

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA/24/2000

In

OA/ 493/92

Date of Decision : 13 .04.2000

Shri N.A. Panchal : Petitioner (s)

Mr. K.K.Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors : Respondent(s)

_____ : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

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 Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

An

: 2 :

Shri N.A.Panchal,
A-17, Sadashiv Society,
Near Ambica Vidhyalaya,
Virat Nagar Road, Odhav,
Ahmedabad.

: Applicant

Advocate: Mr.K.K.Shah

Versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Engineer (Const.)
Western Railway,
2nd Floor, Ahmedabad,
Railway Station Building,
Ahmedabad.
3. Deputy Chief Engineer {C}
Western Railway,
Bhuj.
4. Deputy Chief Engineer,
North {C},
Western Railway,
Ahmedabad.

: Respondents

Decision by Circulation

ORDER

RA/24/2000

IN

OA/493/92

Date: 13-4-2000

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

Pen

The applicant in the above O.A. has filed the R.A. and prayed for

clarification regarding payment of interest at the rate of 24% per annum on the amount of Rs.79, 142.97 recovered by the respondents by way of penalty.

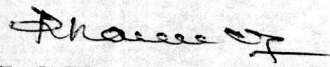
2. In the O.A., the applicant challenged the penalty order of the Respondents by way of withholding Rs.79,142.27 under the DAR rules. This Tribunal after hearing both sides, quashed the impugned orders on the ground that the principles of natural justice was not followed. This Tribunal further directed that the Respondents, shall not hold any fresh inquiry and directed to release of the withheld amount only. No specific order regarding payment of interest was passed.


3. The applicant in this R.A. contends that the Tribunal has kept silent on the claim of interest and keeping in view the facts, interest ought to have been granted and therefore seeks clarification in this regard.

4. This Tribunal in paragraph 2 of the judgment referred to the claim for interest at the rate of 24% by the applicant. However, keeping in view the particular circumstances, this Tribunal in their judgments issued direction to the Respondents to release the withheld amount only after quashing the impugned orders. As the claim for payment of interest was not granted, it should be presumed that this Tribunal rejected the same.

5. There is no error apparent in the face of the judgment which would warrant interference. In the guise of an R.A., the applicant has sought to reargue the case for payment of interest which is not permissible in law.

7. The R.A. is rejected.


(P.C.Kannan)
Member (J)


(V.Ramakrishnan)
Vice Chairman

23

Sr. No. 995

Dated: 26/6/02

Submitted : Hon'ble Vice Chairman & (vacant)

Hon'ble Mr. A.S. Sanghavi, Member (J) (on leave)

Hon'ble Mr. G.C. Srivastava, Member (A)

Certified Copy of order dated 11/01/02 in CA/

Spt. C.A. No. 2011 of 01 passed by the
Supreme Court/High Court against the Judgment/Oral

Order passed by this Tribunal in CA/493/92 is placed
RA/24/00
for perused please.

Amrvt
S.J.(J) 28-06-02

D.R.(J)
(Asst)

HP
24/6
2002
Resptd

Hon'ble Vice Chairman (vacant post)

Hon'ble Mr. A.S. Sanghavi, Member (J) (on leave)

Hon'ble Mr. G.C. Srivastava, Member (A)

File

Copy



URGENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 2011 of 2001

Decree Despatch No.

Date

7854

25/12

1. N A PANCHAL

Vs

1. UNION OF INDIA & ORS.

Petitioner

Respondents

To

1. UNION OF INDIA

THRO" GENERAL MANAGER
WESTERN RAILWAY
CHURCH GATE
BOMBAY

2. CHIEF ENGINEER (CONSTRUCTION)

WESTERN RAILWAY,
2ND FLOOR, AHMEDABAD
RAILWAY STATION BLDG.,
AHMEDABAD

3. DEPUTY CHIEF ENGINEER (C)

WESTERN RAILWAY
BHUJ

4. DEPUTY CHIEF ENGINEER

NORTH (C)
WESTERN RAILWAY
AHMEDABAD

✓ 5. THE MEMBER

C.A.T., OPP. SARDAR PATEL
STADIUM, AHMEDABAD-14. *सत्यमेव जयते*
[REF: OA NO. 493/92 AND REVIEW
APLN. NO. 24/2000].



Upon reading the petition of the above named Petitioner presented to this High Court of Gujarat at Ahmedabad on 19/03/2001 praying to grant the prayers and etc...

