

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No.
~~TAxxNox~~

448 of 1992.

DATE OF DECISION

21-12-94

Shri Vashram Jasa Petitioner

Shri M.M.Xavier Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Shri R.M.Vin Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. Dr.R.K.Saxena : Member (J)

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 Vashram Jasa,
Ex-point Jamadar,
Sihor Junction,
Western Railway,
Bhavnagar Division,
BHAVNAGAR PARA.

Residential Address :

Plot No: 10,
Near Railway Station,
SIHOR (Dist.Bhavnagar)

.....Applicant.

(Advocate : Mr.M.M.Xavier)

Versus

1. Union of India,
Representing Western Railway,
through its General Manager,
Western Railway,
Churchgate,
Bombay-20.

2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para - 3.

3. The Divisional Accounts Officer,
Western Railway,
Bhavnagar Division,
Bhavnagar Para - 3.

.....Respondents.

(Advocate : Mr.R.M.Vin)

JUDGMENT

O.A.NO. 448 OF 1992.

Date: 21-12-94.

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

Heard Mr.M.M.Xavier and Mr.R.M.Vin learned
advocates for the applicant and the respondents
respectively.


2. The applicant was working as Points Jamadar
at Sihor Junction, Bhavnagar District. He joined Bhavnagar

Railway on 8th August, 1946. He filed Special Civil Application No.2768/83 in the High Court of Gujarat for the relief that his date of birth was wrongly recorded in the Railway Register. On the basis of the interim relief granted by the High Court, he continued in service until 2.7.1988. The Special Civil Application was transferred to this Tribunal as T.A./275/86, which was decided by this Tribunal on 24.6.1988. The directions that the applicant's representation dated 12.11.1972, should be decided by the Competent Authority. Thereafter, the C.P.O. passed a speaking order dated 15.12.1988, rejecting the application. The applicant then filed O.A./139/89, challenging the order of the C.P.O. This application was however, dismissed by this Tribunal on 13.2.1992.

3. The contention of the applicant is that as he retired on 2.7.1988, his retirement benefits, the gratuity and pension should be based on the pay and allowances drawn by him on that date. On the other hand, his retirement benefits have been worked out on the basis of pay and allowances that were drawn by him on 31.7.1983, which is the date of retirement as per the records maintained by the respondents. The respondents have withheld an amount of Rs.8049/- from the amount of gratuity paid to him for recovery of pay and allowances that were paid to him after his normal date of retirement. It is the contention of the petitioner that once he was allowed to work by the interim relief granted by the High Court, and the respondents have taken the work from him they cannot withdraw the benefit that will occur to the petitioner on the basis of the last

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pay drawn at the time of his actual retirement. The applicant had submitted representation, but no reply was received by him. Accordingly he has requested for the following reliefs :

- " a) Your lordship be pleased to direct that the applicant was in continuous services upto date 2.7.1988 and the Railway Administration having allowed to work and having taken work till date 02.7.1988 the Railway Administration can not withdraw the benefit that have accrued on the basis of the last pay drawn, and to further held that ; The applicant is entitled to get his pension and other dues seeks as if he retired from the service on 02.07.1988.
- b) Your lordship be pleased to direct that the respondents to release the amount of Rs.8049/- of gratuity impounded with 18% running interest.
- c) Your lordship be pleased to grant such relief as may be considered to be just and proper in the circumstances of the case."

4. The respondents have filed reply and they have contested the claim of the applicant. According to them the applicant was due to retire from Railway service on 30.6.1983, on the basis of date of birth recorded in the service sheet, but he was continued in service as per the orders on interim relief granted by the High Court in Special Civil Application No.2768/83. This Special Civil Application, was later transferred to the Central Admin. Tribunal and as per the directions of the Central

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Administrative Tribunal, the Chief Personnel Officer, Railways had rejected the applicant's claim for alteration of the date of birth of the applicant. The applicant had again approached the Central Administrative Tribunal by O.A./139/89, challenging the order of the Chief Personnel Officer. However, this O.A. was dismissed by the Central Administrative Tribunal on 13.2.1992. Hence, the respondents state that the correct date of birth of the applicant being 1.7.1925, he should have been retired on 30.6.1983, based on this retirement date. Benefits like gratuity and pension have worked out which is been correctly done on the basis of the recorded date of retirement. They have stated that the higher amount of pay and allowances received by the applicant during the period he continued in service as per orders of interim relief granted by the High Court cannot be taken into account for working of his retirement benefits. They further state that his continuation in service during 1.7.1983 to 2.7.1988, was illegal and payment made during this period to the tune of Rs.22,883/- has to be recovered. Accordingly they have withheld amount of Rs.8049/- from the applicant's gratuity towards this recovery.

