



CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NOVEMBER 1986~~

Retirement - 1987
O.A. No. 511
~~1986~~

1987

DATE OF DECISION 15.4.1991

Shri Naranbhai A.Panchal Petitioner

Mr.P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr.B.R.Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.M.M.Singh : Administrative Member

The Hon'ble Mr.R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Naranbhai A.Panchal,
'Rasala Bazar'
Behind Old Power House,
New ~~Dis~~sa (Banaskantha)

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: Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India,
Through:
The General Manager (W.R.)
Churchgate, Bombay.
2. Chief Engineer(Const.)
West, II Floor, Railway Station,
Ahmedabad.
3. Deputy Chief Engineer(Const.),
(W.R.), Bhuj (Kutch).

: Respondents.

(Advocate: Mr.B.R.Kyada)

JUDGMENT

O.A./511/1987

Date: 15.4.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985, for a declaration that the order of the respondents dated 14.9.1987 (A/6/1) keeping the order of applicant to retire voluntarily in abeyance as illegal, invalid and inoperative in law and for quashing and setting aside the same i.e. Annexure 6/1 and to direct the respondents to pay all the dues and retirement benefits to the applicant with interest. The applicant amended the application during the pendency of this proceeding, stating that the respondents be directed to consider the applicant having retired from services w.e.f. 30th September, 1987 and to grant him all the pensionary benefits and further be declared that once the resignation is tendered by the employee, the running of the time cannot be stopped by the department, and the applicant be deemed to have retired from service as per resignation dated 19th June, 1987 (A/3).



2. The case of the applicant is that he was serving as a deputy store keeper Grade I, in 1984, but after operation of cataract in his eyes, he applied for voluntary retirement by application dated 19th June, 1987 produced at Annexure (A/3) to the respondent No.2, that the same was accepted by the department vide letter dated 22nd July, 1987 (A/3/1) but thereafter, the respondent No.3 without giving any reasoned order, kept the application for voluntary retirement in abeyance vide order dated 14th September, 1987 (A/6/1).

3. It is mentioned in the application that after the applicant submitted his application for voluntary retirement and accepted by the respondents, the respondents with the malafide intention to harass the applicant issued two minor penalty chargesheets one of which is dated 15th August, 1987, that the applicant by his letter dated 7th September, 1987, submitted his explanation to the respondents produced at Annexure A/4. The second chargesheet issued by respondents is dated 7th September, 1987 which was about the incidents of 1981 produced at Annexure A/5. It is alleged that the respondents knew that they had no powers to hold any inquiry of the incidents of 1981, still issued the chargesheet at Annexure A/5 with malafide intention to harass the applicant that the applicant submitted his reply vide letter dated 14th September, 1987 produced at A/6. It is alleged by the applicant that there was no question of negligence on the part of the applicant in his duties as storekeeper but due to non-availability of staff and violation of store rules by the respondents, the applicant was served with baseless charges and the proceedings are pending. There were other two chargesheets given to the applicant regarding his negligence and for imposition of minor penalty and the penalties are imposed on him of withholding his increment. It is alleged that no chargesheet is issued to the applicant for any major

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penalty nor any such case is pending and therefore the order of the respondents dated 14th September, 1987 keeping the voluntary retirement of applicant in abeyance is illegal, arbitrary and unjust. The applicant made representation on 18th September, 1987 vide Annexure A/7 to reconsider his request for voluntary retirement due to difficulties in his vision: but the respondents did not care to reply to him. Then the applicant made another application dated 5th October, 1987 vide Annexure A/8 for payment of retirement dues but there was no response from the respondents.

4. The case of the applicant is that there was no disciplinary proceeding pending against him for imposing major penalties and therefore there was no reason for the respondent to keep the application for voluntary retirement in abeyance, that on expiry of 3 months time from 19th June, 1987 he should be deemed to have retired on 19th September, 1987 and the respondents had no powers to restrain the applicant retiring from service with effect from 19th September, 1987.