And Whereas Upon hearing
MR KK SHAH for the Petitioner no. 1
MR MUKESH A PATEL for the Respondent no. 1
NOTICE SERVED for the Respondent no. 2,4
NOTICE UNSERVED for the Respondent no. 3

Court passed the following order :-

CORAM : D.M. DHARMADHIKARI, C.J. & K.A. PUJ, J
DATE : 11/01/2002

"Heard Mr. K.K. Shah, learned advocate.....
.....there will be no order as to costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

Witness DEVDATTA MADHAV DHARMADHIKARI, Esquire Chief Justice at Ahmedabad
aforesaid this 11th day of Jan, 2002.

By the Court

For Deputy Registrar
This 25-7 day of Jan 2002

Note : This writ should be returned
duly certified within 2 weeks.
(570) 310120

SMT 2011/51



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2011 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI *sd/-*

and

Hon'ble MR.JUSTICE K.A.PUJ *sd/-*

1. Whether Reporters of Local Papers may be allowed to see the judgements? :
2. To be referred to the Reporter or not? :
3. Whether Their Lordships wish to see the fair copy of the judgement? :
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :
5. Whether it is to be circulated to the Civil Judge? :

NO

N A PANCHAL
Versus
UNION OF INDIA

Appearance:

MR KK SHAH for Petitioner No. 1
MR MUKESH A PATEL for Respondent No. 1
NOTICE SERVED for Respondents No. 2,4
NOTICE UNSERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE K.A.PUJDate of decision: 11/01/2002

CAV JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Heard Mr. K.K. Shah, learned advocate for the petitioner and Mr. Mukesh A. Patel, learned advocate for the respondents. This Court has passed an order on 19.12.2001 to put up the matter on 21.12.2001 for final disposal. The matter was thereafter placed for final

hearing on 21.12.2001, 24.12.2001 and finally on 26.12.2001. The learned advocate for the petitioner was heard at length in the matter and the written submissions filed by the learned advocate for the respondents on 28.12.2001 are also taken into consideration while deciding this matter.

2. In the present petition, the petitioner has sought the direction for modification in the order passed by the Central Administrative Tribunal in O.A. No. 493 of 1992 and Review Application No. 224/2000 to the extent of granting further relief which was not granted by the Tribunal by awarding that the petitioner was eligible and entitled for the relief of interest on the illegally withheld amount of gratuity and retiral benefits by respondent Railway and therefore the respondents be directed to pay the interest at the rate of 24% p.a. from the date, on which the petitioner has retired from the railway service till the date of actual payment. To appreciate the claim of the petitioner in the present petition, few facts are required to be noted. It is the case of the petitioner that he voluntarily retired from the railway service on 30.9.1987 and the said date of retirement was accepted by the railways. However, due to the penalty order passed the gratuity and retiral dues to the extent of Rs. 79,142.27 ps. were withheld by the respondents. Being aggrieved by the said order, the petitioner had filed O.A. No. 493/92 before the Tribunal and the said O.A. was decided by the Tribunal on 9.2.2000 directing the respondents to release the amount of Rs. 79,142.27 ps. withheld from the

retiral/benefits of the petitioner within 12 weeks from the date of receipt of the copy of the said order by the respondents.

3. Since the Tribunal has not given any finding with regard to granting of interest on the delayed payment of gratuity and retiral benefits, the petitioner had moved Review Application No. 24 of 2000 in O.A. No. 493/92 before the Tribunal requesting the Tribunal to clarify ~~with/regard to~~ the relief of interest to be paid with 24% p.a. on the amount of Rs. 79,142.27 ps., withheld by the respondent-railway. The said Review Application was decided by the Tribunal on 13.4.2000 and it was held by the Tribunal that keeping in view the particular circumstances, the Tribunal has issued direction to the respondents to release the withheld amount only after quashing the impugned orders. ~~As~~ the claim for payment of interest was not granted, it should be presumed that the Tribunal rejected the same. The Tribunal has, therefore, come to the conclusion that there was no error apparent on the face of the judgment which would warrant interference.

4. Being aggrieved by the said order of the Tribunal, the petitioner has filed the present petition in this Court. It was argued before us by the learned advocate of the petitioner that the date on which the amount was actually to be made available to the petitioner was in September 1987 when he took voluntary retirement, was not paid to him because of the penalty order. However, the said penalty order was challenged

before the Tribunal in 1992 and the Tribunal has decided only in February 2000 quashing and setting aside the penalty order and directing the respondents to release the amount withheld by the respondents. It was therefore contended by the petitioner's ld. advocate that since the amount of retiral dues of gratuity was withheld as a penalty and since the penalty was found illegal and the order imposing such penalty was quashed and set aside by the Tribunal, the said amount has become due and payable from the date on which the same was actually made available to the petitioner and, therefore, if the petitioner would have got the said amount in the year 1987, the said amount would have become at least three times more by way of interest accrued on the said amount, at the time when the amount was actually paid to the petitioner pursuant to the order of the Tribunal. It was further contended that because of withholding of such amount in the year 1987, the petitioner was put into financial difficulty and it was not possible to maintain the affairs of his family and he was also unable to take further treatment of his eyes. It was therefore submitted by the petitioner that it was the fit case to award the interest on the amount withheld by the respondents by way of penalty from the date it was made available to the petitioner. In support of his contention, the petitioner has also relied on Rule 303 of Railway and Retirement Benefits, 1994. Sub-rule (b) and (c) of Rule 303 read as under :

"303. Interest on Delayed Payment of Retirement Gratuity/Death Gratuity on Retirement or Superannuation."

