

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration T.A.No.778 of 1987

M.L. Vijra

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Applicant

vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

(By Hon. Mr. Justice U.C.Srivastava, V.C.)

The applicant has filed a Civil "rit Petition before the High Court of Judicature at Allahabad by operation of law this case has been transferred to this Tribunal. The applicant prayed that a mandamus be issued directing the opposite parties for payment of his gratuity and payments of security of Rs.1000/- by counting the qualifying war service towards pension and a mandamus be issued to the opposite parties directing them to make payment of computation value of 1/3 pension and a writ of mandamus be issued directing the opposite parties to pay an additional interest at the rate of 9 percent per annum to the petitioner for withholding the gratuity illegally and without any reasonable excuse since it has been due on 1.4.1978 till the amount is paid. The applicant was appointed as clerk on 1.6.48 in North-Eastern Railway and later on he was promoted to the post of Ward Keeper in the year 1953. The applicant retired on 31.3.78 and at that time he was holding the post of Depot Store Keeper. According to the applicant his service record was very good and he was also awarded a reward. The applicant submitted a formal application for pension including gratuity etc and he had made several efforts for the same, but he could not get it and he approached the Authority. Ultimately an order was passed on 14.2.1979

providing payment of provisional pension. Before the expiry of this period of six months from the date of passing of the provisional pension order, the petitioner again made representation to the Disc. Controller of Stores, Izatnagar, that his pension be finalised and that he may also be paid the amount towards death cum retirement gratuity, and it should have been released within fifteen months if commercial debits are involved and six months if not involved. But failing to get the said amount the applicant had no option but to approach the Court of Law. According to the applicant it should be presumed that there is no claim against the applicant ^{no} if efforts have been made by him to assess and adjust the recoverable dues within the period of 3 months from the date of retirement, and as such the opposite parties have violated the provisions of para 323(B) of Pension Rules, 1950.

2. The respondents have resisted the claim of the applicant and have stated that an inquiry was instituted against the applicant for loss of 10.5 sets of switches which were received from Bharatpur loaded in BFR No.10295/R as "Scrap" and while working as DSK/Track Supply depot/CPA he did not observe the establishment procedure in store code para 2133-S even after he had acknowledged the receipt of BFR NO.21058/NF. The costs of 10.5 switches in department is equal to Rs.15,592.50/- and the departmental charges was Rs.17,541.56/-, and this amount exceeded from the amount of gratuity of the applicant. As the death cum gratuity amount comes to Rs.14,645.00/- and the amount of recovery is Rs.2896.56/- and as a matter of fact the applicant is to refund the balance amount of Rs.2896.56/- to the Railway Administration. According to the Railway Administration a proceeding took place and a show cause

notice was issued to the applicant at his Mumbai and other addresses after his retirement. But the service of notices were not received.

3. The applicant denied the averments made by the respondents and according to him no chargesheet was served upon him and no inquiry was set up. It is further stated by the applicant the letter was addressed to the applicant to the Mumbai and Bareilly address while the applicant had actually gone to Ambala after his retirement and he had given correct address of Ambala to the Department. The factual position thus appears to be that no notice was given to the applicant even if no show cause notice was issued to the applicant and no such finding was recorded against the applicant and the loss of consignment in the year 1969-70 was later on traced and found in the year 1974 if that was so obviously the applicant cannot be held guilty of the loss. As no proceedings taken place against the applicant in accordance with law and no finding is recorded, the applicant could not get the opportunity to meet the same, this application deserves to be allowed and the respondents are directed to pay an amount of Rs.14,645/- to the applicant alongwith six percent interest within a period of 3 months from the date of communication of this order. It is for them to take any proceedings against applicant for recovery of any amount which in fact they are entitled to in accordance with law separately. No order as to costs.

Dated: 28th April, 1992, Alld.

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Vice-Chairman.

(sph)