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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 25th day of November 1994.

Original Application no. 1490 of 1993.

Hon'ble Mr. S. Dayal, A.M.

Shri Mahadeo, S/o Late Shri Ram Swaroop, R/o Village
Jhalwa Post Office, Peepal Gaon, Distt. Allahabad.

.... Applicant

C/A Shri Anand Kumar

Versus

1. General Manager, N. Rly, Baroda House, New Delhi.
2. Divisional Railway Manager, N. Rly Allahabad.
3. D.P.O. N. Rly, Allahabad.
4. Asstt. Signal Telecommunication Engineer, N. Rly Tundla, Distt. Firozabad.

.... Respondents

C/R ---

* O R D E R

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the Administrative Tribunal Act, 1985, seeking payment of pension provident fund and other pensionary benefits with a compound interest for delay in payment.

2. The applicant has mentioned in the application that he was working as a Khalasi in Group D category in Tundla from 1961 to 1983 when he fell ill and could not join duty. He was served with a charge sheet issued with a letter dated 16.10.89 and he gave a reply on 25.10.89.

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An enquiry officer was appointed in July 1990. The enquiry could not proceed because the applicant was not able to move out of Allahabad.

3. The applicant made an application on 15.06.92 to the respondents that Rly Doctor/Medical Board may be directed to examine him and if he is unfit he may be discharged on grounds of medical unfitness and if he is fit, he may be allowed duty. He follows it up with another application dated 31.12.92 in which he has sought voluntary retirement on medical grounds (Annexure A 2).

4. The pensionary benefits have been claimed as relief by the applicant on three grounds. The first is that Rule 1802 (B-1) of the Indian Railway Establishment code, Volume II, permits any railway servant to retire after giving three months notice. The second is that Railway Board's letter no E (P & A) I-77/RT-466 dated 22.08.85 provides that an employee, who is continually sick and is compelled to remain on extraordinary leave for a prolonged spell, may give a notice for voluntary retirement and he may be permitted to retire even before expiry of notice period as well as the period of leave. The third is the judgement of the Supreme Court in 1990 SCC (L & S) 698 in ⁴D. Kapoor Vs. Union of India; and the applicant's own case and this case decided by the Supreme Court are stated to be ⁱⁿ pari materia.

5. The first ground is not tenable. The applicant can give a notice for voluntary retirement which will become effective after three months if there is no disciplinary proceeding pending against him. But he

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cannot give a notice of voluntary retirement even on medical grounds if an enquiry is pending against him. In such cases, the permission of the employer would be necessary and there would be no deemed retirement on completion of the notice period.

6. The second situation envisaged in the letter of the Railway Board dated 22.08.85 of prolonged extraordinary leave due to continual illness also does not confer any right to the employee to retire without permission of the employer.

7. The third ~~ground~~ ground is also not valid as the case cited is not in pari materia. In that case, the permission to retire had been given first and then after completion of departmental enquiry the President withheld the pension and gratuity although the Enquiry Officer did not find wilful misconduct. The Supreme Court held that pension and gratuity could not be withheld in that case.

8. The applicant, therefore, fails to establish that he has voluntarily retired. Therefore, he is not entitled to relief claimed. The application is, therefore, dismissed in limine.

9. There shall be no order as to costs.

(S. Dayal)
Member-A