(a).....

(b) In case of Railway servants against whom disciplinary or judicial proceedings have been instituted and on the conclusion of proceedings they are fully exonerated, the interest on delayed payment of Death Gratuity/Retirement Gratuity may be allowed in their cases. In such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped. In such cases, the payment of gratuity will be deemed to have fallen due on the date following the date of death and if the payment of Gratuity has been delayed interest may be allowed for the period of delay beyond three months from the date of death.

(c) In cases where the Railway servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority. If the payment of gratuity in such cases is delayed, the interest will be payable beyond three months from the date of issue of orders."

On the basis of the facts and circumstances of the case, and the relevant Rules quoted above, the petitioner has claimed the interest at the rate of 24% p.a. on the amount withheld by the respondents by way of penalty from the date on which he became eligible and entitled to the retirement benefits, till the date of actual payment.

5. The claim of the petitioner was disputed by the respondents and the learned advocate appearing for the respondents filed Written Submissions which is taken on record. It was submitted on behalf of the respondents

that the Tribunal has exercised its judicial discretion on cogent grounds against waiving the enquiry afresh and impliedly for this reason the interest was not granted by the Tribunal. It was further submitted by the respondents' ld. advocate in the Written Statements that the petitioner himself had remained negligent in challenging the orders passed by the authority before the appellate authority and there was unreasonable delay in challenging the order of the appellate authority before the Tribunal. It was also submitted that the withholding of the amount of the retiral benefits was due to the departmental enquiry and proceedings going on against the petitioner and that the Railway Rules empower the Railway to withhold the retiral benefits when such kind of enquiry was pending against the employee. It was also submitted by the respondents' ld. advocate that setting aside of the penalty order was not the absolute acquittal but it was acquittal on technical ground with consciousness that as per law in such circumstances the lapses in the enquiry are to be cured after giving opportunity of hearing and so as to curtail that, the payment of interest qua the amount withheld has been curtailed while exercising the judicial discretion and the said judicial discretion could not be taken into account into the judicial review. It was also submitted by the ld. advocate for the respondents that the provisions contained in Rule 303 are not applicable to the facts of the petitioner's case. On the basis of these grounds urged in the Written Submissions, the respondents' ld. advocate has submitted that the

petition filed by the petitioner was not maintainable in the eye of law and the petitioner was not entitled to any relief prayed for in the said petition.

6. Now the short question, for our consideration, is as to whether the petitioner is entitled to the interest on the amount withheld by the respondents, and if the answer to this question is in affirmative, then the question would arise as to from which date to which date the petitioner is entitled to such interest and at what rate. It is an admitted position that the petitioner has opted for voluntary retirement in September 1987, and that has been accepted by the respondent-Board. It is also an admitted position that the petitioner was entitled to gratuity and retiral benefits on the date of his voluntary retirement. It is only because of the penalty imposed by the respondent-Board for the alleged breach committed by the petitioner, the respondents have withheld the amount of gratuity as well as retiral benefits to the extent of the amount of penalty. It is also an admitted position that the order levying the penalty was ultimately quashed and set aside by the Tribunal and while setting aside as well as quashing of the penalty order, no finding was given by the Tribunal with regard to interest on the delayed payment of the amount of gratuity as well as retiral benefits. It is in view of this admitted position, to say that interest on the amount withheld has not been granted against/avoiding/ the holding/ of an enquiry afresh does not appear to be correct. Since the petitioner was retired in 1987, no useful purpose could have been served to remand the case

back to the disciplinary authority to hold an enquiry afresh. A similar case also arose before the Hon'ble Supreme Court in R. Parangusam vs. Chief Electrical Inspector and Another, reported in (1996) 10 SCC 55, wherein the Court has held as under :

"3.....The tribunal in the impugned order, while setting aside the order of compulsory retirement from service, remitted the matter to the Government to conduct the enquiry afresh after giving opportunity to the appellant and based thereon to pass appropriate orders for fixation of the pension etc. It is not in dispute that the appellant has already retired from service. It is also not in dispute that the advances drawn for construction of the house, allotment of the house in the name of his wife by the Housing Board has already been redone. Consequently, there is no detriment caused to the State. Since he had already retired from service, we think, on the facts and circumstances of the case, it is not a case for conducting a fresh enquiry as directed by the tribunal. The order of the tribunal is set aside. The Government is directed to consider his case for promotion on a par with the juniors who were promoted pending enquiry, and then grant him promotion if he is found eligible with all consequential reliefs. The Government will also redetermine his notional scale of pay on the promotional post and pay the arrears of salary and also pension as if he had retired on promotional post. This action should be taken and payment made within a period of six weeks from the date of the receipt of this order."

