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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 634/87
[Redacted]

198

DATE OF DECISION 24/2/1988

Shri V.O. Ambodkar.

Petitioner

Shri Ramamurthy.

Advocate for the Petitioner(s)

Versus

Deputy Controller of Stores, W.Rly.,
Mahalaxmi, Bombay.

Respondent

Shri R.K. Shetty.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. L.H.A. REGO, MEMBER(A)

The Hon'ble Mr. M.B. MUJUMDAR, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
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? No



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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

O.A. 634/87

Shri V.O. Ambodkar,
C/o. Shri T.R. Talpade,
Advocate High Court,
308, Narottam Niwas,
Ground Floor,
Jawaji Dadaji Road,
Nana Chowk,
Bombay - 400 007.

... Applicant

v/s.

1. Deputy Controller of
Stores,
Western Railway,
Mahalakshmi,
Bombay - 400 011.

2. Controller of Stores,
Western Railway,
Churchgate,
Bombay - 400 020.

... Respondents.

Coram : Hon'ble Member(A) Shri L.H.A. Rego
Hon'ble Member(J) Shri M.B. Mujumdar

Appearances:

1. Shri Ramamurthy,
Advocate for the
Applicant.

2. Shri R.K. Shetty,
Advocate for the
Respondents.

ORAL JUDGMENT

DATE : 2-2-1988

(Per M.B. Mujumdar, Member(J))

After hearing the advocates for both the sides at length on the point of admission and interim relief we feel ourselves well-equipped for deciding all the relevant points finally. Hence with the consent of both the advocates we are disposing of this application finally.

2. The relevant facts for the purpose of this judgment are these: The applicant Shri V.O. Ambodkar was working as Depot Stores Keeper-II in Ward-22 of the Stores Depot of the Western Railway at Parel ^{from} _{September} 1985 till his retirement on superannuation on 31st January, 1987. In

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of

January, 1986 the ~~Fact finding~~ Committee comprising Assistant Controller of Stores (C) Parel, Assistant Works Manager (M) Parel, and Assistant Commandant (RPF) BCT was appointed to investigate the shortage of steel items at Jambul siding at the Stores Depot. The committee submitted its report in September, 1986. It did not hold either the applicant or anybody guilty for shortage of material but suggested some remedial measures. As the higher officers were not satisfied with this report another Review Committee was appointed. That Review Committee constituted on 15-9-1987 consisted of Deputy Controller of Works (MX), Deputy Chief Mechanical Engineer (P) and Sr. Accounts Officer, Churchgate. That committee submitted its interim report on 1-10-1987 and the final report on 30-11-1987. That Committee held the applicant fully responsible for the shortage of material as ~~custodian~~ since he failed to discharge his duties with full devotion.

According to the Committee the applicant had contravened many provisions of the Stores Code, with regard to accounts of material, stock verification and safe custody of the material. On 1-2-1988 the Deputy Controller of Accounts submitted a report to the Assistant Personnel Officer in the Office of the General Manager of Western Railway, for taking necessary action. Along with the report relevant papers including the reports of the Fact Finding Committee and the Review Committee are also submitted. It was submitted before us on behalf of the respondents that the respondents propose to start departmental proceedings against the applicant after following the relevant provisions in the Pension Rules.

3. After his retirement the applicant is drawing a provisional pension of about Rs.1,100/- p.m. He has been given the amounts due to him towards Provident Fund, encashment of leave and Group Insurance. Before his retirement he had made an application for ~~paying him~~ commuted value of 1/3 of his pension. That application is not decided so far inspite of the directions given by us on 3-12-1987. That amount comes to about Rs.48,200/-. The applicant is also not paid the amount of death-cum-retirement Gratuity (DCRG) which comes to about Rs.38,940/-.

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4. On 24-9-1987 the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985. The applicant has prayed for restraining the respondents from taking any disciplinary action against him for alleged loss of steel items lying in the open yard at the Stores Depot. He has also prayed for directing the respondents to pay ~~to~~ him the amount due to him on account of Death-cum-Retirement Gratuity and the amount of commuted value of pension.

5. The respondents have resisted the application by filing their written statement. The applicant has thereafter filed a rejoinder and it is followed by sur-rejoinder of the respondents.

6. We have heard the learned advocates for both the sides and we are of the view that the applicant is not entitled to the main relief of restraining the respondents from taking any disciplinary action against him. However, he is entitled to DCRG and commuted value of pension as prayed for by him.

7. Shri Ramamurthy vehemently submitted that the respondents are proposing to initiate departmental action against the applicant in order to victimise him. He brought to our notice the various letters sent by the applicant to the higher authorities regarding the shortage of the material in the Depot. He heavily relied on the observation of the Fact Finding Committee that it had not held him guilty.

