

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 80/88

Transfer Application No.

Date of decision 1.12.1993

Shri R.L.Dhasal.

Petitioner

Shri D.V.Gangal.

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan.


Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member(A).

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

  
(M.S.DESHPANDE)  
VICE-CHAIRMAN

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

Original Application No.80/88.

Shri R.L.Dhasal. .... Applicant.

V/s.

Union of India & Ors. .... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,  
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri D.V.Gangal.  
Respondents by Shri P.M.Pradhan.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt.1.12.1993.

The applicant challenges his retrospective retirement w.e.f. 8.10.1984 by the order dated 5.12.86.

2. The applicant was appointed as a Peon on 7.12.1967 and came to be promoted as a Notice Server on 10.11.1978. He was unwell from 1983 onwards and was treated by the Civil Surgeon, Ahmadnagar for the year 1984. The applicant's contention is that he had sent several applications including those on 31.1.1985, 2.5.1985 and 24.10.1985 ventilating his grievances to the department and had also forwarded the medical certificates, but no relief was given to him. The applicant was ultimately retired by the impugned order dt.5.12.86 <sup>and not</sup> w.e.f. 8.10.1984. We may also mention that on 18.1.85 a letter was sent by the Respondents' Annexure - E' asking the applicant, who had been absent, to attend the office failing which departmental action would be taken against him. The applicant sent an advocate's notice under section 80 of the C.P.C. and then filed the present application challenging the order retiring him retrospectively.

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2. The application is opposed by the respondents mainly on two grounds. The first was about the limitation and second about the applicant's entitlement to the relief which was sought. With regard to the point of limitation, it may be noted that the applicant had <sup>in</sup>no response to the order dt. 5.12.1986 sent a notice immediately on 11.12.1986. It has been mentioned in the application that apart from sending the advocate's notice the applicant was bed-ridden and sick upto 2.1.1988. In para 12 of the written statement, the Respondents have admitted that the Civil Surgeon had issued a certificate on 8.10.1984 declaring the applicant to be completely and permanently incapacitated, as a justification for the impugned order. In these circumstances, the delay of a little over one month in filing the present application on 25.1.1988 was justified and we condone the delay in filing the application and hold that the application is within time.

3. There is no controversy before us that <sup>the</sup> order retrospectively retiring the applicant could not have been passed. The retirement would operate from the order dt. 5.12.1986. The only question that now arises is about the entitlement of the applicant. The applicant's own contention was that he was ailing and that he had forwarded medical certificates to the department together with his applications stating that he was unable attend the office and, as we have pointed out, the Respondents have also referred to the position that the applicant was ailing. It will be for the department to make available to the applicant such

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leave as may be admissible including medical leave <sup>to</sup> on the basis of the service/which we have adverted after calculating the leave that is due to the applicant as well as the medical leave to which he may be entitled, the respondents shall regulate the remaining period of his absence until the order of superannuation which was passed on 5.12.1986. We also make it clear that the applicant would be entitled to the benefit of pay revision which came into effect on 1.1.1986 if he is otherwise eligible for it. We therefore set aside the order of retirement.

The respondents to treat the applicant as having been superannuated w.e.f. 5.12.1986 and ~~that~~ they shall calculate the monetary entitlements of the applicant on the basis of the guidelines which we have given above, within a period of three months from the date of receipt of order and also fix his post retirement benefits in the light of Chapter 4 of the Pension Rules.

*M/R Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER(A)

*M.S. Deshpande*

(M.S.DESHPANDE)  
VICE-CHAIRMAN

B.