

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXX XXXXXX

(2)

XXXXXX.

198

T.A. No. 447/87

DATE OF DECISION 21.9.1988Shri V.W.Kulkarni

Petitioner

Shri V.G.Valsangkar

Advocate for the Petitioner(s)

Versus

Union of India through General Manager, South Central Railways Secunderabad.

Respondent

Shri V.G.Rege

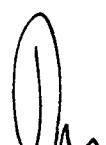
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice Chairman

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal?



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.A.No. 447/87

(24)

Shri V.W.Kulkarni,
43, Shri Guruprasad Balaji Society,
Kumatha Naka,
SOLAPUR - 413003.

Applicant

v/s.

Union of India
Through
The General Manager,
South Central Railways,
Secunderabad.

Respondent

CORAM; Hon'ble Vice Chairman Shri B.C.Gadgil
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearance :

Shri V.G.Valsangkar
Advocate
for the Applicant

Shri V.G.Rege
Advocate
for the Respondent

ORAL JUDGMENT

(PER: B.C.Gadgil, Vice Chairman)

Dated: 21.9.1988

Regular Civil Suit No. 865/77 of the file of
Civil Judge, Senior Division, Solapur is transferred
to the Tribunal for decision.

2. The dispute in this litigation is a very short one. The applicant was a railway employee and on 30.9.1979 he retired as a Senior Commercial Inspector. Before his retirement a departmental enquiry was initiated against him. The charge sheet dated 27.10.1976/3.12.1976 was issued in this respect. That charge sheet is at Ex.4/1. The Railway administration passed an order dated 3.10.1979 releasing the gratuity that was payable to the applicant. While doing so the department directed that certain amount should be recovered from that gratuity.

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In this litigation, we are concerned with an amount of Rs.13,718. Thus, the applicant did not get the said amount of Rs.13,718. The applicant filed the suit in question for recovery of that amount. Of course, we may say that initially the suit was for declaration and injunction. However, by an amendment, a claim was made to recover that amount on the ground that withholding its payment is illegal and is not permissible.

3. The respondent resisted the suit by filing their written statement (Ex.37). It is not disputed that the payment of above mentioned amount was withheld by the respondents by the letter dated 3.10.1979. The respondent, however, contended that the departmental enquiry mentioned above was completed and the Enquiry Officer ^{had} submitted his report and that the said report was under consideration of the Disciplinary Authority. This written statement was filed on 19.6.1981. It cannot be disputed that the Disciplinary Authority has not passed any final order on the basis of that departmental enquiry.

4. Mr. Valsangkar for the applicant contended that the gratuity amount can be withheld only after following the procedure of departmental enquiry. We are not shown any rule which will permit the railway administration to withhold the amount of gratuity particularly when the said withholding is based on an allegation that the railway administration has suffered a ~~loss~~ ^{loss} on account of negligence on the part of applicant. As stated above, the departmental enquiry was initiated before the superannuation of the applicant. The rule permitted the continuance of such departmental enquiry even after superannuation. The Disciplinary Authority ~~have~~ ^{has} not passed any order till today. It is material to note that

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an enquiry initiated in 1976 has not been completed for about 12 years. It is an accepted proposition that ~~the~~ departmental enquiries are expected to be decided within a reasonable time. Of course, ~~the~~ 'reasonable time' may mean different periods depending upon the facts of each case. However, in the present case the enquiry officer has completed the enquiry and has submitted a report in 1980. Thus, for the last 8 years the disciplinary authority has not taken any action. In the face of this circumstance, we hold that there has been unreasonable ^{with} delay in proceeding the enquiry and the enquiry is liable to be struck down.

5. Thus, the net result is that the amount of Rs.13,718 has been withheld for no valid reasons. Obviously, the applicant will be entitled to get back the said amount. Mr.Valsangkar submitted that the applicant should be awarded costs and the interest on the above mentioned amount. Mr.Rege submitted that the amount was withheld as the enquiry was going and that therefore neither costs nor interest should be allowed. We are not inclined to accept this submission. It would be in the interests of justice if we allow the costs of the application. We quantify the costs as Rs.600/-. Under Section 34 of the Code of Civil Procedure the maximum rate of interest permissible is 6%. We feel that interest at 4% per annum should be paid. Hence, we pass the following order.

O R D E R

The application (Regular Civil Suit No. 865/77) succeeds. The departmental enquiry initiated on the basis of the charges dated 27.10.1976/3.12.1976 are quashed. The respondents are restrained from proceeding with that enquiry. The respondents are directed to pay

Rs.13,718/- together with the interest at 4% per annum from 1.10.1979 till payment. In addition, the respondents are also directed to pay to the applicant Rs.600/- as quantified costs of this litigation. This judgment should be complied with expeditiously, say, within a period of three months from today.

B.C.Gadgil
(B.C.GADGIL)
Vice Chairman

P.S.Chaudhuri
(P.S.CHAUDHURI)
Member (A)