In view of the above order of Hon'ble Supreme Court, it is not correct to hold the view that the interest was not granted by the Tribunal only because the matter was not remanded back to the disciplinary authority for making an enquiry fresh. The Tribunal has not dealt with the issue regarding grant of interest on the amount withheld and since there was an error in the order of the Tribunal to that effect, the petitioner was justified to raise the said issue in the Review Application.

7. With regard to the petitioner's claim for granting of interest he placed reliance on the Rule 303 of Railway and Retirement Benefits, 1994. It is true that the said Rule is having Proviso providing the conditions which observe that "The benefit of this instruction will however be available to such of the Government servants who die during pendency of judicial and/or disciplinary proceedings against them and against whom the proceedings are consequently dropped." However, the payment of interest on delayed payment of gratuity and retiral benefits is not ruled out and it is not the only condition on which the interest can be granted. If in the opinion of the Tribunal or the Court, as the case may be, having regard to the facts and circumstances of the case, the interest is required to be granted on delayed payment of gratuity and retiral benefits, such interest cannot be denied merely on the ground that the same is not contemplated in the Rule prescribed for that purpose. In this connection, it is necessary to refer to the decision of the Hon'ble Supreme Court in State of Gujarat Vs. Umedbhai M. Patel, reported in 2001 (3) SCC 314, wherein the Hon'ble Court has taken the view that, as the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the record of compulsory retirement, the High Court was right in holding that the impugned order was liable to be set aside. Three months time was given to the appellant State to comply with the directions of the High Court,

failing which the respondents would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him. In the present case, the order levying penalty was challenged by the petitioner way back in 1992 and the said order was quashed and set aside by the tribunal in February 2000 directing the respondents to release the amount withheld by them due to the levy of penalty. The petitioner was therefore certainly deprived of his legitimate claim for the amount of gratuity as well as the retiral benefits to the extent of the amount retained by the respondents. On the other hand, by retaining the said amount for such a long period, the respondents were benefitted to this extent. We see, therefore, no justification in denying the claim of interest made by the petitioner in his Review Application before the Tribunal. On the facts and circumstances of the case as well as on the basis of the legal authorities cited above and even on equitable grounds, we hold that the petitioner is entitled to claim interest on the delayed payment of the amount of gratuity as well as retiral benefits. We are, however, of the view that the petitioner's claim regarding interest at the rate of 24% p.a. from the date, on which the petitioner was entitled to retiral benefits on opting for voluntary retirement, i.e. September 1987, cannot be accepted as certain delays are attributed to the petitioner and also the claim of interest at the rate of 24% is excessive and unreasonable. In this view of the matter, we are of the view that the ends of justice would be met if we direct the respondents to grant interest at the rate of 10% p.a., from the date of filing of

application by the petitioner before the Tribunal against the order levying penalty till the date of actual payment of the amount withheld by the respondents.

8. The petition is, therefore, disposed of with the aforesaid directions. However, there will be no order as to costs.

[D.M. Dharmadhikari, J.]

[K.A. Puj, J.]

rmr.

True Copy

KMK Kaudhvan

Principal Private Secretary;
to the Hon'ble Judge (Class-I)
High Court of Gujarat,
Sola Road.
Ahmedabad-380060.

urgent Intimation
29/1/2

BY ORDER OF THE COURT

DEPUTY REGISTRAR

KSP
24/1/02

fresh
24/1/02

TRUE COPY

Assistant Registrar

the day of

2002

over
31/1/02
5-14/12

RA/24/200

1. Judgment/Order by

(i) Hon'ble Mr. V. Radhakrishnan ^{and} Mewar
(ii) Hon'ble Mr. P.C. Kannan - Mewar

2. Both the aforesaid Members are functioning in this Tribunal.

2. Hence to be placed before the said Members i.e. Hon'ble Mr. _____

Hon'ble Mr. _____

3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. _____ and Hon'ble Mr. _____

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.