5. The applicant has further alleged by amendment that the respondents have given the chargesheet to the applicant dated 15th January, 1988 i.e. after retirement of the applicant that the respondents had no right to stop the running of the time of resignation. It is alleged that in the said inquiry, applicant has raised objection that the respondents had no authority to hold any inquiry against the applicant, but the inquiry officer has given the report that the charges levelled against applicant were proved, that the disciplinary authority has issued an order to recover the amount of Rs.79142.27 from the applicant as the loss has occurred due to negligence on the part of the applicant. It is alleged by the applicant that he has submitted the appeal dated 18th November, 1989 to the appellate authority which is pending but according to the applicant,

there was no authority on the part of the respondents to conduct any inquiry against the applicant after the retirement w.e.f. 30th September, 1987.

6. The respondents have filed written statement contending that the respondents had taken disciplinary action against the applicant and the penalties were imposed on the applicant in past by orders on 28.12.1984, 17.6.1985, 31.12.86, the copies of which are produced at Annexure R/1, R/2 and R/3. It is contended that due to negligence of the applicant, the huge claim amounting to about Rs.2,20,864.00 is standing and still 71 claim cases are yet to be disposed of. It is contended that to safeguard the public interest, the application of the applicant for voluntary retirement was kept in abeyance and the applicant was asked by the letter dated 27th June, 1987 Annexure R/4 to clear outstanding stocksheets etc. and after obtaining clearance and no claim certificate, his case would be considered, that thereafter he was further reminded by letter dated 11th July, 1987 Annexure R/5 and also he was sent the statement showing outstanding claims as shown in Annexure R/5A but the applicant did not reply.

7. The respondents have further contended that the applicant resumed his duties on 6th August, 1987 and thereafter he was advised by administration to clear all the liabilities before he retired from services but he avoided the same by one reason or other, and therefore, there was no other option or alternative with the respondents except to keep in abeyance the voluntary retirement which was to be given effect from 30th September, 1987 and that step was in the public interest and the interest of administration. It is contended that heavy financial liabilities were involved, therefore the applicant was not allowed to retire voluntarily. It is contended that the applicant absconded from the ~~duties~~ since 1st September, 1987 and he was immediately asked by letter dated 5th October, 1987 Annexure R/7 to resume duties,

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but the applicant did not pay any heed to it. Another letter dated 5th October, 1987 Annexure R/7 was sent to the applicant to resume duty followed by the letter dated 10th October, 1987 Annexure R/8. It is contended that his application for voluntary retirement was kept in abeyance for above reasons as he was involved in financial liabilities and was absconding. It is contended that the chargesheet which was issued to the applicant was on 25th August, 1987 and not on 15th August, 1987 as alleged by the applicant. The respondents have, at the time of hearing of this application, produced the letter dated 20th February, 1991 from respondent No.3 addressed to their learned advocate Mr. B.R. Kyada in which it is mentioned that the retirement benefits of the applicant are already calculated and admissible pension has been released to the applicant. It is also mentioned in this letter that DAR action has been initiated against applicant and is finalised on 29th September, 1989 whereby the applicant has been held responsible for the loss sustained by the railway to the tune of Rs. 79142.27 to be recovered from Retirement dues and therefore gratuity and other payments due on, account of retirement are to be adjusted against the said loss. It is mentioned that the applicant has accepted the same as he did not make any appeal or representation against penalty awarded to him.

8. The applicant has filed rejoinder controverting the contentions taken by the respondents in written statement. It is contended by the applicant in this rejoinder that he was not absconding as alleged, that he was not responsible for store articles and the penalties imposed upon him were arbitrary. The applicant has denied that he has committed any offence of misappropriation.

