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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 169/91
T.A.NO.

DATE OF DECISION 25.6.1998

Govindlal Mavjibhai Parmar

Petitioner

Mr.I.M.Pandya

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mrs.P.Safya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble Mr. P.C.Kannan : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lerdships wish to see the fair copy of the Judgment ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- No

(6)

Govindlal Mavjibhai Parmar
235, Samratnagar,
Opp.Madhusudan Dhyan Kendra,
Nr.Indira Bridge, Hansol,
Ahmedabad-382 476

: Applicant

(Advocate : I.M.Pandya)

Versus

1. Union of India,
Notice to be served on
the Director General (STN)
Department of Telecommunications,
Parliament Street,
New Delhi-110 001.

2. The General Manager,
Telecom District Ahmedabad,
Rammivas Building-2,
Khanpur, Ahmedabad.

: Respondents

(Advocate: Mrs.P.Safaya)

O R D E R

O.A.169/91

Date: 25.6.98

Per: Hon'ble Mr.V.Radhakrishnan

: Member(A)

The applicant who was working as Senior Section Supervisor was retired prematurely on 31.5.1988 under Rule 48 of the Central Civil Services (Pension) Rules, 1972. The applicant filed an appeal against the order. Consequently, on consideration of the appeal he was reinstated vide letter dated 31.3.1989 subject to the condition that the intervening period between

(X)

premature retirement and reinstatement will be treated as extraordinary leave. The applicant represented that the intervening period should be treated as duty but his request was rejected. The applicant retired on normal superannuation on 31.1.1991. While the applicant has prayed many reliefs in the O.A. at the time of final hearing Mr.Pandya learned counsel for the applicant confined himself the only one relief i.e. that the applicant should be allowed the benefit of increment for the period from 31.5.1988 to 2.4.1989 in order to enable him to get higher pension.

Mrs.Safaya, learned counsel for the respondents however, states that the applicant had given an undertaking and consent for treating the intervening period as extraordinary leave. This contention was refuted by Mr.Pandya who is stated that the applicant had not given such an undertaking. The respondents also not attached any copy of undertaking alongwith the reply.

2. The Rule in respect of drawal increments is given in F.R. 26 (b) (ii) that "All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of

16

(8)

India:

* Provided that the President may, in any case, in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be counted for increments under clause (i) or (ii)."

3. It will be seen from the above, all extraordinary leave except on medical certificate shall not count for increment except where the extraordinary leave was taken" for any cause beyond the Government servant's control." In this case, it will be observed that the applicant was reinstated after he had filed an appeal against his compulsory retirement and the question that is to be considered is as to whether the events leading to his compulsory retirement and consequent reinstatement could be considered beyond his control. On going through the facts and circumstances of the case, we feel that extraordinary leave was given to the Govt. servant to regularise the period of break between the date he was compulsory retired and the date he was reinstated. By no stretch of imagination, we can say that the extraordinary leave was for any cause within the control of Govt. servant, and we are of the opinion that this is fit case

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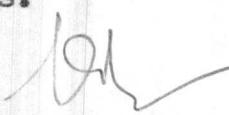
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to be brought under the purview of proviso to Sub-clause (ii) to F.R.26 (b) because the extraordinary leave taken by the applicant was taken for a cause beyond his control. Accordingly, we direct the respondents to treat this period of extraordinary leave of 10 months and 2 days from 31.5.1988 to 2.4.1989 as countable for increment on notional basis and accordingly refix of his pay after allowing the increment for the said period on the date of his retirement and accordingly refix his pension on the basis of his refixed pay. The applicant shall also be entitled for arrears of gratuity pension from the date of his retirement on the revised pension. The above exercise shall be carried out by the respondents as early as possible in any case not later than three months from the date of receipt of a copy of this order.

With the above observations and directions,
O.A. stands disposed of. No costs.


(P.C. Kannan)

Member (J)


(V. Radhakrishnan)

Member (A)