

Retirement - benefit -  
(Jud.)

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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
~~XXXXXXXXXXXX~~

O.A. No. 242 OF 1988  
~~XXXXXXXXXX~~

DATE OF DECISION 11-4-1991.

Narayan Shankar Patel, Petitioner

Mr. G.M. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

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? Yes
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.

Narayan Shankar Patel,  
Aged about 49 years,  
occupation nil.  
Residing at village  
Chamunda Mata's Temple,  
Mukteswar Colony,  
Post. Vasai, Tal. Kharalu,  
Dist: Mehsana.

..... Applicant.

(Advocate: Mr. G.M. Shah)

Versus.

- 1) Union of India  
Ministry of Railway,  
New Delhi.
- 2) General Manager  
Western Railway,  
Bombay.
- 3) Divisional Railway Manager,  
Western Railway,  
Rajkot.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A. 242 OF 1988

Date: 11-4-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant ex-employee of the Western Railway seeks direction to the respondents to give him pension and provident fund.

2. The averments in the application consist of removal of the applicant from service by an order dated 26.12.78, the order questioned by filing a Civil Suit No. 201/80 in a Court, the Civil Suit resulting in an order by compromise, the compromise consisting of applicant to resume duty on 5.1.1984 and ask for voluntary retirement from the next date, namely, 6.1.1984, and allegation of nonpayment to the

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applicant of pension and provident fund arising from the Court's order.

3. The application is short of pleadings regarding number of years of service put in by the applicant and pension rules applicable to him, whether he became eligible for pension in accordance with the applicable rules and what provident fund rules, contributory or otherwise, were applicable to the applicant. Copy of the order of the Court in the above Civil Suit has also not been annexed. However, contents of Divisional Office Rajkot Memorandum dated 29.12.83 give Railway's version of the Court's order. This memorandum is reproduced below:

"No.E/Court/Mech/EL.

Divisional Office  
Rajkot:29-12-83.

Memorandum.

Sub:- Civil Suit No.201/80 filed by Shri Narayan Shanker Patel, Cleaner, loco MSH in the court of Civil Judge(Senior divn)Mehsana.

.....

Shri Narayan Shanker, Cleaner, loco MSH was taken up under DARand was removed from service from 26.12.78 by AME MSH under NIP No.M/1/6/1 of 26.12.78 and as per memorandum No.M/1/5/1 dt. 26.12.78.

Against the above order, he had filed a civil suit No.201/80 in the court of Civil Judge (S.D) Mehsana.

While the court case was in process the employee (Shri Narayan Shanker) approached the Hon'ble court through his advocate for compromise terms under his application dt.14/20.9.82 and the case was referred to the Headquarters office who vide their letter No.E/DAR/308/44/8/198 dt. 7.6.83 have agreed to accept the settlement offered by the employee.

In view of the above, the order for removal is set aside and the suit is disposed as compromised and as per the consent terms accepted in the court and order of the court, Shri Narayan Shanker is allowed to be taken on duty only for

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one day i.e. he should be taken on duty as a Cleaner under Loco Foreman MSH on 5.1.84 only and on the next date i.e. on 6.1.84 he will tender his voluntary retirement application and the same should at once be forwarded to this office. If however the employee fails to submit Voluntary retirement application on the next day of joining duty, then, he will be deemed to have voluntarily retired after one month from the date of his joining duty.

He will not be eligible for any wages during the intervening period from date of removal to the date of joining duty i.e., from 26.12.78 to 4.1.84.

Sd/-  
for Sr.DME(L) RJT.  
t 2612

Copy to-

- 1) The LF MSH (in duplicate) for information & n/action;
- 2) Sr.DAO RJT (3) Supdt EPB-Mech (4) S-EM five copies for ss/leave clerks; memo file, p.file);
- 5) Shri Narayan Shanker (ex-cleaner) /o Shri GM Shah Advocate Vanikar club Rajmahal road Mehsana for information & presenting himself to LF MSH for duty on 5.1.84 only and acknowledge.
- 6) Shri M N Udani Rly Advocate RJT w.e.to his letter dt. 3.12.83(2 spare copies enclosed to produce in court)
- 7) The LME MSH w.e.to his No.M/1/5/1 dt. 9.10.79.
- 8) File No.E, 308/M/75/XB/24."

The above version gives rise to the reasonable inference that the real cause of action for the applicant arises from the respondents' failure to implement the order of Civil Judge (Senior Division) Mehsana and the applicant seeks the indulgence of the Tribunal to direct the respondents to implement it. The question, therefore, is whether this Tribunal is vested with powers in that regard.

3. The Administrative Tribunals Act, 1985 contains provisions regarding powers of the Tribunal to have its orders enforced. Section 27 of the Act reads as follows:

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"Execution of orders of a Tribunal, - Subject to the other provisions of this Act and the rules, (the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order) shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section(2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

The Tribunal is not vested with any powers to have orders of a Court other than itself implemented. In view of this, the Tribunal cannot issue the prayed directions to the respondents. For that, the applicant has to take necessary steps in the proper legal forum if so advised. This Tribunal is not that forum.

4. In view of the above, the application is liable to be dismissed. We hereby do so without any order as to costs.

5. Before we part with this case, we should take note of learned counsel for the respondents' objection at the final hearing that the respondents have not been served <sup>and</sup> / the final hearing fixed without any notice to them. Suffice it to say that the objection is not <sup>in</sup>substantiated by the record of the Tribunal in this regard. By this office Notice after admission dated 19.5.1988 parties, including respondents, were communicated this Bench order dated 19.5.88 reproduced below:

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"Heard learned advocate Mr.G.M.Shah for the applicant. Mr. B.R.Kyada for the respondents absent, for which he has filed a leave note. The application is admitted. Issue notice on the respondents returnable within 45 days from the date of this order. The petitioner is also permitted to file rejoinder if any within 15 days thereafter. The matter may be placed before the Registrar on 18-7-1988."

On receiving notice, the Railway Ministry (Railway Board) informed the Registrar of this Tribunal vide their number 88.LL.3.9(335) dated 30.5.88 that the Ministry forwarded the notice to the General Manager, Western Railway for necessary action. Copy of this reference was marked by the Ministry to the General Manager. However, the General Manager who stood impleaded as respondent and to whom also the said notice was directly forwarded by the Registry as also to ~~the~~ Divisional Railway Manager, Rajkot, chose not to file a reply.

6. The Registry is directed to forward a copy of this order to the Secretary, Union Ministry of Railways (Railway Board) and to the Secretary, Union Ministry of Personnel and Public Grievances and Pensions, Govt. of India. The Union of India may perhaps like to look into the applicant's case to do the needful to redress his any grievance on account of the alleged failure of the Railway Administration in implementing the order of the Court of Civil Judge (S.D.) Mehsana in Civil Suit No. 201/80.

*R. C. Bhatt*  
(R.C. Bhatt)  
Judicial Member

*M. M. Singh*  
(M.M. Singh)  
Administrative Member.