5. Hon'ble Mr. V. Radhakrishnan ^{MR} has ceased to be Member of Tribunal but Hon'ble Mr. P.C. Kannan M(J) is available in this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.S. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Vice Chairman.

Mr. Patel
25/3/2000

SOCOR ^{PG} 3-42w

Dr. Suresh
DK (J)

0302200/-

Hon'ble V/C
May be dealt with by a Bench
consisting of V.C. & Mr. P.C. Kannan
May be shown to Mr. P.C. Kannan first
17/4/2000

RA/ST/12/2000

Submitted/
Application found by
Order; it approved as to
be registered.

Hyated
28/3/2000 use

S.O.C.S. —

28/3/2000
S.O.C.S. / 28/3/2000

2000/12/200

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R.A. NO. 24 OF 2000
in

O.A. 493/92

N.A. Panchal.

... Applicant

Versus

Union of India & Ors.

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Annexures	Particulars	Page Nos.
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Copy of judgement for Clarification

Place : Ahmedabad

Date : 21 /3/2000.

Kiran K. Shah

(Kiran K. Shah)
Advocate for the Applicant

Filed by Mr. K. K. Shah
learned Advocate for Petitioner
with second set & 21 dated
copies copy sent to the court
other side

22/3

By Registrar C.A.T.(R)
Ahmedabad

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R.A. NO. 24 OF 2000

in

O.A. 493/92

Shri N.A. Panchal,
Retired Depot Store Keeper (C),
Bhuj residing at
A-17, Sadashiv Society,
Nr. Ambica Vidhyalaya,
Virat Nagar Road, Odhav,
Ahmedabad.

... Applicant

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Church Gate,
Bombay.
2. The Chief Engineer (Construction)
Western Railway,
2nd Floor, Ahmedabad
Railway Station Building,
Ahmedabad.
3. Deputy Chief Engineer (C),
Western Railway, Bhuj.
4. Deputy Chief Engineer,
North (C),
Western Railway,
Ahmedabad.

... Respondents.

1. The applicant hereby seeks clarification with regard to the relief prayed in the O.A.493/92 for interest on retirement dues which were withheld as prayed in the original application and reproduced in para 3 of the judgement. The copy of the judgement for clarification is annexed hereto and marked as Annexure- A to this application.

2. The applicant has challenged the validity of the chargesheet and penalty orders imposed by the respondents by withholding his retirement dues to the tune of Rs. 79,142- 27 ps.

3. The applicant voluntarily retired from 30.9.1987 and the same date of retirement is accepted by the railway. However, as per the penalty order, the said dues were withheld by the respondents railway illegally. The applicant being aggrieved with the same approached the Hon'ble Tribunal and ultimately the Hon'ble Tribunal delivered the judgement in OA No. 493/92 as per Annexure- A above in favour of the applicant. However, while granting the reliefs, the Hon'ble Tribunal has kept silent over the reliefs claimed for interest at the rate of 24 % p.a. and also with regard to the all consequential benefits of retirement.

4. The applicant submits that due to his catrack and kidney problem, he sought voluntary retirement prior to his superannuation. The respondent railway was not keeping sufficient staff and the applicant was performing his duty in absence of requisite staff.

Since the respondents have imposed the penalty on the flimsy ground and on concocted charges, where the applicant was not to be considered as responsible. Not only that, there was no malicious intention and there was no evidence adduced by the

respondents in the inquiry. Hence the Hon'ble Tribunal was kind enough to direct the railway to release the retirement dues withheld by the respondents but the Hon'ble Tribunal should have appreciated that the said amount of retirement dues of approx. 80,000/- have been very much useful and can be useful for the applicant in his retirement life and the said amount even by keeping with the nationalised bank or with the Government Bond could have been doubled in five and half years and by could have become fourth times more within 12 years.

5. The Hon'le SupremeCourt have time and again held that the delay in paying the retirement dues and Gratuity requires to be paid with interest and as per the latest decision of the Hon'ble Supreme Court and of the High Court and of the Administrative Tribunal, it has been awarded at 18 % p.a. The Hon'ble Tribunal once found that the retirement dues were wrongfully withheld by the respondents, the respondents are required to be directed to pay the interest at the rate of 24 % p.a. as prayed in as deemed fit by this Hon'ble Tribunal and as awarded in other cases at the rate of 18 % p.a.

6. The Hon'ble Tribunal while giving the final directions and passing the final order, have not made any observation for not granting such reliefs nor any discussions with regard to the same has been made. Since the applicant has prayed for, the Hon'ble Tribunal looking to the old age and since it

amounts wrongfully withholding the retirement dues as penalty and stigma, the same is required to be released with interest and, therefore, the necessary clarification may further be directed by passing the order in the present application.