5. During the course of arguments Mr.M.M.Xavier learned counsel for the applicant argued that eventhough the applicant was continued in service due to the interim relief granted by the High Court he had performed work in that post. Hence, the amount paid to him during this period and he performed duties of the post, were due to him and cannot be recovered. Further more the amount

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of pay and allowances drawn by him at the time of his actual retirement should be on the basis of working out of his pension and gratuity. In this connection he mentioned that the pension rules clearly states that the amount of gratuity shall be determined on the basis of emoluments last drawn and pension shall be calculated on the basis of average pay drawn during last ten months service. It was not correct on the part of the respondents to deny him this benefit. He supported his case on the decision of the Gujarat High Court in the case of Bachu Laxman Versus Union of India and Ors. SCA/1336/75, there also the question to be decided related to the basis of calculation of retirement benefits when the petitioner had continued in service on the basis of interim relief granted by the High Court. It was decided that as the petitioner was in continuous service with the Railway Administration and the Railway Authority had allowed him to work and taken the work of the petitioner till the date of grant of interim relief, the Railway Administration cannot withdraw the benefits occurring to him on the basis of the last pay drawn and the said benefits cannot be calculated as if he retired on the earlier date. Mr.M.M.Xavier has quoted another case of Dayal Ramji Meghani Versus Union of India and Ors., SCA NO. 1336 of 1975, wherein also it was decided the retirement benefits should be given to the petitioner on the basis of last pay drawn eventhough he might have continued in service due to interim relief granted by the

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High Court. He has also supported his case by the judgment of this very Bench of Central Admn. Tribunal in T.A.1274/86 wherein the petitioner was allowed pension and other retirement benefits on the basis of last pay drawn as he was allowed to continue by virtue of the order of stay granted by the Court.

6. Hence, the short question to be decided is to whether the applicant is entitled to claim retirement benefits on the basis of the last pay drawn by him when he actually retired on 2-7-1988, taking into account the benefits of the increments earned by him from 1-7-1983 to 2-7-1988. The applicant continued in the post due to ~~fortuitous~~ circumstances viz., stay order obtained from the Court and this does not give him any right to count the emoluments he drew at the end of the period when the stay was vacated. He is of course entitled for pay and allowances during the period he actually worked and nothing more than that. The counsel for the applicant quoted the decision in T.A.1274/86 to bolster his arguments.

7. It is true that a decision in T.A. No.1274/86 was in favour of the petitioner. However, the same Bench of this Tribunal has decided to the contrary in O.A. No. 269/88 that the period of officiating in the post due to interim order of a Court cannot be counted for retirement benefits. The Tribunal pointed out that "as the application came to be dismissed, that the service between the two dates of the retirement cannot be construed as

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valid for computing his qualifying service for retirement. The extra period of two years became fortuitous for calculation of retiral benefits". The same view was taken by this Tribunal in the case in O.A. No.511/88. In view of the above two judgments with which we are in respectful agreement, we hold that the applicant's prayer cannot be accepted. However, in so far as the period he worked from normal date of retirement i.e. 1st August, 1983 ~~and~~ to 2-7-1988 he shall be eligible for the pay and allowances of the post in which he worked. Therefore, in case the amount of Rs.8049/- which has been stated to be withheld from his gratuity relates to the pay and allowances for the above period, the same shall be refunded to the applicant within 8 weeks from the date of the receipt of this order. The other prayers are rejected. The application is disposed of accordingly. No order as to costs.


(Dr. R.K. Saxena)
Member (J)


(V. Radhakrishnan)
Member (A)

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