9. The learned advocate for the applicant submitted that once the applicant had by application dated 19th June, 1987 applied for voluntary retirement and the

respondents have given reply on July 22nd 1987 allowing the applicant to voluntary retire with effect from 30th September, 1987, there was no authority vested with respondents to keep the application of the applicant for voluntary retirement in abeyance by letter of the respondents dated 14th September, 1987 to the applicant. Learned advocate for the applicant submitted that once the government servant exercises his rights of voluntary retirement from service by giving three months notice in writing, to the Government, the government is bound to allow him to retire as prayed in notice on expiry of the period of notice. Learned advocate for the applicant in support of his above submission relied on the decision in Dinesh Chandra Sangma vs. State of Assam and others 1978 S.C.C (L & S) Page-7 in which it is held that in view of F.R.56(c) there is corresponding right of the Government servant to voluntarily retire from service by giving the Government three months' notice in writing. It is held in this decision by Hon'ble Supreme Court that there is no question of acceptance of the request for voluntary retirement by the Government when the Government Servant exercises his right under F.R. 56(c). Now so far as the Railway Establishment Rules are concerned, on page 341 of the book "Railway Establishment Rules and Labour Laws" by B.S.Mainee (Edition 1982-83) there is note 7 on the topic of Voluntary Retirement which reads as under:

"(7) Notice of retirement should be accepted by the competent authority in all cases except:-

(a) In cases where disciplinary proceedings are pending or contemplated for imposing major penalty and the disciplinary authority is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case or (b) in cases in which prosecution is contemplated or may have been launched in the court of law".

Learned advocate

/ submitted that no where in the letter dated 14.9.1987

re re (A/6/1), it is mentioned that either disciplinary proceeding was pending or contemplated against applicant for imposing major penalty and hence the action of respondent in keeping the voluntary retirement of applicant in abeyance was illegal.

Learned advocate for respondents submitted that the

application for voluntary retirement dated 22.7.1987 was accepted on the five conditions mentioned in it. Even reading that letter, it is nowhere found that any disciplinary action was pending or contemplated against applicant for major penalty. Therefore, in view of the decision cited by learned advocate for the applicant and in any case in absence of the intimation by respondents to the applicant within three months from the receipt of application for voluntary retirement that the disciplinary proceeding was pending or was contemplated against the applicant for major penalty, the action of respondents in keeping the voluntary retirement of applicant in abeyance was illegal. The letter Annexure R/A dated 30.11.1988 that the applicant attaining superannuation on 30.11.1988 stands retired from railway service with effect from 30.11.1988 and the mention of DAR proceeding for major penalty pending against applicant in that letter cannot have any legal effect on the voluntary retirement of applicant on 30.9.1987 because there was no such intimation of major penalty action to the applicant before 30.9.1987. Moreover letter of applicant dated 4.1.1989 produced at R/G by respondents in which applicant stated about his retirement from 30.11.1988 also will not change the legal position as this was written in reference to his retirement benefits. Thus having regard to the above facts, we agree with the submission of learned advocate for the applicant that the applicant should be considered as retired from service with effect from 30.9.87 and not with effect from the date of superannuation i.e. 30.11.1988 and his pensionary benefits should be calculated on that basis, and the impugned order dated 14.9.1987 is quashed. However this deemed date of 30.9.87 will not have any effect on the authority which initiated DAR action against applicant subsequent to 30.9.1987.

10. Next it was submitted by learned advocate for the applicant that the respondents should be directed to pay all dues and retirement benefits to the applicant with interest. The learned advocate for the applicant, at the time of hearing under instructions of his client, submitted that the pension of the applicant is fixed and the applicant is getting pension, that the applicant has received his provident fund amount from the respondent, but the other benefits namely gratuity, leave encashment salary and amount of commutation of pension are not paid to him on the ground that penalty is awarded to the applicant in DAR action against him for loss caused to the Railway to the tune of Rs-79,142-27. Learned advocate for respondents submitted that as per letter dated 20.2.1991 addressed to him by Executive Engineer(Const.) Western Railway, Bhuj, applicant has accepted the said penalty as he has not filed appeal or representation against the penalty awarded to him on finalisation of DAR action on 29.9.89. On the other hand, the applicant in his amendment application has denied that the applicant has not submitted appeal against the decision of the disciplinary authority, and has stated that the appeal was submitted on 18.11.1989 to the appellate authority which is pending. Be what it may, but the word 'pension' includes, gratuity as per Article 2308 of Railway Establishment Code, and, therefore, the contention that gratuity could not be withheld cannot be sustained and the same will apply for encashment leave salary and commutation of pension. Learned advocate for the respondents submitted that these amounts namely gratuity, leave encashment salary and commutation of pension will be adjusted against the loss of Rs.79,142-27 caused to Railway as per penalty imposed on the applicant. At present we do not go into the merits of that case but it is sufficient to mention at this stage that the respondents are entitled to withhold the above amounts from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against applicant for the pecuniary loss