7. This application is filed within the period of limitation.

8. RELIEF SOUGHT

(A) This Hon'ble Tribunal be pleased to clarify the relief of interest to be paid with 24 % p.a. on the amount withheld by the respondent railway i.e. Rs. 79, 142-27 ps. and be pleased to direct the respondents to pay all the consequential benefits if it is not paid to the applicant in the interest of justice.

(B) This application may kindly be allowed with costs.

(C) Any other further order or direction as deemed fit, just and proper may kindly be passed, in the interest of justice.

AFFIDAVIT

Shri N.A. Panchal

I, Shri N.A. Panchal, aged 70 years residing at the above address the applicant herein do hereby solemnly ~~verify~~ ^{affirm} that what is stated hereinabove is true to the best of my knowledge, information and belief and I believe the same to be true. *except the legal submissions which is on advice of my advocate.*

Place : Ahmedabad.

Date : 2/8/2000

N.A. Panchal

*Testified by
Shri N.A. Panchal
on*

*Solemnly affirmed before me
and signed my name
on 2/8/2000
Shri N.A. Panchal*

A 5

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

OA/493/1992

Date of Decision : 09/2/2000

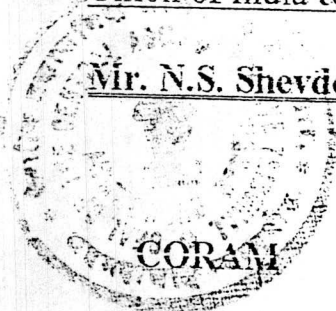
Shri. N.A. Panchal : Petitioner (s)

Mr.K.K.Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr. N.S. Shevde : Advocate for the Respondent(s)



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

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

[Handwritten signature]

Shri N.A.Panchal,
Retired Depot Store Keeper (C)
Bhuj residing at
A-17, Sadashiv Society,
Nr.Ambica Vidaylaya,
Virat Nagar Road, Odhav,
Ahmedabad.

: Applicant

(Advocate: Mr.K.K.Shah)

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Chief Engineer(Construction)
Western Railway,
2nd Floor, Ahmedabad
Railway Station Building.
Ahmedabad.
3. Deputy Chief Engineer (C)
Western Railway, Bhuj
4. Deputy Chief Engineer
North (C),
Western Railway,
Ahmedabad.

: Respondents

Advocate: Mr.N.S.Shevde

JUDGMENT

O.A. No. 493 of 1992

06:09/2/2000

PER : HON'BLE MR. V. RADHAKRISHNAN : MEMBER (A)



Heard Mr. K.K. Shah for the applicant and Mr. N.S. Shevde. for
the respondents.

7 2. The applicant was issued a charge sheet dated 15.1.88, Annexure-A. The applicant claims that the charge sheet is incomplete and he could not get proper opportunity to defend the same and the charge sheet issued by the incompetent person without authority is to be declared as null and void. The impugned orders issued by the respondent No. 3 and 4 are improper and not in accordance with the Railway servants (D & A) rules, 1968, and are violative of principles of natural justice and also arbitrary, discriminatory and against the law of equity and fair play.

3. Accordingly, the applicant in this O.A. has approached the Tribunal praying for the following reliefs :-

"A The impugned orders at Annexures A, A1, A2 may kindly be quash and set aside and the amount of pension and retirement dues may kindly be directed to the respondents to pay with interest of 24% by holding the action of the respondents as illegal, null and void, and grant all the consequential benefits.

B This application may kindly be allowed with cost.

C. Any other order or direction as may be deem fit may kindly be passed in the interest of justice".

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4. The respondents have filed reply and resisted the claim of the applicant. They have initially made preliminary objection that the applicant had raised similar issues in OA/511/86 which has already been decided by this Tribunal on 15.4.91. A review application filed by the applicant was also rejected, hence the respondents feel that the application is hit by res-judicata and stated that the Tribunal in the judgement, OA/511/86 has observed as under :-

However this deemed date of 30.9.1987 will not have any effect on the authority which initiated the DAR action against subsequently to 30.9.87.

5. They have also stated that the Tribunal held that an amount of Rs. 79,142.27 would withhold by the respondents from the gratuity of the applicant's pensionary benefits till the final disposal of the appeal. The respondents have also pointed out that the applicant has not submitted any appeal in the first instance, but later on submitted an appeal on 28.6.91, which was rejected. The appellate authority/disciplinary authority withheld an amount of Rs. 79,142.27 which is equal to the loss sustained by the respondents.



