

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.688 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Sri Ram Nath, S/O late Bharose, Ex.
design Khalasi helper, Eastern Railway
Liluah, residing at 80/C/4, G.T. Road,
West, P.O. Serampore, Dis.Hooghly

.... Applicant

VS

1. Union of India, service through
the General Manager, Eastern Railway,
17, N.S. Road, Fairlie Place,
Calcutta-700 001

2. Divisional Railway Manager, E. Rly.
Howrah Division, Howrah

3. Divisional Personnel Officer,
Eastern Railway, Howrah Division,
Howrah

4. Chief Traction Foreman (OHE),
Eastern Railway, Liluah, Dist.Howrah

.... Respondents

For the Applicant : Mr.B.C.Sinha, counsel
Mr.P.C. Das, counsel

For the Respondents: Mr. C. Samaddar, counsel

Heard on 20.11.1998 & 14.12.1998 : : Date of order: 14.12.1998

O R D E R

The question is - Whether the respondents are justified to recover the overpayments made to the applicant from 1.8.90 to 22.11.94 for the service rendered by him after attending the age of superannuation on 27.7..90. According to the applicant, his date of birth as recorded in the service book is 27.7.1932, and his due date of retirement as per undisputed date of birth was 27.7.1990, and he should deemed to have been retired from service on 31.7.1990. But the respondents allowed him to continue in service even after the due date of superannuation on 31.7.1990 till 22.11.94, *then* a letter was issued by which the respondents sought to recover the overpayments made to the applicant for the period from 1.8.90 to 22.11.94. According to the applicant, there

is no fault on his part. Since the respondents failed to notify the date of superannuation of the applicant and allowed him to continue in service, thereby he is entitled to get all the benefits of reemployment after the date of superannuation on 31.7.1990. Feeling aggrieved by the said order dated 22.11.94 (Annexure/A), the applicant approached this Tribunal for quashing the order dated 22.11.94 with a direction upon the respondents to release all retirement benefits withheld by the respondents for the alleged overpayment made to the applicant.

2. The case of the applicant is resisted by the respondents by filing a written reply. In the written reply they stated that there was a wrong entry in the date of birth column of the seniority list of the applicant which showed as 22.6.1943 in place of 27.7.1932 and due to such wrong entry, the applicant continued in service upto 22.11.1994. Thereby the applicant retained in service beyond the normal age of superannuation for a period of 4 years 3 months 22 days. On detection of such erroneous retention in service, he was immediately discontinued from service by a letter dated 22.11.1994. According to the respondents, due to such erroneous retention in service they had to bear an extra amount of Rs.1,32,072/- towards the salary and other allowances paid to the applicant. Since the applicant has no right to continue in service after the due date of superannuation, thereby that payment was wrongly paid to the applicant and so he is not entitled to get the benefit of that payment and the amount is liable to be recovered from him in accordance with the law and the Department had already taken steps to regularise the overpayment to the applicant following the departmental instruction contained in para 4 of Railway Board's order No.5/87 on establishment (Vol.I). So, the application is liable to be dismissed.

3. Mr.Sinha, learned advocate appearing on behalf of the applicant submits that there is no laches on the part of the

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applicant in the matter of service rendered by him after due date of superannuation, as stated by the respondents and the respondents did not notify the date of retirement of the applicant in accordance with the rules prescribed by the Department. Since the applicant is not at fault for the continuation of service after due date of retirement and for the made overpayment to the applicant for such service, the question of recovery should not be made by the Department and in view of the aforesaid circumstances the order of recovery as passed by the respondents is highly arbitrary, illegal and liable to be quashed.

4. Mr. Samaddar, learned advocate appearing on behalf of the respondents submits that the matter of regularisation of overpayment is under process in view of the departmental instruction contained in para 4 at page 10 of the Railway Board's order No.5/87 published in Railway Board's orders on establishment, 1987 Vol.I by Bahri Brothers. And the applicant has no right to continued in service after due date of retirement. So, the Department is authorised to recover the amount if overpayment is made through mistake by the Department. Hence the said notice cannot be said to be violative of rules and thereby the application is liable to be dismissed.

5. I have considered the submissions of the learned counsel of both the parties. In this case admittedly the respondents paid remuneration to the applicant for the period of service rendered by him from 1.8.90 to 22.11.1994. It is a settled law that after due date of superannuation as prescribed by the rules, no employee has a right to continue in service. But in the instant case the Department through mistake allowed the applicant to continue in service without serving any notice on him prior to his date of superannuation and the applicant also did not raise any objection regarding continuation of service after due date of retirement. I find that a similar matter has been considered by



the Hon'ble Apex Court in the case of State of J&K vs. Pirzada Ghulam Nabi, reported in 1998 SCC(L&S) 462. In para 4 of the said judgment the Hon'ble Apex Court has ^{made a} distinguished between the cases in respect of directing payment of salary subsequent to the date of superannuation and in respect of recovery sought to be made by the Department after due date of superannuation and it is found from the judgment in the case of Collector of Madras v. K. Rajamanickam, reported in 1995 SCC (L&S)414 that similar point has been considered and in that case the respondents have already paid for the period of service rendered by him after the date of superannuation and the Department sought recovery of the amount so paid. But the Hon'ble Apex Court did not permit recovery of the amount which had already been paid for the service rendered by the employee after the date of superannuation. But it was directed by that judgment that his retiral benefit should be computed on the basis of his correct date of superannuation. We find that the judgment in the case of Collector of Madras vs. K. Rajamanickam would ~~directly~~ apply to the applicant's case since the respondents paid the applicant for the service rendered by him after due date of superannuation and now they wanted to recover the amount from him by a letter dated 22.11.1994 (Annexure/A to the application). So, I hold that the said recovery would not cause hardship to the applicant when he actually rendered service to the Department after retirement. Thereby I do not find any justification to make recovery of the overpayment, as alleged by the respondents in this case, particularly when the applicant under no circumstance can be held responsible for continuing in service after due date of superannuation.

6. In view of the aforesaid circumstances it is clear that the applicant would not be entitled to get any other benefits on the basis of the continuation of service after due date of superannuation and his all benefits should be counted on the



basis of the corrected date of superannuation i.e., 31.7.1990. The respondents are directed to make all retirement benefits to the applicant within four months from the date of communication of this order in the light of the observation made above. With this observation the application is allowed awarding no costs.

14/11/98
(D. Purkayastha)

MEMBER (J)