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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 6th of April of 1995.

ORIGINAL APPLICATION NO. 1697 OF 1995.

Inder Jit Oberai, aged about 64 years,
s/o L. Ganda Mal Oberai,
retired as a Telephone Operator, Banda,
R/o 6 E, Hajiapur, Opposite Model Town,
Bareilly.

..... Applicant.

Versus

1. Union of India through the Chairman Telecom
Commission Dak-Tar Bhawan, New Delhi.
2. The Chief General Manager,
Telecom U.P. Circle, Lucknow.
3. Shri S.P. Misra,
General Manager, Finance O/O Chief General Manager,
Telecom, U.P. Circle, Lucknow.
4. Shri M. Shankaran,
Chief Accounts Officer (T.A.),
U.P. Telecom Circle, Bhopal House,
Lucknow.
5. Shri R.K. Srivastava,
Accounts Officer (TA-1),
Bhopal House, U.P. Telecom Circle,
Lucknow.
6. Shri U.B. Chaudhary, (T.D.E.)
Telecom Divisional Engineer (U.P.),
Sultanpur.
7. Shri S.C. Misra,
Dy. G.M. Administration, U.P. Telecom Circle,
Lucknow. Respondents.

By Advocate Sri Amit Sthalekar.

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CORAM: Hon'ble Mr. K. Muthukumar, MEMBER (A)

Hon'ble Mr. J.S. Dhalawal, MEMBER (J)

O R D E R (RESERVED)

By Hon'ble Mr. K. Muthukumar, MEMBER (A).

1. The applicant is a retired Telephone Operator, Banda, and he retired from service on 31st March 1987. In this application, he has challenged the impugned letters of the respondent no. 4 ^{ie} and letters dated 3.7.1993 and 16.8.1993 of the respondent no. 4 annexed as Annexure-A-I and A-II of the application. He has also prayed for compensation by way of market rate of ~~penal~~ interest on the payments of his terminal benefits and also the payment of ~~payment of~~ interest his T. A. Bill for May 1968.

2. The facts in this case are briefly that the applicant was facing chargesheet initiated against him in disciplinary proceedings by the respondents in 1970 and 1976 and was also imposed punishment in 1976 with the stoppage of increment. However, the above chargesheets were challenged in the transferred application ^{and} no. 610/86 [~] were quashed by the order of this Tribunal dated 30.5.1988 filed as Annexure-R.A.3. In regard to the fresh chargesheet dated 18.3.1976, the matter was re-heard by the Tribunal on his Review Application and the same chargesheet was ^{also} quashed by this Tribunal as well as the disciplinary proceedings on that basis and it was directed that the respondents should accord consequential benefits to the applicant within a period of three months from the date of the receipt of the certified copy of the judgment.

3. By the impugned letter dated 3.7.1993 the respondent no. 4 has intimated the applicant that the period of one year for the commutation of pension without medical examination had been reckoned from 7.4.1993 only i.e., the date of communication of the Competent Authority's Office Memo to the effect that the disciplinary proceedings were finally dropped by the Competent Authority. In the said letter, it is also indicated that the disciplinary proceedings initiated against him, were subsequently deemed to be the proceedings under Rule 9(2)(a) of CCS (Pension Rules) 1972 and accordingly, the period of one year for commutation of pension without medical examination, reckoned from 7.4.1993, in accordance with the provisions contained in sub rule i(b) of Rule 13 read with Rule 12 (v) of CCS Commutation of Pension Rules 1981 has become absolute on 13.4.1993 i.e., date on which Part II of Form I of the application for Commutation of Pension without medical examination, was signed by the Head of the Office namely T.O.E Sultanpur as provided in Rule 6(1)(i). Accordingly, he was intimated that the amount of commuted value was calculated by applying the factor applicable to the age of 65 years and, therefore, this decision was held to be correct. The above letter of 3rd July 1993 of the respondent no. 4 was in reply to the representation dated 26.4.1993 of the applicant in Annexure-2 of the application. He was informed again of the same position as in Annexure-I in response to his subsequent representations on the subject. Aggrieved by this, the applicant has approached this Tribunal for setting aside the decision contained in the aforesaid Annexures-I and II declaring them as being false and void.

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4. The respondents in their counter affidavit have averred in para 8 of the counter affidavit that no chargesheet for disciplinary proceedings was pending against the petitioner after the chargesheet dated 4.10.1990. However, in para 10 of the affidavit, they have also admitted that by the order dated 7.4.1993, the Telecom Divisional Engineer, Sultanpur, has quashed all the chargesheets pending against the petitioner, in view of the judgment of this Hon'ble Tribunal passed in O.A. No. 610/86 and have, therefore, stated that the petitioner should have no grievance against the order dated 7.4.1993. They have also averred in their submissions, the same contents of the respondent no. 4 in the impugned letter in regard to the question of commutation of pension which according to them has become due only on 13.4.1993 i.e., the date on which the Part II Form I was signed by the Competent Authority. In response to the averments made in para 4.15 of the application, the respondents have averred that ^{on} _~ the payment of interest on delayed payment of D.C.R.G., the matter has already been submitted to the Ministry of Communication for suitable sanction.

