

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.428/93

DATE OF DECISION : 21.09.1993

K.E.Sankaran nambiar,
Thayyil House,
Thiruvangadi PO,
Tellicherry.

.. Applicant

Mr. P.Sivan Pillai

.. Adv. for respondent

V/s

1. Union of India through
The General manager,
SR, Madras-3.

2. The Ex. Engineer (Construction),
SR, Ernakulam.

3. The Financial Advisor &
Chief Accounts Officer (CN),
SR, Egmore, Madras-8.

4. The Chief Engineer (CN),
SR, Egmore, madras-8. .. Respondents

Mr. Thomas Mathew Nellimootttil .. Adv. for respondents

CORAM : The Hon'ble Mr. N.Dharmadan, Judicial Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

A retired Office Superintendent of Railway is before me. He is aggrieved by the denial of the respondents to refund the terminal leave salary due to the applicant, on his retirement on 31.8.1990 with 18% interest.

2. Admittedly the applicant retired from Railway service as Office Superintendent on 31.8.90 and he was given all retirement benefits except the terminal leave salary earned by him. Repeated representations filed for getting the same were not considered. Hence, he has filed

this application under Section 19 of the Administrative Tribunals Act for a direction to refund the terminal leave salary withheld illegally with 18% interest from 1.10.1990.

3. According to the Railway, an amount of Rs.76,000/- is due to be realised from the applicant "towards the heavy loss caused to the stores". In support of the claim of loss to the Railway, they have produced Annexures-R1, R2 & R3 letters dated 17.11.92, 7.4.93 and 20.11.92 respectively. These are inter-departmental communications issued long after the retirement of the applicant.

4. It is pertinent to note that/earlier litigations between the applicant and the Railway. He has also filed CCP 100/92 in OA 731/90 against the Railway. The learned counsel, Shri Sivan Pillai, alleged that the denial of release of leave salary is a vindictive action of the Railway only because of the filing of CCP and earlier case.

5. Normally, if actually some amounts are due from a Railway employee to be recovered towards loss of Railway, it ~~should be~~ be quantified and notified to him before his retirement, for disciplinary or other departmental action can be continued against any Railway employee only for the limited purpose of realisation and recovery of such amount from him after his retirement.

6. It is a settled proposition of law that a Government employee can be proceeded against after retirement only on two circumstances, viz. (i) if a disciplinary proceeding initiated against him while in service is pending against him at the time of his retirement, and (ii) a proceeding for realisation of amounts due from the Government employee can be continued against him even after retirement provided the employer has quantified the loss and notice was given to him before his actual retirement. Except in these two circumstances, a

proceeding cannot be initiated against a retired Government employee. Unless there are extant orders providing for taking such actions. No such extant orders or other authority enabling the Railway to proceed against the applicant for realisation of the alleged huge loss of Rs.76,000/- stated to have been sustained to the Railway, have been produced before me.

7. The learned counsel for the applicant relied on a Railway Board's letter, Annexure-A3, dated 7.8.89 and submitted that the leave salary earned by the applicant cannot be withheld by the Railway after his retirement unless he is involved in a disciplinary proceeding or criminal proceeding and undergoing suspension. The relevant clause in Annexure-A3 is extracted below:-

"5. It has also been observed that in some cases the amount of encashment of L.A.P. admissible to the retiring employee is also being withheld in contravention of the provisions. It may be reiterated that in terms of Boards order No.F(E) III/82/LE-1/2 dated 29th December 1983 the authority competent to grant leave can withhold whole or part of cash equivalent of L.A.P. only if the employee is under suspension on the date of retirement of the disciplinary and criminal proceedings are pending against him if in the view of the said authority there is a possibility of some money becoming recoverable from the employee on conclusion of the proceedings against him. On conclusion of the proceedings he will become eligible to the amount so withheld after adjustment of Railway dues, if any. these instructions may be strictly followed in letter and spirit."

8. The Railway has no case that any disciplinary proceeding or criminal case is pending against the applicant nor was he suspended before the retirement. Hence, the Railway has no legal authority to withhold leave salary due to the applicant. If the Railway claims any amount in the light of subsequent orders or letters issued after retirement of the applicant, without issuing notice to him and fixing the ~~same~~ as allegedly to be due from him, the leave salary cannot be withheld. Only in case when quantification of liability has been made before his

retirement with notice to him, a recovery is possible if it was notified to him before his actual retirement.

9. On the facts and circumstances of the case, I am satisfied that the respondents have withheld the leave salary earned by the applicant without any justifiable reason, after his retirement. It is clearly stated in the reply that after his retirement on 31.8.90, he has been paid all the retirement benefits due to him including pension. If, as a matter of fact, an amount of Rs.76,000/- was actually due to the Railway from the applicant, the respondents ought not have allowed him to go on retirement scot free and released the retirement benefits including pension. The fact that the applicant has been granted retirement benefits including pension after his retirement shows that the case now set up by the respondents in the reply based on Annexures-R1, R2 & R3 ^{is} not a bonafide claim.

10. It ~~was~~ the duty of the Railway to verify the stores and settle the scores before the retirement of the applicant. There is no explanation why such settlement was not made in the case of the applicant before his retirement. If any officer in charge of the matter defaulted and allowed the applicant to retire from service before verification and quantification of loss and his liability, such officer is really responsible for the loss, if any, actually sustained by the Railway. It is now stated that the Railway sustained a loss of Rs.76,000/- in Annexures-R1, R2 & R3. If it is a real loss to the Railway, the same can be realised from the above officer if he is in service for he is responsible for the loss on the facts and circumstances of this case.

11. As indicated above, it is a case in which the Railway denied the terminal leave salary to a Railway employee who has been allowed to retire from service without any objection or liability. Hence, he is also entitled to interest on the same. Accordingly, I allow the application and direct the respondents to pay leave salary actually due to the applicant with 18% interest from 1.10.1990. This shall be done within a period of two months from the date of receipt of this judgment.

12. The application is allowed as above. No costs.


21.09.93
(N.DHARMADAN)
JUDICIAL MEMBER
21.09.1993

v/-