

ORDER NO.12, DATED 12-4-2001.

Heard Shri D.K.Dey, learned Counsel for the Applicant and Mrs. R.Sikdar, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

2. In this Original Application, the applicant has prayed for a direction to the Respondents to pay the salary of the applicant for the months of May, 1989 to December, 1993 and the Bonus for the year from 1989 to 1993. He has also claimed interest @ 12% per annum on the aforesaid amount.

3. Respondents have filed counter opposing the prayers of the applicant.

4. No rejoinder has been filed.

5. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. Applicant's case is that while he was working as Gangman in S.E.Railway, under the P.W.I., Hijli, in the night of 3rd and 4th of June, 1989, some miscreants committed theft of certain Railway property and this fact was brought to the notice of P.W.I., by the applicant, who also gave the PWI, the name of such miscreants. On the next day, some henchmen of the gang of those miscreants attacked the applicant at his residence at Hijli and threatened to kill him and thereafter, the applicant left for his native village on 4.6.1989 giving intimation to the P.W.I. Applicant was placed under suspension w.e.f. 4.6.1989 in order dated 7.6.1989 which according to the applicant, was received by him on 29.8.1989. This order of suspension was ~~removed~~ ^{scratched} ~~J.100~~ in order dated 5.9.1989. Applicant has stated that he has represented for his posting to any other post other than ^{1/100}

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Hijli because he was apprehending danger to his life but no such order was given to him.Ultimately,he was posted under P.W.I.,Jaleswar which post he joined on 1-1-1994.In the context of the above facts, the applicant has come up in this Original Application with the prayers referred to earlier.

6. Respondents in their counter have stated that there is no written record that the applicant had informed the PWI,Hijli about the threatening to his life and his going away to his native village. It is stated that he might have informed the P.W.I. verbally but no record to that effect is there. It is stated by the Respondents that the applicant was placed under suspension w.e.f. 4-6-1989 and the order of suspension was ~~removed~~ ^{replaced} on 5.9.1989. It is stated that the applicant is entitled to his salary for the month of May,1989 and for the month of June,1989 upto 3rd ^{June} and subsistence allowance from 4.6.89 ^{1st June} to 5.9.1989. Amounts for the above periods have been drawn but could not be disbursed to the applicant,because he was not available. It is stated that as the applicant did not work from 4.6.1989 to 31.12.1993, he is not entitled to any salary. We have considered the above pleadings of the parties carefully. Applicant was placed under suspension on 4-6-1989 and order of suspension was revoked on 5.9.89. Respondents have not made any averment that any disciplinary proceedings was initiated against him and if so what was the result. Apparently, therefore, without initiating any disciplinary proceedings, suspension order was revoked on

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5. 9.1989. Therefore, alongwith his salary for the Month of May upto June 3,1989,during which period, the applicant had worked in his post, he is also entitled to salary from 4-6-1989 to 5-9-1989. Respondents are directed to make payment of this amount to the applicant,within a period of 60 days from the date of receipt of a copy of this order.

7. As regards the period from 6-9-1989 till 31.12.1993, the applicant has stated that as he was apprehensive of danger to his life, he could not join to his post. It is also stated that as the Departmental Authorities appreciated his difficulty and in consideration of the perceived danger to his life posted him out of Hijli to Jaleswar, he should not be denied the salary for this period. We find that the ~~alleged danger~~ ^{perceived} to his life arose out of an incident in June, 1989. Because of this, incident, he stayed away from his duties for a long period of four years. As he had not worked during this period, he is not entitled to the salary for this period. Applicant has stated that he represented for his transfer from Hijli but alongwith this OA he has not filed copy of any such representation. Moreover, applicant admittedly joined on 1.1.1994 and was not paid his salary from 5.9.1989 till 31.12.1993 but he has approached the Tribunal for getting the salary after five years i.e. only in September, 1999. This claim of salary is barred by limitation. In view of this we hold that the applicant is not entitled to the salary for the period from 6.9.89 to 31.12.1993.

J.J.M.

8.

Applicant has also prayed for Bonus for the above period. His entitlement of Bonus, on the duty periods, ordered to be paid to him, should also be worked out strictly in accordance with rules and paid to him within an another period of 30 days beyond the period fixed above.

9.

Last prayer of the applicant is with regard to payment of interest. We have allowed a part of the claim of applicant and the point for consideration is whether for the said part, interest can be allowed to him. Respondents have stated and it is also admitted by applicant that from 4.6.1989 till 1.1.1994 he was not available to receive whatever amount is due to him. In view of this, claim of interest is also held to be without any merit and is rejected.

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In the result, therefore, the Original Application is disposed of with the directions given above. No costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN, D.C.C.L

KNM/CM.

Case Records
received on 18.4.2001
morning.

free copies of final
order dt. 12.4.2001
issued to counsels
for both sides. *ABM*
S.C(J)

DS
18/4/01