

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2633/92

New Delhi, this the 20th day of November, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

B.S.Yadav c/o Mr. A.K. Yadav,
Block No. 9 D, Mahabir Extension,
Vikas Kunj, Vikas Pura,
New Delhi. ...Applicant

(By Advocate: Shri S.K. Sawhney)

Vs.

Union of India through

1. The General Manager,
Western Railway, H.Q.,
Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway Division,
Ratlam.
3. The Divisional Personnel Officer,
Western Railway Division,
Ratlam. Respondents

(By Advocate: Shri O.P. Kshatriya)

O R D E R (ORAL)

Dr. Jose P. Verghese, Vice-Chairman (J)-

The petitioner in this case is seeking quashing of the respondents' order, said to have been passed after this court decided the matter by an order dated 7.7.1991 in OA No. 2481/90 filed by the same petitioner. This court had directed the respondents to issue notice, in case they decided to retire the petitioner on medical grounds as the same was required to be done in accordance with law. We also notice that the application was allowed with a cost of Rs. 300/- upon the respondents. In the body of the judgement itself this court had observed that:

"with great restrain we are compelled to observe that the respondents have taken the assertions of the applicant in the O.A. very lightly and irresponsibly and have miserably failed to file proof of facts asserted by them".

(8)

It is also the fact that the respondents have not filed the certificate which is stated to have been issued by the Medical Board against the petitioner certifying that the petitioner is unfit for all categories.

After notice respondents have filed their reply and we have perused the averments contained therein and heard the parties today. We have considered the entire case of the petitioner and we find that there is some substance in the case of the petitioner for grant of relief to the extent being granted hereinbelow on the basis of the grounds raised in this petition.

Respondents by an order dated 1.1.1991 themselves have cancelled the order dated 5.4.1990 on the basis of which the petitioner stood retired previously and thereafter in pursuance to the orders of this court, they obtained the certificate from the Medical Board certifying that the petitioner is unfit for all categories and proceeded to retire him w.e.f. 31.8.1991 by an order dated 30.10.1991. Respondents have proceeded to treat the period between 20.3.1991 to 30.8.1991 as 'no pay' on the principles of 'no work no pay'. We are not in agreement with contention of the respondents justifying the said order and keeping in mind the observations made by this court in the previous decision cited above, we are of the view that the petitioner is entitled to full emoluments from the original date of retirement namely 5.4.1990 which was cancelled by the respondents themselves till the

subsequent date of retirement namely 30.8.1991.

Respondents shall calculate the dues in accordance with the rules for the period, and pay the same to the petitioner within two months from the date of receipt of the copy of this order. The payment due to the petitioner shall be liable to deduction, namely, the actual amount of pension if any paid during this period. It goes without saying that the last pay drawn for the purpose of payment of pension shall be calculated in the light of this order as if the petitioner had retired only on 30.8.1991 and if any difference of payment towards pension amount is payable, the same shall also be paid within the period stated just hereinabove. Our order dated 7.5.1991 had directed the respondents to give notice before passing an order of retirement which according to the said decision was in accordance with law. The respondents had not given any notice subsequently before they proceeded to retire him and the petitioner is therefore, entitled to pay in lieu of notice of one month and the same shall also be calculated and paid alongwith the payment directed to be given by this order.

With this, this OA is allowed to the extent stated above.

Naresh

(N. Sahu)
Member (A)

naresh



(Dr. Jose P. Verghese)
Vice-Chairman (J)

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