

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 94/93
T.A. No.

DATE OF DECISION 29-7-1973

Union of India and Others Petitioner

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

Versus

Shri J.Lemos Respondent

Shr P.H. Pathak Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel Vice Chairman.

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

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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1. Union of India
Owing and representing Western Railway
through the General Manager,
Western Railway, Churchgate,
Bombay.
2. Divisional Railway Manager
Western Railway, Bhavnagar Division,
Bhavnagar Para, Bhavnagar.

Applicants

Advocate Shri R.M. Vin

Versus

Shri J.Lemos
C/o Shri M.M.Xaviers
Advocate,
D-74 Kaliabid,
Talaja Road, Bhavnagar

Respondent

Advocate Shri P.H. Pathak

ORAL JUDGEMENT

In

O.A. 94 of 1993

Dt. 29-7-93

Per Hon'ble Shri N.B. Patel

Vice Chairman.

Even assuming that the award of the learned Presiding Officer can be branded as *ex parte* award and further assuming that the Presiding Officer has erred in holding that he has no jurisdiction to set aside his own *ex parte* award, we find that the case does not warrant any interference under Article 227 of the Constitution. Infact, we find that the Railways could have filed a reply and could have entered into contest

with the applicant as regards his claim, but they did not do so. The matter does not rest there. It appears that, substantially speaking, the basis on which the applicant was making the claim in the present application and his earlier recovery application number 13/82 was the same or the basis on which the present application was made was in continuation of the same basis on which his claims in the earlier application was upheld. The award in the earlier application being Recovery Application No. 13/82, was acquiesced in. The submission of Mr. R.M. Vin was that, as salary has to be paid every month, the cause of action would be a recurring cause of action and, therefore, even if the award in the earlier case was acquiesced in, it would not bar the Railway Administration from contesting the present claim of any similar claim or claims which the applicant may make in future. We do not agree with this preposition, because we find, on perusal of the judgement of the learned Presiding Officer in Recovery Application No. 13/82, that the claim of the applicant was based on a principle, namely that he would be entitled to claim Kilometer running allowance for working on a higher post if he had so worked on a higher post for a particular number of days. There is also some substance in the contention of Mr. Pathak that the effect of not allowing the applicant to get kilometer running allowance in this case would be

reduction in his salary after his promotion. For ~~all~~ these reasons the present application is summarily rejected.

2. Mr. Pathak states that the applicant has been permitted to withdraw the amount without furnishing any security but on an undertaking that he will invest the amount by way of fixed deposit, for a period of five years. In view of the summary rejection of the present application, the applicant is relieved of his undertaking to keep the amount invested as fixed deposit for five years. Interim relief vacated. Original application stands disposed of as rejected.

No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman.

*AS.