

Reserved
(On 11.04.2014)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : This the 16th day of April 2014

Hon'ble Dr. Murtaza Ali, Member (J)

Original Application No. 237 of 2004

Kamata Prasad S/o Late Gajadhar Retired Crane Driver SN. 06160 Under
SSE/Prog. Eng. B. DLW Varanasi R/O M-N 10/12 Lakharaw Kakarmatta
Varanasi.

... Applicant

By Adv: Shri R. Prasad.

VERSUS

1. Union of India through General Manger, DLW Varanasi.
2. Chief Personal Officer DLW Varanasi.
3. Mahaprabhandhak (Karmik) DLW Varanasi.

... Respondents

By Adv : Shri D.S. Shukla.

ORDER

The present OA have been filed under section 19^{of The} Administrative
Tribunal Act 1985 for seeking relief to issue direction to respondents to
calculate the retiral benefits including pension and gratuity on the basis of
total tenure of service as 34 years and 6 months and also direct them not
to deduct Rs. 1,80,000/- from his retiral benefits, and treat the suspension
period in continuous service.

2. The brief facts of the case are that the applicant joined service on
31.01.1969 and superannuated on 31.07.2003 from the post of crane
driver (grade 1) after completing 34 years and 6 months. It has been
stated that he was prosecuted under section 3 of R.P.U.P. Act and

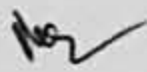


acquitted on 03.05.1997 and during the pendency of such case he was placed under suspension. His retiral benefits were calculated upto Rs. 5,14,000/- after reducing the amount of gratuity and other~~s~~ admissible emoluments. It has also been stated that without giving any show cause notice a ~~some~~^{sum} of Rs. 1,80,000/- has been deducted from his retiral benefits.

3. The respondents has on the other hand admitted that the applicant was initially engaged as Khalasi and retired from his service from the post of crane driver (grade 1) on 31.07.2003. It has been submitted that he was involved in a criminal case and therefore, he was placed under suspension w.e.f. 27.09.1973 to 03.05.1979. It has been submitted that the suspension period i.e. 27.09.1973 to 03.05.1979 was not counted for qualifying service for the purposes of pensionary benefits and after superannuation the applicant's qualifying service was worked out as 28 years 4 months and 6 days.

4. Heard Shri R. Prasad, counsel for the applicant and Shri D.S. Shukla, counsel for the respondents and perused the record.

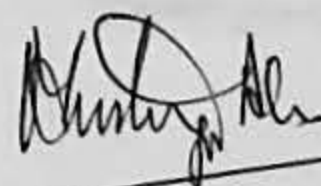
5. Learned counsel for the applicant has drawn my attention to the order dated 17.09.2010 passed by Hon'ble Mr. S.N. Shukla, the then Administrative Member. From the perusal of the order it is evident that the service book of the applicant was produced before Hon'ble Mr. S.N. Shukla,^{and} from perusal of service book it has been noted that under the title "Punishment" following entry has been made:-



"The period of suspension from 27.09.1973 to 03.05.1979 shall be a part of duty for all purposes vide letter No. WP/D?O?A/296 dated 11.5.1979."

6. It has also been observed that the above order has superseded by the impugned order and the learned counsel for the respondents were directed to seek instructions to clarify under which rules the impugned order has been issued but nothing has been said in this regard by the learned counsel for the respondents. Since, the period of suspension w.e.f. 27.9.1973 to 3.5.1979 had become a part of duty for all purposes and service certificate (Annexure A-1) has also been issued ^{certifying} ~~certified~~ total service w.e.f. 31.01.1969 to 31.07.2003, then the suspension period should not be excluded from calculating the qualifying service of applicant.

7. Accordingly, the OA is allowed and the respondents are directed to include the period of suspension while calculating the qualifying service of the petitioner for the purposes of pension and gratuity etc and pay all retiral benefits accordingly, within a period of two months from the date of receipt of a certified copy of this order. The respondents are also directed to pay the interest @ 9% per annum from the date of his retirement till the actual date of payment.



MEMBER (J)

/SS/