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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. 764/87

Ishwari Pd.Gup ta

applicant.

vs.

Union of India and others

Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S.Sharma, J.M.

(Delivered by Hon'ble G.S.Sharma)

In this petition under Section 19 of the A.T.Act XIII of 1985, the applicant has sought a direction to the respondents to pay Rs.2,75,399.00 as his pay and allowances from 1.8.84 to 21.8.87 under the circumstances stated below.

2.The applicant was serving under the Northern Railway as Captain T.T.E. at Bareilly and on reaching the age of superannuation, he retired from service w.e.f.31.7.84. Before his retirement, the applicant was placed under suspension and a chargesheet for major punishment was served on him on 23.9.83. After his retirement, the applicant filed a petition under Section 19 of the A.T.Act before this Bench of the tribunal which was registered as OA.No.71/86 against the respondents for his retiral benefits and some other payments due to him. The defence taken by the respondents in that case was that as the disciplinary proceedings were still pending against the applicant, no payments could be made to him till the disciplinary proceedings are concluded. The validity of the disciplinary proceedings pending against him were challenged by the applicant in that case as well as in the present case on the ground that after the retirement, such proceedings can not continue. After considering the contentions of both the

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parties, a bench of the tribunal, of which one of us was a party, held in that case that the disciplinary proceedings could continue against the applicant even-after his retirement under the law, but issued a direction to the respondents to finalise the said proceedings ^{within 6 months} and thereafter pay the necessary dues of the applicant within a month. The present petition was filed by the applicant on 21.8.87 with the allegation that despite the order dated 8.8.86 of this tribunal in his earlier case(O.A.No.71/86) the disciplinary proceedings have not been finalised against him within the period allowed to the respondents and as the disciplinary proceedings continued against the applicant after his retirement, he should ~~not~~ be deemed to be in active service of the respondents till 31.1.87, the period allowed by the tribunal for finalising the said proceedings and as he has not been paid any salary by the respondents, the respondents be directed to pay the salary to him from 1.8.84 to 31.1.87.

3.The applicant appeared in person before us on the date fixed for admission and placed his reliance on 3 decisions of the Hon'ble the Supreme Court,namely,**P.R.Nayak V. Union of India,A.I.R. 1972 S.C. 554 ; Khemi Ram Vs.State of Punjab, 1976(2),S.L.R.239,and B.J.Shelat Vs.State of Gujarat and others 1978 S.L.J.,503**, to support his contentions that no disciplinary proceedings can be taken against a government servant after his retirement and if they are taken,he should be deemed to be in service with all benefits of pay etc.. We have carefully considered the rulings relied-upon by the applicant. In the case of **P.R.Nayak Vs. Union of India(Supra)**interpreting rule3(1) of All India Services(discipline and appeal)Rules,the Hon'ble Supreme Court had held that a member of All India Services can not be placed under suspension unless the disciplinary proceedings have,in-fact,commenced against him.In our opinion,

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this case law has no application to the facts of the case of the applicant. In the case of **B.J.Shelat Vs. State of Gujarat (Supra)**, the Hon'ble Supreme Court had held that if a delinquent applies for premature retirement after attaining the age of 55 years, he should not be permitted to retire and if he is allowed to retire, the disciplinary proceedings can not be taken against him afterwards. The ratio of this case has also no application to the case before us as in the instant case, the disciplinary proceedings had already started much before the applicant had actually retired.

4. In the case of **Khemi Ram Vs. State of Punjab (Supra)** interpreting rule 3.26(d) of Punjab Civil Services Rules, the Hon'ble Supreme Court had observed that under this rule a government servant under suspension on charge of misconduct shall not be permitted to retire on reaching the age of superannuation, but should be retained in service until the inquiry into the charge is concluded and a final order is passed thereon. This case may be of some help to support the contention of the applicant, but there is nothing before us to establish that there is a similar provision as contained in Rule 3.26(d) of Punjab Civil Service Rules for the employees of the Indian Railways. We are further of the view that suppose there is such provision even for the employees of the Indian Railways the applicant should have ^{by filing an appeal} challenged the orders passed by this tribunal in his earlier case repelling his contentions that he could not be proceeded against departmentally after his retirement. The order passed by the tribunal on 8.8.86 can not be ^{reopened or reviewed &} ~~ruled out~~ after such a long time and it has the effect of res judicata between the parties. We are further of the view that even if it is assumed for the sake of argument that the

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disciplinary proceedings could not continue against the applicant after his retirement, it can not be held that as the disciplinary proceedings continued against him without extending his service, he is entitled to get his salary and other benefits on this ground till the disciplinary proceedings are finalised. The case of the applicant is, therefore, misconceived and for the reasons stated above, we do not find it to be a fit case for adjudication.

The petition is accordingly dismissed in limine.

अमरजीव
A.M. 19.11.87

J. M.
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