

RESERVED

13  
PZ

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

\*\*\*\*\*

Allahabad this the 20<sup>th</sup> day of August 1996.

Original Application No. 378 of 1986.

Hon'ble Mr. T.L. Verma, JM  
Hon'ble Mr. S. Dayal, AM

Dr. S.B. Nandi retired ADMO,  
Junior Institute Dispensary,  
Bungalow No. M/45 B Opposite  
Durgawari, N.E. Railway, Gorakhpur.

..... Applicant.

C/A Sri G.C. Bhattacharya

Versus

General Manager, N.E. Railway,  
Gorakhpur.

..... Respondent.

C/R Sri Lalji Sinha

O R D E R

Hon'ble Mr. T.L. Verma, JM

This application under Section 19 of the Administrative Tribunals Act has been filed for issuing a direction to the respondent for treating the applicant as Additional Medical Officer in the scale of pay Rs. 1100-1800 with effect from September 1981 with all consequential benefits. The applicant has sought further direction to the respondent to pay to the applicant:-

(a) Leave encashment for 180 days.  
(b) Gratuity.  
(c) Commutation of pension with interest thereon at the prevailing market rate and to issue first class supplementary pass of three sets in the year with effect from January 1986, and not to evict him from the railway quarter till his dues and other retiral benefits are settled.

Contd..2..

2. The applicant was initially appointed as Assistant Surgeon grade II on 4.6.58 in the Institute Dispensary N.E. Railway Gorakhpur. He was promoted to the post of Assistant Medical Officer in 1966. The applicant was served with chargesheet dated 10.6.71 in a disciplinary proceeding initiated against him. The applicant filed suitable reply, ~~against~~ to the charges framed against him, the disciplinary authority however, ~~to have~~ imposed punishment of reduction ~~in salary~~ to lower scale of pay Rs. 350-900 by order dated 10.8.73. The order of punishment imposed by the disciplinary authority was challenged by filing O.S. No. 903 of 1975 in the court of ~~third~~ Munsif Gorakhpur. The suit was dismissed. In appeal, filed by the applicant, ~~against~~ the judgement and decree passed by the Munsif Gorakhpur ~~second~~ was set aside by the Second Additional District Judge Gorakhpur, ~~second~~ and decreed the suit. The Additional District Judge declared that order dated 16.8.73 imposing ~~the~~ penalty of reduction of the applicant to the lower scale of pay and postponing the future increments for five years was null and void and not binding upon the plaintiff. The applicant was directed to be restored to his basic salary of Rs. 620 per month with all consequential benefits including the arrears of pay with effect from 16.8.73. The Union of India filed second appeal no. 100/9182 in the High Court of judicature at Allahabad. The High Court passed following interim order in the second appeal :-

*Th*  
"Heard learned counsel for the parties. The execution of the decree passed by lower appellate court shall remain stayed, subject to the condition that the appellant deposits entire decreetal amount within a period of two months from today and difference in the salary starting from the month of August 83 by 15th of succeeding month. The plaintiff respondent will be entitled to withdraw the amount deposited under this order after furnishing adequate

security to the satisfaction of the Executive Court. In case of default of any of the conditions laid down in this order, same shall stand automatically vacated."

The second appeal is still pending.

3. The applicant contends that despite the punishment imposed by the disciplinary authority his seniority remained intact according to the provisions contained in Railway Board's letter No. E (B&A) 62 BG-6-46 dated 30.7.64. The applicant, therefore, was entitled to be considered for promotion to the grade of D.M.O. in the scale of Rs. 1100-1800 with effect from September 1981. But the applicant was considered for ~~promotion~~ and he retired on 31.1.85 in the scale of Rs. 700-1600. It is said that he has not been paid his retirement benefits to which he was entitled as D.M.O. in the scale of Rs. 1100-1800. He has been sanctioned pension in the scale of Rs. 700-1600 and as such he has been deprived of Rs. 40 per month by way of pension, and other retirement benefits. He submitted several representations (Annexure-3, 4 and 5 respectively) to the appropriate authorities to undo the injustice done to him, by not giving him the scale of Rs. 1100-1800 with effect from September 1981. The same however did not yield any result. Hence this application for the reliefs mentioned above.

4. The respondents have resisted the claim of the applicant in the reply filed on behalf of the respondents it has been stated that while the applicant was working as a Assistant Medical Officer (Class-II) he was awarded punishment of reduction of pay for five years with effect from 15.8.73 ~~from the stage of Rs. 620- of Rs. 500/- in time scale of Rs. 60000~~ to lower stage ~~income~~ He was allowed class-I (Assistant Additional Medical Officer) with effect from 16.8.78 on expiry of

the period of punishment. He was entitled to pay of the post of Assistant Additional Medical Officer only on the expiry of the period of punishment on 16.8.78. It has, ~~been~~ further contended that provident fund and provisional monthly pension has already been paid to the applicant. The amount of towards the Railway Employee Insurance Scheme and Group Insurance Scheme has also been released. D.C.R.G., commutation of pension and encashment of leave salary has, however, been withheld as the petitioner has not vacated the Railway quarter allotted to him ~~for which he~~ is liable to pay penal rent. The further case of the respondents is that as the applicant was not promoted to scale Rs. 1100-1800, pension and other retiral benefits could not ~~have been~~ be sanctioned to him in that scale. So far as the claim of the applicant ~~in~~ seniority etc. is concerned, it has been stated that second appeal no. 100/82 is pending in the High Court and operation of the decree of the first appellate court has been stayed by the appellate court.