5. The applicant argued in person. We have heard the applicant and also the counsel for the respondents and perused the record.

6. It is necessary to dispose of ^{the} matter raised by the learned counsel for the respondents. It was stated that the matter relating to the commutation of the pension of the petitioner had already been finally settled by the judgment of this Tribunal dated 16.5.1994 in the Contempt Petition No. 1128 of 1993 in T.A. No.

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610 of 1986 and, therefore, it is contended that it was not open to the petitioner to re-agitate the matter in the present O.A. We have seen the order of this Tribunal in the above Contempt Petition. This Contempt Petition was removed by the petitioner regarding non-compliance of the order of this Tribunal dated 11.2.1993 in another Contempt Petition no. 81/B/T/88- It was held that on the basis of the averments made by the respondents in the Contempt Petition that the department has ^{made} ~~paid~~ several payments that were found due to him and, therefore, no further payment remained due and, therefore, the above Contempt Petition was dismissed. We find that this order has no relevance to the question raised in the present O.A. regarding the date of effect of commutation which has not been specifically adjudicated and, therefore, the contention of the learned counsel for the respondents is not tenable.

7. The main controversy involved in this case is regarding the date from which the period of one year for commutation of pension without medical certificate should be reckoned under the Provisions of the CCS Commutation Pension Rules 1981 and the relevant Rules Under CCS Pension Rules 1972. Rule 13 of the CCS (Commutation of Pension) Rules 1981 provides for the application for Commutation of Pension any time after following the date / ~~XXXXX~~ the date of employee's retirement from service but before the expiry of one year from the date of retirement and the Form I of the application under this

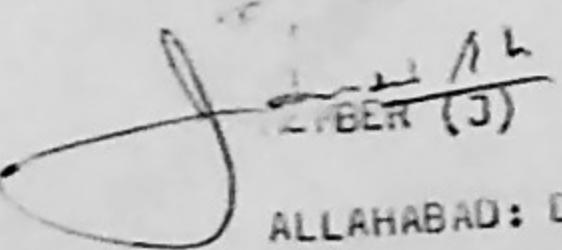
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Rule is required to be completed and delivered to the Head of the Office. In Sub Para 1(b) of the aforesaid Rule it is provided that the period of one year for the purposes of the applicants covered by clause (V) of Rule 12 of the aforesaid Rules and as referred to in this Sub Rule I shall reckon from the date of issue of order, consequent on the finalisation of departmental or judicial proceedings. From the averments made by the respondents, it is clear that the Disciplinary Authority by the order dated 7.4.1993 had quashed and dropped all the chargesheets pending against the applicant. In view of this matter, the disciplinary proceedings in consequence of any chargesheet issued earlier have to be treated as non-est ab initio and, therefore, in our opinion the proviso (b) Under Rule 13(1) of CCS (Commutation of pension) Rules 1981 for reckoning the period of one year from the date of issue of order, consequent on the finalisation of the departmental proceedings will not act as a bar for reckoning this period. In as much as, the departmental proceedings have to be treated non est ab initio and no proceedings can be said to be pending against the applicant on the date of his retirement, we find that the reasoning given in the impugned letters of the respondent no. 4 cannot be accepted, both on grounds of regularity and of equity. Accordingly, we consider it appropriate to set aside the decision contained in the impugned letters in Annexure-A-I and A-II of the application and also the impugned letters and we direct accordingly. The applicant will be entitled to have the commutation factor determined with reference to age on the next birthday reckoned from the date of his retirement. We direct the respondents

to recalculate his commutation amount on this basis and pay the amount due to the applicant within a period of three months from the date of service of a copy of this order ~~on~~ the respondents.

8. Regarding the claim of the applicant for interest on period payment of gratuity. We find that it will not be necessary to pass any specific order. In view of the averments made by the respondents that the matter has been referred to the Ministry of Communication for obtaining sanction. We, however, direct that the respondents to expedite the sanction for the payment of interest admissible under the Rules and also taking into account the delaying payment of the D.C.R.G of the applicant within a period of three months from the date of the receipt of the certified copy of the order. We, however, reject his relief prayed for payment of market rate of penal interest on the payment of transfer T.A Bill for May 1968.

9. In the conspectus of the above discussions, we allow the application to the extent indicated above and also with the directions thereon. No order as to costs.


MEMBER (A)

ALLAHABAD: DATED:

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