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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 26TH DAY OF FEBRUARY, 2003

Original Application No.234 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Komal, S/o late Ganga Ram, a/a
29 years, R/.o vilalge Pokocha
Bhawan, district Jhansi.

.. Applicant

(By Adv: Shri R.K.Nigam)

Versus

1. Union of India through
General Manager, Central Railway
Mumbai C.S.T.
2. Divisional Railway Manager,
Central Railway, Jhansi.

.. Respondents

(By Adv: Shri K.P.Singh)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order of settlement of retiral benefits(Annexure 1) by which amount of Rs 30,287/- ^{has been} deducted from the retiral benefits of the applicant, on the ground of over payment.

The facts of the case are that applicant joined service in Central Railway at Jhansi on 14.10.1960 in Steam Loco shed. Subsequently, he was promoted as skilled Fitter Gr-II in the pay scale of Rs 1200-1800. The date of birth of the applicant according to service record was 01.1.1937. According to the date of birth applicant was to attain the age of superannuation on 31.12.1994. However, as no notice was given to applicant to retire, he continued on the post till 29.9.1995. He was informed on 30.9.1995 that he has ^{been} already retired from service from 29.9.1995. The contents of the notice are as under:-

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"Aapko suchit kiya jaata hein ki dinaang
29.9.95 aprahna se aapko sewa niavrut
kar diya gaya hein. Kripaya Note karein"

The applicant was paid retiral benefits. however, amount of Rs 30,287/- was deducted which was equivalent to the salary paid to the applicant during the period 01.1.1995 to 29.9.1995. Aggrieved by the aforesaid deduction, applicant has approached this Tribunal by filing this OA.

Shri R.K.Nigam learned counsel for the applicant, submitted that applicant joined the Railway as Khalasi in 1960. The applicant discharged his duties sincerely and honestly. Consequently, he was promoted upto Fitter Grade-II. As he was a semi literate, he could have no knowledge about his retirement so he continued to discharge his duties as usual until he was given notice dated 30.9.1995 intimating him that he has been retired from service from 29.9.1995. There is no allegation against the applicant that he played any fraud on the Railway Administration so as to allow him to continue on the post. He continued to work on the post under a bonafide belief that he has not yet attained the age of superannuation. It is submitted that in the circumstances of the case the respondents were not justified in deducting the amount from the applicant and it may be refunded to applicant with interest @ 18%.

Learned counsel has placed reliance on the judgment of Hon'ble Supreme Court in case of 'State of Bihar Vs. Narsimha Sundaram, 1994(28) ATC 719(SC)

Shri K.P.Singh learned counsel for the respondents, on the other hand, submitted that the applicant illegally continued on the post though he had knowledge that he shall be attaining the age of superannuation on 31.12.1994. It is submitted that as the Loco Shed where the applicant was serving was closed and record was transferred to TRA Section, there was a delay on the part of the Railway

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Administration to locate the correct date of superannuation of the applicant. However, the applicant could not take advantage of the mistake and the amount has been rightly deducted. Reliance has been placed by respondents in the judgment of Hon'ble Supreme Court in case of 'Radha Krishna Vs. Union of India and Ors J.T. 1997 (4) SC-116.

Shri K.P.Singh, learned counsel for the respondents has submitted that in any case applicant is not entitled for any interest on the amount.

I have carefully considered the submissions of the counsel for the parties. There is no allegation on the part of the respondents against applicant that he is responsible in any manner to mislead the railway administration permitting him to continue for about 9 months even after attaining the age of superannuation. Hon'ble Supreme court in case of 'State of Bihar Vs. Narsimiha Sundaram(Supra) which is a judgment of a Bench consisting of three Hon'ble Judges of Hon'ble Supreme court held in para 5 as under:-

"So far as the question of payment of arrears of salary is concerned, we do not find any merit in the contention of learned counsel for the appellant that the respondent can be refused his emolument for the period in question as no proceedings were ever initiated for inquiry as to the alleged fraud played by the respondent on the department. It is not denied that the respondent worked till 30.9.1989 and in that view we confirm that part of the impugned judgment which refers to the salary. The respondent should be

paid his arrears of salary if not already paid within two months from today."

From the aforesaid observations of Hon'ble Supreme Court it is clear that if the applicant has worked on the post and he has been paid salary, it could not be subsequently recovered especially in view of the fact that there is no allegation against him that he in any manner misled the department in permitting him to continue on the work even after retirement. There is also no evidence^{of} material on record that applicant was actually aware^{about} the exact date of his superannuation. In these circumstances, in my opinion, the respondents were not justified in deducting the amount. The judgment relied on by learned counsel for the respondent is by Hon'ble two judges of Supreme court and the larger bench judgment mentioned above was not noticed. In the circumstances, and in the ends of justice, the applicant is found entitled for the relief following the judgment of the larger bench of the Hon'ble Supreme court. However, in the peculiar facts and circumstances of the case I do not find it a fit case for awarding interest on the amount to the applicant.

For the reasons stated above, this OA is allowed. Respondents are directed to refund the amount of Rs 30,287/- to applicant within two months from the date a copy of this order is filed before respondent no.2. No order as to costs.


VICE CHAIRMAN

Dated: 26th February, 2003

Uv/