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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1462 OF 2006.

ALLAHABAD THIS THE 03RD DAY OF JANUARY 2008.

Hon'ble Mr. Justice Khem Karan, V.C.

Lal Chand Yadav s/o late Jagar Dev Yadav, aged about 62 years, r/o Vill & Post-Thana Rampur, Sub Post Office-Kathirawn, District Varanasi.

.....Applicant

(By Advocate: Shri O P Gupta)

Versus.

1. Union of India through Secretary, Ministry of Communication, Govt. of India, New Delhi.
2. Sub Record Officer, RMS 'A' Div. Varanasi.
3. Sr. Superintendent RMS, 'A' Division, Allahabad.

.....Respondents

(By Advocate: Shri S. Singh)

O R D E R

Heard Shri O.P. Gupta, learned counsel for the applicant and Shri S. Singh, learned counsel for the respondents.

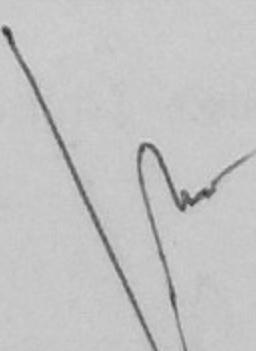
2. The applicant, Lal Chand Yadav, has prayed for quashing the order dated 11.09.2006 (Annexure 6) passed by respondent NO. 3 for recovering certain sum from him and has also prayed that respondents be directed to pay to him all retiral benefits including gratuity and pension together with interest thereon.

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3. It appears from pleadings of the parties that applicant was due to superannuate on 31/12/2004 but he continued even thereafter upto 31.12.2005. It appears that the respondents have issued orders for recovering the amount paid to the applicant in the shape of salaries and allowances for the period from 01.01.2005 to 31.12.2005. While the applicant says that the said amount cannot be recovered from him as he was not solely responsible for his continuance after 31.12.2004 and in any case, he worked during that period, so wages paid to him cannot be recovered.

4. On the other hand, respondents have tried to say that since the applicant continued working even after 31.12.2004, so he is liable to pay the amount mentioned in the impugned order. It has also been said that it was the responsibility of applicant to have relinquished the charge on 31.12.2004 itself, as provided in para 2 of Fundamental Rules 56. It has also said that O.A. is not worth admission, as applicant has not exhausted the departmental remedy of appeal. It has also said that the applicant knew that he was to retire on 31.12.2004 as he had opted for retiring on attaining the age of 60 years.

5. I have heard Shri O.P. Gupta, the learned counsel for the applicant and Shri Saumitra Singh, the learned



counsel for the respondents and have gone through the entire material on record.

6. There is no dispute that the date of retirement of applicant was 31.12.2004. There is further no dispute that he continued even thereafter upto 31.12.2005 and got the wages for the period from 1.1.2005 to 31.12.2005. The question is as to whether the respondents can recover the amount of wages, which they paid to him for the period from 1.1.2005 to 31.12.2005. Shri O.P. Gupta has argued that according to the Government of India's instruction issued under Para 35 of CCS (Pension) Rules, it was the responsibility of the Administrative Authority to ensure that the applicant retired on due date, so the applicant cannot be held responsible for continuing even after 31.12.2004. Relying on decision dated 27.7.2001 of this Tribunal in O.A. No.1471 of 1999, **Avtar Singh Vs. Manager, Mail Motor Service, Kanpur and others** and decision dated 29.3.2006 of this Tribunal in O.A No.98 of 2000, **Raja Ram Sharma Vs. Union of India and others**, Shri Gupta has further argued that since the amounts were paid as wages for the work done by him, so the same cannot be recovered.

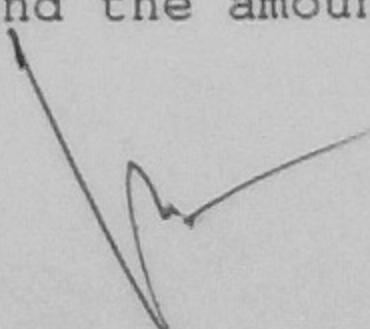
7. Shri S. Singh has not been able to cite or quote any Rule, under which any departmental remedy lies, against such recovery. So the Tribunal finds that the O.A is not bad for not exhausting departmental remedy.



(10)

8. On the other hand, Shri S. Singh has argued on the basis of para 2 of Fundamental Rule 56 that it was also the responsibility of the concerned official to have relinquished his post on the date he was to retire. Learned counsel for the respondents has said that since applicant was well aware that he was to retire on 31.12.2004 and since he continued even thereafter so the respondents are fully justified in directing the recovery of amount paid to him in the shape of wages for the period in question.

9. I have considered the respective submissions in the light of relevant Rules and the law so cited and I am of the view that order dated 11.9.2006 (Annexure No. A-6) for recovering the amount from the applicant is not legally justified. The reason is that there is no allegation, nor proof that applicant interpolated any record, so as to ensure that his continuance even after 31.12.2004. It appears, it was the responsibility of the authority concerned as well as of the applicant to have retired on due date but both of them appear to have failed to discharge their duties as per Rules. Though I am not prepared to accept that the applicant did not know that he was to retire on 31.12.2004 but the question is as to how the authorities concerned closed their eyes when according to them, formalities for retirement were underway prior to 31.12.2004. The applicant has worked from 1.12.2005 to 31.12.2005 and the amount has been paid



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to him in the shape of wages and so in view of settled legal position, the same cannot be recovered unless it is shown that the applicant practiced any fraud etc. So the order of recovery has to be quashed and respondents have to be directed to release the retiral benefits as per Rules as if the applicant retired on 31.12.2004.

10. The O.A. is accordingly disposed of and order of recovery dated 11.9.2006 (Annexure A-6) is quashed and respondents are directed to release the retiral benefits as per Rules within a period of three months from the date of receipt of copy of this order. In case any delay thereafter is made in payment of said dues, the respondents shall also pay interest at the rate of 9% per annum from 1.1.2005.

No order as to costs.

1 Jan, 08
03.1.084

Vice-Chairman

Manish/-