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loss of Rs.79,142-27.

10. The result is that the application is partly allowed. and impugned order dated 14.9.1987 of respondents Annexure A/7 is quashed. The respondents are directed to consider the applicant as voluntarily retired from service with effect from 30.9.1987 and his pensionary benefits be fixed and calculated accordingly. The rest of the prayers are rejected. No orders as to costs. Application is disposed of.

Renu
(R.C.Bhatt)
Judicial Member

M.M.S
(M.M.Singh)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A. No. 42 OF 1991 in
O.A. No. 511 OF 1987
Case No.

DATE OF DECISION 10.12.1991

Shri Naranbhai A.Panchal Petitioner

Mr.P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

B.R.Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.M.M.Singh : Administrative Member

The Hon'ble Mr.R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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Shri Naranbhai A.Panchal,
'Rasala Bazar',
Behind Old Power House,
New Dissa, (Banaskantha).

...Applicant.

Versus

1. Union of India
Through :
The General Manager (W.R.),
Churchgate, Bombay.
2. Chief Engineer (Const.),
West, II Floor,
Railway Station,
Ahmedabad.
3. Deputy Chief Engineer, (Const.),
(W.R.),
Bhuj, (Kutch).

...Respondents.

Decided by Circulation

ORDER

R.A. No. 42 of 1991

in

O.A. No. 511 of 1987

Date : 10.12.1991

Per : Hon'ble Mr. R.C.Bhatt : Judicial Member

This Review Application is put by the Office for disposal by circulation. The original applicant has filed this Review Application against the decision given by this Bench in O.A./511/87, by which the applicant's application was partly allowed. The impugned order dated 14th Sept. 1987, of respondents, at Annexure-A/7, by which the order of the applicant to retire voluntarily was kept in abeyance was quashed and the respondents were directed

to consider the applicant as voluntarily retired from service w.e.f. 30th Sept. 1987, and were also directed that the applicant's pensionary benefits be fixed and calculated accordingly.

2. The applicant has filed this application for review of the observations made in para-10 of the Judgment. In para-10, this Bench has observed that the respondents were entitled to ^{withhold} the amounts of gratuity, leave encashment and commutation of pension from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against applicant for the pecuniary loss of Rs.79,142.27/-.. The applicant has alleged in the Review Application that in his original application he has specifically mentioned that the applicant was not making any comments with regard to the so-called allegation of loss of Rs.79,142.27/-, to the administration as it is not the issue to be decided before this Hon'ble Tribunal. It is alleged that the applicant had retired from service w.e.f. 30th Sept. 1987, i.e., the date prior to the issuance of any chargesheet with regard to the amount which was to be adjusted against the pensionary benefits of the applicant, and the said observation and the direction were not tenable at law and there was no necessity to make such observation and to give liberty to the administration by this Tribunal. At this stage it is important to note that the applicant had by amendment application dated 5th March, 1991, had prayed as under :

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VII (A) "The Hon'ble Tribunal be pleased to direct the respondents to consider the applicant as retired from service w.e.f. 30.9.1987, and grant him all the pensionary benefits and further be pleased to declare that once the resignation is tendered by the employee, the running of the time cannot be stopped by the department and therefore, the applicant deemed to be retired from services as per his resignation dated 19.6.1987."