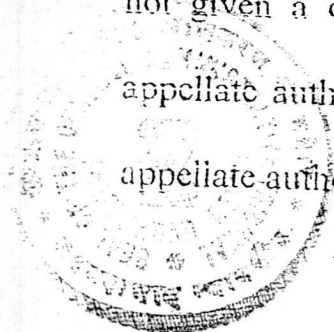
6. The respondents have stated that the charge sheet is issued correctly in prescribed form by the Deputy Chief Engineer C. Bhuj, who

is a Junior Admn. Scale Officer and he is competent to issue the charge sheet. An inquiry was conducted by the respondents and on completion of the inquiry, the applicant made a statement that "I am satisfied with the conduct of the inquiry and no more evidence or witnesses are to be produced." The disciplinary authority after considering the inquiry report imposed the penalty, for recovery of Rs. 79,142.27. A late appeal filed by the applicant was also considered and rejected. So far as the question of name of the witnesses of charge sheet is concerned, they have stated that the name of the witnesses was to be given during the proceedings, if necessary. All the documents were given to the applicant along with the charge sheet. They have stated that the penalty of recovery imposed is covered under rule 6 of DA rules, hence the recovery is according to the rules, which reads as under:-

"Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway administration by negligence or breach of orders."

7. The applicant has filed rejoinder. He denied that he did not submit an appeal in 1989. He stated that he had filed an appeal dated 28.6.91. He also denied that he had been given full opportunity to conduct the defence. He stated that he has never given opportunity to

produce any defence witnesses. He also stated that the earlier O.A. was filed to release retiral benefits, while the present O.A. was filed for quashing the charge sheet. He also stated that he was carrying out the work under pressure and without requisite staff. He also stated that he was also not given copy of the inquiry report, under which, he could have submitted the defence. Mr. K.K. Shah, learned advocate for the applicant during the arguments pointed out that the charge sheet issued is very vague and not specific. He also pointed out that no documents had been enclosed along with the charge sheet for proving the charges. So far as the inquiry is concerned, the applicant was given the impression that the preliminary inquiry was going on and without notice to the applicant, respondents made it as a final inquiry. He also pointed out that the names of the witnesses to be examined by the prosecution had not been given in the charge sheet. He also mentioned that no presenting authority was appointed by the respondents. The applicant was also not given opportunity to produce witnesses for the defence. The inquiry was held behind his back and hence the proceedings were vitiated as principles of natural justice not followed. He also contended that the applicant was not given a copy of the inquiry report. So far as the orders of the appellate authority is concerned, he pointed out that the orders of the appellate authority is lack application of mind as he had not examined



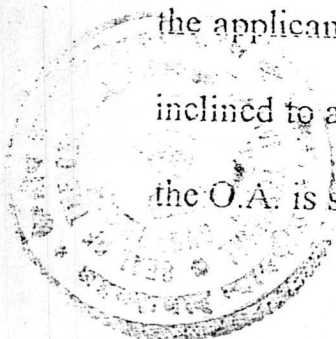
various points raised by the applicant. He also pointed out that as per the orders of the Tribunal in OA/511/86, the applicant was due to retire on 30.9.87 and issued a charge sheet on 15.1.88 can not be sustained without necessary sanction of the president.

8. Mr. Shevde, learned counsel for the respondents disputed the contentions of the Mr. Shah. He pointed out that the applicant was charge sheeted and the applicant has given in writing that he had received all the documents along with the charge sheet. So far as the contention of Mr. Shah is concerned, that the charge sheet was issued after the retirement of the applicant, Mr. Shevde stated that at the time of issuing the charge sheet, the applicant was in service. Only by the judgement of the Tribunal dated 15.4.91, he was deemed to retire on 30.9.87. Accordingly, the charge sheet issued is quite legal and in order. So far as the question of examination of the prosecution witnesses is concerned, he stated that the applicant had admitted his guilty and hence there was no need to prove the guilt through witnesses. The inquiry was held according to the procedures. So far as the defence witnesses is concerned, the applicant has given in writing that he does not have any defence witnesses to be examined. The applicant had committed misconduct by giving clear receipts. He filed the claims for

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discrepancies beyond time limit and hence they become time barred. In the inquiry report, conclusion was that the applicant was guilty and hence disciplinary authority passed orders to recover the losses incurred by the respondents from the gratuity and other benefits of the applicant, which is quite in order. Mr. K.K. Shah disputed the contention of Mr. Shevde and stated that the applicant was working single handedly and under pressure. He could not have, in the absence of proper facilities like weigh bridge carry out check of each and every receipt. He also pointed out that the respondents have not produced clear receipts submitted by the applicant.