8. Even after considering all the circumstances we are of the view that it will neither be proper nor legal to restrain the respondents from initiating any departmental action against the applicant. Though the Fact Finding Committee had held the applicant not guilty of the shortage of material, the Review Committee which was composed of senior, ~~and~~ high officials held the applicant responsible for shortage of material and for certain other lapses. The respondents have already submitted a report for

Explanation.—For the purpose of this para—

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway servant or pensioner, or if the Railway servant has been placed under suspension from an earlier date, on such date ; and

(b) a judicial proceeding shall be deemed to be instituted—

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made ; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court ; and

(c) the term 'grave misconduct' used in this para is wide enough to include 'corrupt practices'. In case a Railway servant against whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf of pecuniary resources of property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him. In such cases action to withhold or withdraw pension may be taken under this para. It should, however, be ensured that the property or pecuniary resources in respect of which the Departmental or Judicial proceedings are instituted should have been acquired by the person concerned or by any other person on his behalf, any time within the period of four years before the institution of such proceedings, if not instituted while the Railway servant was on duty either before retirement or during re-employment."

Clause (b) of the proviso authorises the authorities to start a departmental proceeding against the railway employee even after retirement. The only conditions are that they should obtain the sanction of the President and see that the proceedings are not in respect of an event which took place more than 4 years before the institution of the proceedings. We assume that the respondents will fulfill both the conditions before starting any departmental proceedings against the applicant.

9. Shri Ramamurthy submitted that the respondents should not be allowed to start the departmental proceedings against the applicant as there is no evidence against him. If that is really so, he should not be apprehensive of facing the proceedings. In fact these proceedings will provide him an opportunity to vindicate himself.

10. Hence we hold that the applicant is not entitled to the relief of restraining the respondents from starting any disciplinary proceedings against him.

11. However, regarding D.C.R.G. and encashment of leave we are of the view that as the disciplinary proceedings were not started when the applicant was in service, the respondents will have no authority to withhold these retirement benefits. Shri R.K. Shetty learned advocate for the respondents could not show us any provision which entitles the railway authorities to withhold payment of DCRG and encashment of leave to a railway employee on his retirement when departmental proceedings are not started against him, while he was in service. On the contrary Shri Ramamurthy relied on a copy of the Railway Board's letter dtd. 4-12-1985 which is at Ex. 'A' to the applicant's rejoinder. The material portion of that letter reads as follows :-

"If the departmental or judicial proceedings have not been instituted/initiated before retirement of the employee, the question of not authorising the pension or DCRG does not arise. Obviously, the benefit of commutation can also cannot be withheld. However, in future if some misconduct is apprehended against the employee and the investigations have been considered necessary, every possible endeavour should be made to complete the investigation to establish any prima-facie case justifying instituting a departmental proceedings against him before retirement. Steps should also be taken to ensure that formal chargesheet is also issued with a view to institute regular departmental proceedings before the retirement of the employee".

12. Shri Shetty had no explanation as to why the above provisions should not be applied to this case. We may also point out, that under para 701 of the Manual of Railway Pension Rules, a railway servant is entitled on his retirement to Death-cum-Retirement Gratuity as specified in para 703 ibid. As the payment was unduly withheld for a long period, the applicant will also be entitled to interest, from the expiry of a period of two months from his retirement. Regarding commuted value of

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pension, the applicant is already drawing about Rs.1,100/- per mensem as provisional pension. It is desirable that before paying commuted value of 1/3rd pension, his pension is finally fixed.

13. Shri Shetty submitted that the respondents will have no remedy for recovering the loss caused to the Government if the applicant is finally held guilty in the departmental proceedings which are to be held against him. We do not think that the Government will be without any remedy in that case. Para 315(1) of the Manual of Railway Pension Rules, which we had quoted earlier, gives wide powers to the President even for recovering the pecuniary loss caused to the Government from pension due to the applicant. Government will also have a right to recover the loss from the applicant by filing a suit.

14. Before closing the judgment we may point out that Shri. Ramamurthy, learned advocate for the applicant desired inspection of the reports of the Fact Findings Committee and the Review Committee, on which the respondents have heavily relied. The respondents have claimed privilege regarding these reports by filing the affidavit of Shri Kanti Swaroop, Controller of Stores, Western Railway. We have gone through these reports and in view of the decision which we have arrived and we do not think it necessary to decide the question of privilege in this case.

15. In the result, we pass the following orders :

- (i) The applicant's request for restraining the respondents from taking any disciplinary action against him for any alleged loss of items lying in the Stores Depot in question, is hereby rejected.
- (ii) The respondents are directed to fix the final pension to which the applicant is entitled and pay commuted value of 1/3rd of that pension and DCRG to the

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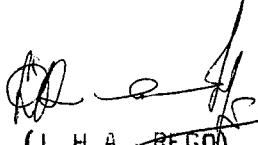
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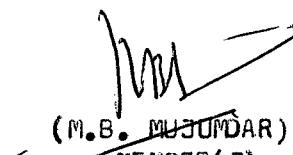
applicant, within two months from the receipt
of a copy of this order.

~~on above~~

(iii) The respondents shall pay interest on ~~this~~ amount
from 1st of April, 1987 till payment at the rate of
10% per annum.

(iv) Parties to bear their own costs.


(L.H.A. REGO)
MEMBER(A)


(M.B. MUJUMDAR)
MEMBER(J)