This amendment was allowed. Thereafter, on merits, the application was partly allowed as observed earlier. So far the prayer for granting the applicant all the pensionary benefits was concerned, this Tribunal after hearing learned advocates and referring to Article 2308, of the Railway Establishment Code, and also considering the respondents' letter dated 20th Feb.1991, produced at the time of hearing, made the observations at para 10 of the Judgment because it was mentioned in the letter dated 30th February, 1991, that DAR action had been initiated against the applicant and was finalised on 29th September, 1989, whereby the applicant has been held responsible for the loss sustained by the railway to the tune of Rs.79,142.27/-, to be recovered from Retirement dues and therefore, gratuity and other payments due on, account of retirement were to be adjusted against the said loss. It was also mentioned in that letter that the applicant had accepted the same as he did not make any appeal or representation against penalty awarded to him.

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The applicant had controverted in his rejoinder by stating that he had filed an appeal which was not decided. Therefore, this Tribunal had observed that the respondents will be entitled to withhold the amount of gratuity, encashment of leave salary, and commutation of pension, as per para-10, of the judgment. There is no substance in the Review Application that the said observation in para-10, is not tenable at law. There is no substance in the Review Application that the said observation requires to be removed. The applicant has vaguely averred in the application that these observation is contrary to the judgment of the Hon'ble Supreme Court as well as the provisions of the Railway Establishment Manual. It is also alleged in the Review Application that the sum of the amount of Rs.79,142.27/-, to be adjusted against the pensionary benefits of the applicant is ex facie in flagrant violation of the principle of natural justice, fair play because the applicant has not argued that point nor legal position was pointed out to the Hon'ble Tribunal nor it was the prayer of the respondents and in the petition of the applicant and therefore, no prayer can be granted in favour of the administration.

It is important to note that the applicant had by amendment sought the prayer to grant him all the pensionary benefits and hence on the strength of the evidence before this Tribunal and as per the judgment, the observation was made in para-10, "At present we do not go into the merits of that case but it is sufficient to mention at this stage that the respondents are entitled to withhold the above amounts from the retirement benefits of the applicant subject to the final decision of the departmental proceedings against the



applicant for the pecuniary loss of Rs. 79,142.27/-." The averments made in the Review Application, that the observations of the Tribunal on the said issue was not warranted and is in violation of the principles of natural justice, has no substance. None of the averments of this Review Application attracts order 47 Rule (1) of Civil Procedure Code. The result is that the Review Application deserves to be dismissed.

3. Before we part with this file, we are constrained to observe that though this Review Application was presented on 14th May, 1991, it is put for order by circulation as late as on 5th December, 1991. The Office, in our opinion is responsible for this undue and unexplained delay in putting this matter for orders. The Office note dated 3rd July, 1991, and 5th July, 1991, show that the copy of the Judgment of second set was not filed and there was no affidavit filed. Thereafter the Office endorsement dated 15th November, 1991, shows, "the learned advocate concerned has removed office objection to-day. Therefore, we may fix this RA for order". It is very strange that after this application was filed on 14th May, 1991, the objections were noted by the Office as late as on 3rd July, 1991 and 5th July, 1991. It is also not understandable as to why this application was not attended to by the Office, even thereafter for long time because the record shows that the applicant filed affidavit as on 10th September, 1991. Even thereafter the matter was not put for order. Such a delay by the Office in our opinion can hardly be excused. The Office is directed to see that the Review Application are attended to and put for order at the earliest and no such incident takes place in future. The



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Deputy Registrar (J), also to bring to the notice of his Staff attending the work of scrutinising Review Application and preparing Board that such laxity like the present one shall not be tolerated in future.

The Review Application is dismissed.

resd

(R.C. Bhatt)
Judicial Member

M.M. Singh
(M.M. Singh) 10.12.91
Administrative Member

AIT