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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2058/93

New Delhi this the 10th day of February, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN

K. P. Pandey,
H. No. 413, Sector-VII,
R. K. Puram,
New Delhi.

... Petitioner

By Advocate Shri N. Ranganathaswamy

Versus

1. Union of India through
Secretary, Ministry of
Urban Development,
Nirman Bhawan,
New Delhi.
2. The Director General of Works,
C.P.W.D., Nirman Bhawan,
New Delhi.
3. The Superintending Engineer,
Delhi Central Circle-I,
I.P.Bhawan, New Delhi.
4. The Executive Engineer,
'N' Division, I.P.Bhawan,
New Delhi.
5. The Pay & Accounts Officer,
C.P.W.D. (New Delhi Zone),
I.P. Bhawan, New Delhi. ... Respondents

By Advocate Shri P. P. Khurana

O R D E R (ORAL)

The petitioner retired from service on attaining 58 years of age. His grievance brought before the Tribunal in the earlier O.A. No. 2597/90 was that his age of superannuation is 60 years and that his premature retirement was, therefore, illegal. That application was allowed by the Tribunal on 8.5.1992 and certain directions were issued. The grievance

that is now brought before the Tribunal in the present application is really in the matter of giving effect to the said decision. The authorities have made certain recoveries from the petitioner. The grievance of the petitioner is that all this is unjustified. I have, therefore, to ascertain in the first instance the effect of the earlier decision of the Tribunal. The clear finding is that the age of superannuation of the petitioner was 60 years and that, therefore, his retirement on 30.12.1990 on completion of 58 years was not right. The petitioner should have retired on attaining 60 years on 31.12.1992. In the normal circumstances, as a result of the direction issued in the said case, the petitioner stood reinstated and actually retired after reinstatement, on attaining 60 years of age. The Tribunal while disposing of the earlier application, made certain directions in regard to payment of backwages. They deserve to be carefully noticed. One of the directions is to reinstate the petitioner in service and to grant him notional increments which became due to him during the period from the date of his retirement on attaining 58 years of age to the date he was taken back to duty. It is on that basis that his pay is required to be fixed notionally which he has received on his reinstatement. There is a positive direction that in the peculiar circumstances of the case no directions regarding backwages are issued. Thus, it becomes clear that the petitioner has been denied the backwages from 31.12.1990 till the date on which he was reinstated in service.

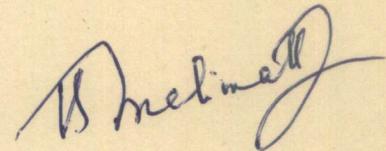
However, the said period would count for earning increments and for proper fixation of pay on reinstatement. As regards his pension and other retirement benefits, the direction is to re-fix them after attaining the age of superannuation in accordance with F.R. 56-B on 31.12.1992, after taking into account the pay drawn by him in the preceding ten months, actually and not notionally.

2. Though the petitioner has been deprived of the benefit of backwages from 31.12.1990 till the date of reinstatement, there is nothing to indicate that any declaration or direction was issued to the effect that the petitioner was liable to refund the pension drawn by him consequent upon his premature and illegal retirement. If that was the intention, the Tribunal would have made that position quite clear. As normally the petitioner would have been entitled to full backwages as the premature retirement was a wrongful act on the part of the administration, the Tribunal having specifically denied the backwages, it would not be reasonable to construe the order as containing an implied unreasonable direction to refund the pension also drawn by the petitioner during that period. I have, therefore, no hesitation in holding that the petitioner was not liable to refund the pension drawn by him until his reinstatement, nor is the pension amount received by him is liable to be adjusted. But the same cannot be said in regard to other retirement benefits like commutation value and DCRG etc. I say so for the reason that the directions of

the Tribunal are quite clear and specific in this behalf. They say that these retirement benefits shall be re-fixed on his attaining the age of 60 years. The petitioner cannot get these retirement benefits on two occasions, one on the date of his wrongful retirement and the other on the date of his rightful retirement. Hence, retirement benefits other than the arrears of pension, such as commutation value and DCRG paid to the petitioner when he was first retired have to be adjusted when the final settlement of retirement benefits is made on attaining the age of 60 years. Though this limited adjustment is permissible, I am inclined to take the view that the respondents would not be justified in claiming interest on the said amounts as they purport to have done. In the light of this elucidation, it is now for the respondents to re-calculate the retirement benefits to which the petitioner has become entitled to. The only deduction which is permissible is the amount paid other than pension, such as commutation value and DCRG when he retired on attaining the age of 58 years. The pension drawn from the date of first retirement till the date of reinstatement shall not be deducted. The respondents shall calculate ~~and deduct interest on~~ the commutation value and DCRG amount which I have said, are liable for adjustment when final retirement benefits are settled on attaining the age of 60 years. Re-calculation on these lines shall be made now and whatever amount is liable to be paid to the petitioner shall be paid or if any further recoveries are to be made from the petitioner, that may be done. Let this exercise be

done within a period of three months from this date. If the decision in this behalf is not taken within three months and if ultimately the petitioner is found due any amount, the same shall carry interest at the rate of 12 per cent per annum from this date till the date of payment. It goes without saying that for this purpose, all recoveries made have to be taken into account whether before or after retirement. The bank guarantee furnished by the petitioner shall stand discharged.

3. With these directions, this application stands disposed of.



(V. S. Malimath)
Chairman

/as/