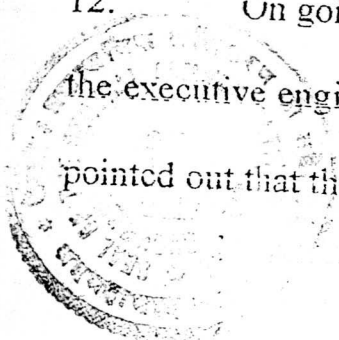
9. We have heard learned advocate for both the parties and gone through the documents. So far as the preliminary contention of the respondents that the application is hit by the constructive resjudicata Mr. Shah pointed out that the O.A/511/86 filed by the applicant for releasing his retiral benefits and the present O.A. which is filed against the charge sheet issued to him and against the penalty for recovery from his pensionary benefits. He also pointed out that the penalty was imposed on the applicant on 15.1.88, but the earlier O.A. was filed in 1986. We are inclined to agree with him. Hence, the contention of the respondents that the O.A. is stated by the constructive resjudicata is not tenable.



10. So far as the contention of Mr. Shah that the charge sheet is vague and incomplete, reference is invited to charge sheet, Annexure-A. The applicant claims that documents were not supplied to him, at the time of inquiry. In so far as the question of examination of witness in the inquiry is concerned, no names were mentioned, but it was stated "as found necessary during the proceedings". It is needless to state that it is necessary to show the names of prosecution witnesses in the charge sheet. It is also relevant to point out that during the course of inquiry, no prosecution witnesses were examined as admitted by the respondents themselves. Moreover, there was no Presenting Officer to represent the case for the prosecution. The contention of the respondents that the applicant has admitted the guilt, hence, it was not necessary for them to examine the prosecution witnesses to prove the guilty is not correct. The respondents have not filed any document to show that the applicant unconditionally accepted the liability and agreed for the recovery. The applicant's reply ^{clearly} shows that he had not unconditionally accepted liability. He had also indicated that there were no facilities for re-weighment at his end and hence there was no alternative for him than to accept the material and report the shortage immediately thereafter.

11. It is well settled that the burden of proving the case of prosecution rests with them only through documents/witnesses. Hence, it is clear that principles of natural justice are not followed in this case. Further, it is also noticed that an impression was given to the applicant that the inquiry being held was in the nature of the preliminary inquiry and a regular inquiry will be held later and all of a sudden, the applicant was punished, with the notice of imposing penalty. Further, the applicant was not allowed to produce any defence witnesses on his behalf, which is a serious lapse in the proceedings. It is also seen that the respondents have not given any proof that the inquiry report was submitted to the applicant even at the stage of imposing penalty. This was a handicap of the applicant in filing his appeal. It is also seen that the order of the appellate authority as at Annexure A/2 is very brief and he has not examined all the points raised by the applicant. It is necessary for the appellate authority to dispose of and give his decision in each and every points raised by the applicant in the appeal, which was not done.

12. On going through the final proceedings, it has been noted by the executive engineer and inquiry officer that " In this connection, it is pointed out that there was heavy consignment. It was not possible to



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verify the weight immediately. (154 plates were received) The plates were sorted out and theoretical weight arrived at (due to lack of weighing facility of such items) Shri Panchal's reply (A-6 on CP 46) may please be perused.

Under the circumstances, Shri Panchal had no alternative except to book delivery under clear signature, as he could have assessed the weight only after sorting the plates size wise.

It is therefore opined that Shri Panchal is not directly responsible for losses towards short receipts."

13. There is no comment by the disciplinary authority on this, as to why, this could not be accepted. Keeping in view, the above observations, we are of the view that the principles of the natural justice are not followed in holding an inquiry and consequently the proceedings were therefore vitiated. Normally in such cases, we would remand the case back to the disciplinary authority to hold a inquiry a fresh, but in the particular case, keeping in view, the facts that the applicant has retired in 1987, no useful purpose will be served by remanding back the case to disciplinary authority to hold a fresh enquiry. We therefore, quash and set aside the orders of the disciplinary authority and appellate

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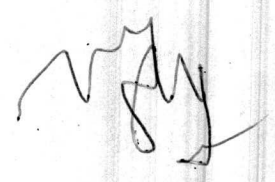
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authority, Annexure A/1 and Annexure A/2. The respondents are directed to release the amount of Rs. 79,142.27 withheld from the retiral benefits of the applicant within 12 weeks from the date of receipt of a copy of this order. No costs.

scd/t
(P.C. Kannan)
Member (I)
Pt

scd/-
(V. Radhakrishnan)
Member (A)

Prepared by:
Checked by: } 286
14/12/2020
True Copy



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સાધારણ અધિકારી (આ.)
સાધારણ અધિકારી (અ.)
કેન્દ્રીય અધિકારી અધિકાર
Central Administrative Officer
અમદાવાદ સ્થાયીકરણ
Ahmedabad Branch