon the provisions of FR 56(a) and the Ministry of Home Affairs OM dated 10.12.1965 in support of his contention that no formal orders are required to be issued regarding the retirement of a Government servant. He argued that a Government servant cannot take advantage of the non-receipt of such a formal order and *alpha* ~~can~~ continue in service. He further contended that FR 56 and the OM issued there-

alpha

under have statutory force.

6. Rule 74 of the CCS(Pension) Rules, 1972, stipulates that "when a Government servant retires ^{from} ~~on~~ service - (a) a notification in the Official Gazette in the case of a Gazetted Government servant, and (b) an office order in the case of a non-gazetted Government servant shall be issued specifying the date of retirement within a week of such date and a copy of every such notification or office order, as the case may be, shall be forwarded immediately to the Accounts Officer". In the instant case, no such notification or order was issued by the respondents. The applicant was in fact allowed to work as a Teacher from 01.02.1991 to 14.05.1991. In the facts and circumstances of the case, the period beyond 31.01.1991 upto 14.05.1991 must be deemed to be implied re-employment of the applicant as Trained Graduate Teacher. Having worked during this period, we are of the opinion that the applicant would be entitled for the pay and allowances of Trained Graduate Teacher. Accordingly, the application is disposed of with the direction to the respondents to release the pension and other retirement benefits treating 31.01.1991 as the date of superannuation of the applicant. For the period during which he worked thereafter, the applicant should be paid full pay and allowances minus the pension admissible to him. The respondents should do so expeditiously and preferably within a period of 3 months from the date of communication of this order. The interim order passed on 01.11.1991 is hereby made absolute.

There will be no order as to costs.

B.N. Dhoudiyal
(B.N. DHOUNDIYAL)
MEMBER (A)
19.02.1993

RKS
190293

PKK
(P.K. KARTHA)
VICE CHAIRMAN(J)
19.02.1993