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Proceedings

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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O.A. No. 454 OF 1990.
~~Tax No.~~

DATE OF DECISION : 21-7-1992.

Amrishkumar Jayantilal Jani, Petitioner

Mr. M.M. Xavier, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

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 ? ✕

Amrishkumar Jayantilal Jani
Retired Senior Clerk
Under Loco Foreman
Bhavnagar Para (W.Rly.)

Address:
Gangavaria Street,
Devdas Patel Road,
Kanbivad, Bhavnagar.

..... Applicant.

(Advocate: Mr.M.M. Xavier)

Versus.

- 1) The Union of India,
Owning & representing
Western Railway through
its General Manager,
Churchgate, Bombay.
- 2) The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.
- 3) The Divisional Mechanical Engineer,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.

..... Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A.No. 454 OF 1990

Date: 21.7.1992.

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

Heard Mr. M.M.Xavier, learned advocate for the applicant and Mr. R.M.Vin, learned advocate for the respondents.

2. This application is filed by the applicant, since retired, seeking the relief from the respondents-railway that the respondents be directed to release the amount of death-cum-retirement dues to the applicant along with 13% interest and also for a declaration that the departmental proceedings be quashed. The learned advocate for the applicant, at the time of hearing

only
pressed/the relief for payment of the gratuity amount
which is being withheld by the respondents. The
respondents have filed reply resisting the application.

3. The main ground of attack at the time of hearing was that the respondents started enquiry on 31st January, 1986 and till today the enquiry has not been completed by the respondents. The only point which is urged before us by the learned advocate for the applicant is that merely because an enquiry is pending against the applicant, he should not be denied the benefit of the gratuity because the applicant has already retired on 31st January, 1986. The learned advocate for the applicant submitted that there is an unusual delay on the part of the respondents in completing the enquiry, and therefore, in the interest of justice, equity and fairplay also, he is entitled to the amount of gratuity even if the disciplinary proceedings is pending.

4. Mr. R.M. Vin, learned advocate for the respondents submitted that the respondents have not paid gratuity amount to the applicant because the disciplinary proceedings is pending against the applicant and till that proceeding is over, the applicant is not entitled to the amount of gratuity.

5. We have heard the learned advocates for both the parties and the only point to be considered at
is
this stage/whether the applicant should be paid

whole or any part of the gratuity amount pending with the disciplinary proceedings. It is not in dispute that the enquiry is still pending. It is not in dispute that the applicant has retired since five years. The learned advocate for the applicant, therefore, rightly submitted ^{that} /under these circumstances the respondents ^{should} /pay some amount of gratuity to the applicant. We are convinced on the point that as the departmental proceedings is pending since more than six years, the applicant cannot be denied of the benefit of any gratuity. In the interest of justice, equity and fairplay, a Government servant, who is facing the departmental proceeding, but which is not completed after six years, would be entitled at least to a part of gratuity. There is a decision in Jeet Singh Virdi V/s. Union of India, ATR 1992(1) CAT 665, in which case, the Government servant had been implicated in a criminal case relating to ^{the} /alleged suicide of his daughter-in-law and during the pendency of that criminal case the Tribunal passed an order ^{for part} / payment of gratuity and leave encashment on his executing a bond of indemnity. In this case, the departmental proceedings is not over even after six years and therefore, this is a fit case in which the applicant should be paid at least 50% of the gratuity amount on his executing bond of indemnity before the competent authority of the respondents subject to the final adjustment on the result of the enquiry proceedings.

Hence the following order :

ORDER

The application is partly allowed. The respondents are directed to release 50% of the gratuity of the applicant during the pendency of this departmental proceedings subject to his executing bond of indemnity. The respondents would be entitled to adjust the amount of gratuity subject to the result of the disciplinary proceedings, meaning thereby that if there is any order of recovery then the applicant ^{shall refund} / the amount to that extent. The applicant should execute bond of indemnity to the satisfaction of the competent authority within one month from today and on execution of that bond, the respondents should release the 50% amount of gratuity within one month thereafter. The applicant is also at liberty to file additional reply before the disciplinary ^{& authority} proceedings within 15 days from today and the disciplinary authority ^{& shall} ~~be~~ dispose of the enquiry proceedings within four months thereafter, in view of the fact that there is much delay in this matter. The application is disposed of with no orders as to costs.

R.C. Bhatt

(R.C.Bhatt)
Member(J)

N.V. Krishnan
21.7.92

(N.V.Krishnan)
Vice Chairman

vtc.