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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order 20.04.2001

ORIGINAL APPLICATION NO. 73/1997.

Gangadhar S/o shri Gopal Dass, aged 60 years,
retired permanent Way Inspector, Grade RS. 2000-3200.
(RPS), R/o old tehsil, House No. 119, P.O. Khatauli,
District Muzzafer Nagar.

APPLICANT..

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Administrative Officer (Construction), Northern Railway, Kashmiri Gate, Delhi.
3. Dy. Chief Engineer (Const.), Northern Railway, Bikaner.
4. Divisional Railway Manager, Northern Railway, New Delhi.

RESPONDENTS..



Mr. Y. K. Sharma, counsel for the applicant.
Mr. Kamal Dave, counsel for the respondents.

COURT

Hon'ble Mr. Justice, B. S. Raikote, Vice Chairman.
Hon'ble Mr. Gopal Singh, Administrative Member.

ORDER

(per Hon'ble Mr. Gopal Singh)

In this application, under Section 19 of the Administrative Tribunals Act, 1985, applicant Gangadhar has prayed for a direction to the respondents to pay the applicant his pension, arrears of pension, commutation of pension value and Death-cum-Retirement Gratuity

Gopal Singh

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with interest at the rate of 12 % per annum.

2. Applicant's case is that he retired on Superannuation on 31.08.1995 from the post of permanent Railway Inspector and on retirement he was paid his accumulations in the Provident Fund on 08.09.1995 and amount of leave encashment on 25.10.1995. It has, however, been alleged by the applicant that he has not been paid his pension, commutation of pension ~~xxxxxx~~ and Death-cum-Retirement Gratuity. Hence this application.

3. In the counter, while contesting the application it has been stated by the respondents that the applicant has not approached the Tribunal with clean hands and therefore, he is not entitled to any relief. It has also been pointed out by the respondents that major penalty proceedings were initiated against the applicant while he was in service and these proceedings are still continuing. It has also been pointed out by the respondents that the claim regarding full pension, commutation value of pension and gratuity could not be finalised, since, the applicant was facing major penalty charge-sheet. The applicant has however, being sanctioned provisional pension. It is also pointed out by the respondents that ~~xxxxxx~~ the charge-sheet dated 22.08.1995 (Annexure R-4) is ^{still} pending. It has been pointed out that the applicant has allowed undue advantage to the contractor to the tune of Rs. 24,00000 (Approximately). The payment of DORG and commuted value of pension to the applicant has been withheld till finalisation of the major penalty chargesheet.

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4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is a fact that the applicant has not approached the Tribunal with clean hands in as much as he has not made any reference to chargesheet pending against him. The Railway Administration has suffered a loss of about Rs. 24,00000 (Approximately) ^{alleged} because of the negligence of the applicant and in case this charge is proved against the applicant, this amount would be liable to be recovered from him. There are also Rules which provides withholding of gratuity etc., in case where Government have suffered financial loss due to the negligence of the Government servant. In the circumstance we are of the view that we cannot interfere in the matter at this stage. The grant of relief prayed for by the applicant would arise only after the chargesheet has been finalised and he has been exonerated. The learned counsel for the applicant had brought to our notice, order of this Tribunal dated 08.09.2000 passed in OA No. 361/1997, Shanker Lal vs. U.O.I. & Ors. In that O.A., the applicant was on leave for a period of one year six months and three days during February 1986 to October 1992 and he was paid full pay and allowances for the said period of leave, though, the applicant was not entitled to any pay and allowances for the period of leave without pay. Full pay and allowances paid for the period of leave without pay erroneously was sought to be recovered from the amount of gratuity. The over payment made to the applicant on this count was brought to his notice 5 years after his retirement. Following the

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judgement of Hon'ble Jammu and Kashmir High Court in Hans Raj Vs. U.O.I, printed as 2000 (2) ATJ 476, it was held that the action of the respondents was not sustainable in the eyes of law. In the instant case retiral benefits have been withheld as the applicant is facing major penalty chargesheet. Thus, the facts of the case in hand are distinguishable and, therefore, the judgement and order cited by the learned counsel for the applicant does not help him.

6. In the light of above discussion we do not find any merit in this application and the same deserves to be dismissed.

7. The O.A. is accordingly dismissed with no order as to costs.

8. Before parting with this OA, we would, however like to direct the respondents department to expedite the finalisation of the disciplinary proceedings with utmost speed.

Goopal Singh

(GOPAL SINGH)
Admin. Member

B. S. RAIKOTE

(B. S. RAIKOTE)
Vice Chairman

Q1(807)
2/12/1921

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Part II and III destroyed
in my presence on 21.3.28
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section officer (1) as per
order dated 29.12.1927
Section Officer (Record)