

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(2)

~~XXXXXX~~ ~~XXXXXX~~
NEW BOMBAY BENCH

O.A. No. 119/88
~~XXXXXX~~

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DATE OF DECISION 26.7.1989

Shri S.M.Shukla Petitioner

Shri D.B.Dave Advocate for the Petitioner(s)

Versus

General Manager, W.Rly.Bombay & another. Respondent s

Shri A.L.Kasturey Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

Yes

No

(8)

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

OA.NO. 119/88

Shri S.M.Shukla
TTI/W.Rly, Borivli,
13, Jwala Estate, S.V.Road,
Borivli (W), Bombay.

... Applicant

Vs.

1. The General Manager,
Western Railway,
Chrchgate, Bombay.
2. Divisional Railway Manager,
Western Railway, Bombay Central,
Bombay.

... Respondents

CORAM: Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.D.V.Dave
Advocate
for the Applicant

Mr.A.L.Kasturey
Advocate
for the Respondents

JUDGMENT

Dated: 26.7.1989

(PER: P.S.Chaudhuri, Member (A))

This application was filed on 12.2.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that :- (i) The Railway Board's letter No. E/C/86/RT/2/1, dated 13.5.1986 be declared illegal and void; (ii) Divisional Railway Manager, Bombay Central be ordered to pay the amount of Rs.20,000/-, that has been withheld from the applicant's death-cum-retirement gratuity, with interest from 12.8.1987 onwards; (iii) payment of commuted pension; and (iv) interest on Provident Fund from January to September, 1987.

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2. The applicant joined Western Railway as a Ticket Collector at Ujjain on 29.9.1949. He thereafter held various posts at various places. He was eventually promoted as Ticket Travelling Inspector at Borivli in 1985 from which post he retired in 1987. His date of birth as recorded in his service record was 12.1.1929. As per the rules in force he was, therefore, due to retire on superannuation on 31.1.1987. However, he was not retired on that date. On 9.4.1987 he received a letter from Divisional Railway Manager, Bombay Central stating that he was due to retire w.e.f. 30.9.1987 and requiring him to complete the requisite forms for payment of pension and other settlement dues. On 11.8.1987 he was issued a letter stating that he had been retired with immediate effect and directing him to deposit all money value books and equipment issued to him. He was also asked to contact the Office of the Divisional Railway Manager, Bombay Central for his settlement dues. Thereafter, he was paid his settlement dues except for :- (i) the interest on his Provident Fund balance from 31.1.1987 to 11.8.1987; (ii) the commuted pension due to him; and (iii) a balance amount of Rs.20,000/- which was withheld from his Death-cum-Retirement Gratuity. Being aggrieved at this he filed the present application.

3. The respondents have opposed the application by filing their written statement. I heard Mr.D.B.Dave, learned advocate for the applicant and Mr.A.L.Kasturey, learned advocate for the respondents.

4. At the outset Mr. Dave stated he was no longer pressing the third and fourth reliefs pertaining to payment of the commuted pension and interest on Provident Fund.

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5. The first relief prayed for is quashing the Railway Board's letter dated 13.5.1986. The respondents have filed a copy of this letter with their reply. It is seen therefrom that on 24.12.1985 the General Manager, Northern Railway informed the Railway Board that the Northern Railwaymen's Union has proposed the following item in PNM Meeting with the General Manager :-

"In certain cases staff continues working for a period beyond the age of superannuation due to administrative lapses. When detected, they are retired but the settlement dues of such employees are not paid due to official red tapeism. It leads to untold miseries as such employees are forcibly made to suffer financially for no faults of theirs. They require immediate financial assistance for re-settlement on retirement which are withheld for years together, although they should be paid their dues immediately on retirement. The union is of the opinion that the settlement dues in their favour should be immediately released for the entire period of service rendered by them."

The case was referred to the FA&CAO of the Railway who observed as under :-

"There does not appear to be any implication involved in the proposal to make provisional payment of the amount payable as per the normal date of retirement on superannuation. In view of the Board's extant orders the proposal can be implemented with the approval of the Board."

In the impugned letter dated 13.5.1986 the Railway Board stated that they agree with the observation of the FA&CAO in the matter. They also added that expeditious steps should be taken to release the pension in such cases, of course, with appropriate hold back of DCRG towards recovery of Government dues. Mr. Dave did not elaborate the grounds on which he was submitting that neither the whole nor even a portion of the DCRG could be held back for recovery of Government dues. Mr. Kasturey submitted that the Railway Board has full powers to make rules of general application to Group C & D railway servants under their control under the powers conferred by Rule 123 of the Indian Railway Establishment Code Vol.I. In view of this position, I do not see any force in this particular prayer of the applicant.

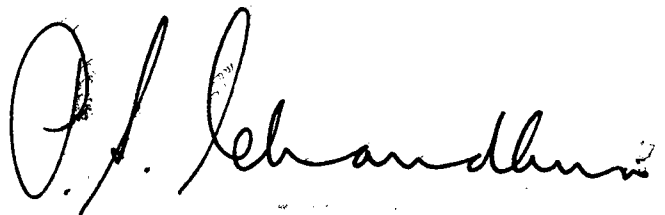
6. Mr. Dave then took the stand that withholding of Rs.20,000/- in this particular case did not amount to recovery of Government dues. He submitted that the applicant was living in private premises and that there were therefore no outstanding claims on him in respect of rent, water charges, electricity charges, etc. He also submitted that there was no outstanding Railway commercial claims due from the applicant. Mr. Dave stated that it was the respondents' submission that the amount of Rs.20,000/- had been retained in deposit to meet with the recoveries of Railway dues which will accrue on account of the applicant's continuation beyond the date of superannuation i.e. from 1.2.1987 to 11.8.1987. It was his contention that according to the respondents themselves the total amount of pay and allowances drawn in favour of the applicant during this period amounted to about Rs.8,460/- out of which about Rs.2,325 pertained to leave salary. It was his conclusion that, first, the Railway Board's letter dated 13.5.1986 did not authorise the withholding of any amount in this particular case. Secondly, in any case the amount of pay and allowances involved was substantially less than Rs. 20,000/-. Mr. Kasturey attempted to counter this by submitting that the respondents had a legal right to correct a mistake and they did so on 11.8.1987. It was his stand that after 31.9.1987 the applicant could not be deemed to be holding a post as he had attained the age of superannuation and that, therefore, a case was to be made out for his reemployment. It was because of this that, as a measure of abundant caution, an amount of Rs.20,000/- had been withheld from the applicant's settlement dues. Mr. Dave's final contention was that the respondent No. 3 had not informed either respondent No. 1 or Respondent No. 2 that he was withholding Rs.20,000/- from the applicant's DCRG. All that Respondent No. 3 had done was to ask Respondent No. 2 to obtain the competent authority's sanction for regularising the extended period of service beyond the age of superannuation.

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7. There is no doubt that the applicant continued in his post beyond the age of superannuation from 1.2.1988 to 11.8.1988. This was not due to any mistake on his part. There can be no Government dues to be recovered from him merely because he continued working due to an error on the part of the respondents. Any delay in the payment of the amounts due to him are on account of administrative lapse or for reasons beyond the control of the applicant.

8. In the result, the application partly succeeds. The respondents are directed to pay the applicant the amount that they have withheld from his DCRG, namely Rs. 20,000/-, together with simple interest thereon at 10% p.a. from 11.11.1987 onwards within two months from the receipt of a copy of this judgment.

9. In the circumstances of the case, there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)