5. We have heard the learned counsel for the parties and perused the records. In view of the admitted position that the second appeal filed ~~against~~ by Union of India against the judgement and decree passed by the Additional District Judge, Gorakhpur in civil appeal no. 316/80 and the operation of the judgement and decree passed in the said appeal has been stayed, it is not proper ~~for~~ us to express any opinion as to whether the respondents have erred in not giving benefit of pay of scale of Additional Divisional Medical Officer to the applicant ~~during the currency~~ of the punishment imposed on the applicant in the disciplinary proceeding. In case the applicant succeeds

in the said second appeal and the judgement and decree passed by the Additional District Judge is upheld he will be entitled to the scale of pay of the post of Additional Divisional Medical Officer as if no punishment of reduction to the lower scale of pay had been imposed on him.

6. This leads us next to the examination of the claim of the applicant that he ought to have been given the scale of Rs. 1100-1800 with effect from September 1981. The punishment imposed on the applicant by the disciplinary authority was in operation till 16.8.78. The applicant, therefore, could not have been considered for promotion during the currency of the punishment imposed on him. According to the instructions contained in Railway Board's letter dated 30.7.64 (Supra) seniority of the applicant remained unaffected. In that view of the matter he should have been allowed seniority from 1973 for being considered for promotion in senior scale of D.M.O. The material on the record indicates that the applicant was not considered for promotion to the senior scale of D.M.O. even after the expiry of five years period of punishment. The applicant claims to have become due for promotion to the scale of D.M.O. in 1981. This application has been filed in 1986 roughly five years after his claim for being considered for promotion to senior scale of D.M.O. was bypassed. There is no explanation for delay in moving the appropriate forum for issuing a direction to the respondents to consider his case. Even the letter which the applicant has relied in support of his claim when he had become due for promotion to the said scale is dated 16.9.81

The other representations stated to have been filed the year by the applicant pertain to 1985-86. We do not know whether the applicant even after being considered for promotion <sup>would</sup> have been promoted to the senior scale of D.M.O. or not. The fact remains that he slept over the matter for long period of over four years and filed representations only after his retirement on 31.1.85. These representations also do not specifically raised the issue of his promotion to the senior scale of D.M.O. Therefore the claim of the applicant, if any, for promotion to the senior scale of D.M.O. has become <sup>time</sup> ~~barred~~ because of ~~@@@~~ <sup>his</sup> laches on ~~part.~~ ~~xxxxxx~~.

7. Admittedly provisional pension on the basis of pay he was drawing at the time of his retirement has already been sanctioned. The amount due under the Group Insurance Scheme has also been released. We may however note that the entitlement of the applicant as to the final pension and other retiral dues will depend on the outcome of the second appeal pending before the High Court.

8. We may however like to note that the pension and other retiral benefits cannot be directed to be paid to the applicant on the basis of his deemed promotion to the senior scale of D.M.O. and his presumption that he would have been drawing pay at Rs. 1740/- had he been promoted according to his claim.

9. We now examine the claim of the applicant for issuing a direction to pay, leave encashment for 180 days, gratuity and amount due as a result of

A.F. (1a)  
3:

commutation pension. The respondents allege that the above amount due to the applicant have been withheld because the applicant has not vacated the government quarter allotted to him even after his retirement. The question whether payment of gratuity can be postponed till vacation of Railway quarter and post retirement passes can be withheld for non vacation of Railway quarter come up for consideration before the Full Bench of C.A.T. (PB) in O.A. 2573/91 Full Bench Judgements of Central Administrative Tribunal (1989-91) page 287. It has been held in the said full bench decision that gratuity is payable immediately on retirement. Payment thereof should be made promptly. Payment beyond three months should entail interest at the rate of 10 per cent per annum and that payment should not be withheld for non eviction of Railway quarter. In view of the law laid down by the Full Bench in the said case withholding of payment of gratuity for non vacation of Railway quarter is illegal. The applicant therefore is entitled to payment of entire gratuity amount with interest thereon at the rate of 10 per cent from the 1st May 1985 till the date of payment.

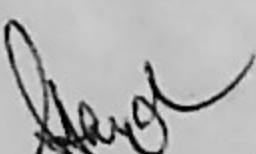
10. So far as the amount of commutation pension is concerned the law is absolutely clear on the point that pension is not subject to any charge. The respondents therefore had no power to withhold the amount of commutation of pension. The applicant is entitled to receive the same also from the date it had become due with interest thereon at the rate of 10 per cent per annum till the date of payment.

AF (20)  
9

11. According to the law laid down in the full bench case referred to above the respondents are justified in withholding post retirement passes for non-residents on of Railway quarter.

So far as the question of payment of leave encashment is concerned, it may be stated that leave encashment does not come within the definition of pension or gratuity. Therefore the bar against withholding of pension and gratuity will not apply to withholding of leave encashment. The respondents are entitled to realise the rent of the quarter penal or otherwise as the case may be <sup>from the applicant. Therefore</sup> The withholding of payment of leave encashment as a security for realising rent due from the applicant in the circumstances of the case cannot be said to be barred in law. The applicant therefore is not entitled to the release of the said amount until he vacates the quarter.

13. In the facts and circumstances <sup>of the case</sup> discussed above, this application is allowed in part. The respondents are directed to pay to the applicant the entire amount of his gratuity and the amount due as a result of commutation of pension with interest at the rate of 10 per cent per annum as indicated above. The direction issued shall be complied with within a period of three months from the date of communication of this order.

  
Member - A

  
Member - J

Arvind.