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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~XX~~

508 OF 1988

DATE OF DECISION 30.04.1992.

Habibkhan Bachankhan Malik Petitioner

Shri D.P.Padhy Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

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?

Habibkhan Bachankhan Malik,
18, Mayurkunj Housing
Society, Near Sonal Cinema,
Vejalpur Road,
Ahmedabad - 380 055.

...Applicant.

(Advocate : Mr.D.P.Padhye)

Versus

1. The General Manager(G.M.),
Western Railway,
Churchgate,
Bombay - 400 020.

2. The Divisional Rail Manager
(D.R.M. Western Railway,
Baroda Division,
Pratapnagar,
Vadodara - 390004.

3. The Senior Divisional Account
Officer, (Sr.D.A.),
Western Railway,
Baroda Division,
Pratapnagar,
Vadodara - 390 004.

...Respondents.

(Advocate : Mr.N.S.Shevde)

O R A L J U D G M E N T

O.A.NO. 508 OF 1988

Date : 30.04.1992

Per : Hon'ble Mr.R.C.Bhatt : Member (J)

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This application under Section-19 of the Administrative Tribunals Act,1985, has been filed by the retired employee of the Railway Department seeking the relief that the DCRG amount of Rs.17364.55, as mentioned in para 6 (17), of the application be directed to be paid to the applicant, and the deposit amount kept by the respondents while arranging the payment of DCRG, also may be refunded to the applicant with interest.

2. The case of the applicant as pleaded in the application is that he ~~retired~~ on 31st May, 1983. The case of the applicant is that he received a letter dated 1st July, 1983, Annexure-A/1, issued by the Sr.DAO BRC to the AAO Pension which showed that his gratuity amount was Rs.17572.50 plus some amount kept as deposit by the Railway Administration. According to the applicant, this amount he did not receive till July, 1983, and learnt that some wrong recoveries were to be made from his dues and the entire amount of Rs.17572.50, were not being paid to him. The applicant then made representation, dated 10th August, 1983, vide Annexure-A/2. Learned advocate for the applicant submitted that there was no debt against the applicant and the debits enlisted against the applicant were wrongly raised. He also submitted that till the date of the retirement of the applicant and till the order Annexure-A/1, there was no existence of any debt or any recovery from the applicant. The applicant again made representation vide Annexure-A/3, dated 4th July, 1986, and also moved through a Trade Union, vide Annexure-A/5. The case of the applicant is that in the beginning, in a letter dated 1st July, 1983, Vide Annexure-A/1, the Sr.DAO ordered the payment of Rs.17572.50, after deposit deduction, and then as per order at Annexure-A/6, dated 21st February, 1985, asked the Sr.DAO to deduct some debits of Rs.8278.20, and pay the remaining amount by cheque to the party, and finally DRM (E) BRC vide his letter dated 28th January, 1988, vide Annexure-A/7.

deducted the entire amount of DCRG and refused the payment made. The learned advocate for the applicant submitted that the deduction shown in the letter dated 28th August, 1988, vide Annexure-A/7, are the unauthorised deductions and they are made without following any procedure. Learned advocate for the applicant submitted that one of the item of the recovery is of Rs.9809.30, said to be towards fraud recovery as mentioned in Annexure-A/7. The applicant ^{alleged} does not know what is this/fraud. He submitted that there is absolutely no legal ground to withhold this amount of DCRG.

3. The respondents have resisted the application by filing the reply. The respondents in para 3 of the reply have asserted that the payment of gratuity was withheld. It is also contended that the applicant's gratuity and commutation was not paid at the time of retirement as the applicant had not vacated the Railway Quarter, and there is a vigilance case under investigation against him. The applicant vacated the Railway Quarter on 15th August, 1983, and the gratuity amount payable was Rs.17,572.50, as advised by the Accounts Department. The respondents have denied that there is no debit against the applicant. The respondents learned advocate contended that the debits were recoverable from the applicant and there was a vigilance case against the respondents. The learned advocate for the respondents submitted that the applicant was requested to remit an amount of Rs.35,339.70, being outstanding against him towards fraud through Station's earnings. The respondents have relied on

para 323 of Manual of Railway Pension Rules, 1950.

It is contended that the applicant has also given his written consent to recover the outstanding dues from the pension and the DCRG, vide Annexure-R.2.

Examining Annexure-R/2, carefully it is clear that the applicant had stated therein that the outstanding Railway dues and any other over payment and pension and DCRG be deducted from the monthly pension and from DCRG payable. Learned advocate for the respondents submitted that as per Annexure-R/1, the case was registered against the applicant by Vigilance Department and the allegations are under investigations and as per Annexure-R/1, the DCRG settlement is held in abeyance till the final decision.

4. The crucial question which arise in this application is that when the applicant has retired as back as on 31st May, 1983, and when the respondents are not in a position to show as to whether the allegations of fraud, etc., which were under investigation and the case which was Registered against the applicant has proceeded or not proceeded or what is the factual position in that matter. There is also ^{vigilance} no date to know when the case was registered against the applicant. No doubt the reliance was placed by the respondents heavily on the concerned letter Annexure-R/2, of the applicant and the paragraph 323, of the Railway Manual Pension Rules-1950. There is a decision in case of A.P.Sharma, Versus Union of India and Ors. in O.A./906/89, decided by the Division Bench of Central Administrative Tribunal, Jodhpur, decided very recently on

21st January, 1992, in which case a charge sheet for major penalty was issued against the employee before his retirement and again such charge-sheet after his retirement and he was not paid DCRG on the ground of the proceeding against him. The reliance in that case was placed by the learned advocate for the applicant on the decision of the Principal Bench of the Central Administrative Tribunal, in (1990) 13 ATC 890, R.D.Kathuria Versus Union of India, in which it was held that there is a presupposition in the rules, which permit government ~~not~~ to pay gratuity or allow the officer concerned the commuted portion of his provisional pension during the pendency of criminal proceedings, that the proceedings pending against the officer concerned would conclude within a reasonable period. The rules do not envisage a case where there may be prolonged litigation for years before reaching the final outcome of the criminal case. In the interest of justice, equity and fair play, in that case, the respondents were directed to pay to the applicant at least one half of the gratuity normally payable to the applicant within a period of two months from the date of his retirement and also to allow the applicant to compute at least one half of one third of the pension which he was entitled to commute subject to execution of bonds. This judgment was followed by the Jodhpur Bench of Central Administrative Tribunal, in L.L.Mathur Versus Union of India, O.A.NO. 394/87, decided on 30th May, 1991. In the instant case, the employee has retired in 1983, and till today it is not possible

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for the respondents to say as to whether the Vigilance case -- registered against him has been completed or not completed or what is the stage at which it is pending. In these circumstances the decision cited above will be applicable and should not there is no reason why the respondents/ be directed to pay at least one half of the amount of Rs.17,364.55, i.e., about Rs.8,682/- subject to executing of bond of indemnity and also further directing the respondents to hear the applicant on his representation on entire recovery. Hence the following order :

ORDER

"The application is partly allowed. The respondents are directed to pay to the applicant Rs.8,682/- within a period of three months of the date of receipt of this order, subject to his executing a bond of indemnity with two sureties to the effect that he will refund the amount to the Government in case the DCRG payable to him as a result of the final order on the Vigilance case and the enquiry ~~Z~~against him. The respondents are directed to hear the applicant on his representation about the entire amount which is sought to be deducted. The application is disposed of accordingly. No order as to costs."

Rebel
(R.C.Bhatt)
Member (J)