

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1176/96

Date of Decision : 25th June 2001.

D.D. Raut Applicant

Shri R.N. Pandya Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri K.R. Yelwe for Advocate for the
Shri V.S. Masurkar Respondents

CORAM :

The Hon'ble Shri S.L. Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *no*
Benches of the Tribunal ?
- (iii) Library *yes*

S.L. Jain
(S.L. JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1176/96

Dated this the 25th day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

D.D.Raut,
6/127, N.N.Nagar-4,
Andheri (E),
Mumbai.

...Applicant

By Advocate Shri R.N.Pandya

vs.

1. Union of India through
The Secretary,
Railway Board,
Rail Bhavan,
New Delhi.
2. The Union Public Service
Commission,
Dholpur House,
New Delhi.
3. The General Manager,
Western Railway,
Headquarter Office,
Churchgate,
Mumbai.

...Respondents

By Advocate Shri K.R.Yelwe
for Shri V.S.Masurkar

P.S. J. ..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 24.7.1996 (Annexure-'A') with a declaration that the applicant is entitled to the pensionary amounts such as pension, gratuity, leave encashment salary and other retiral benefits due and payable to him w.e.f. 1.8.1989, to continue to pay the pension.

2. The applicant while functioning as an AAO (S&C), Office of the FA & CAO, Western Railway, Churchgate, Mumbai, during the month of November, 1982, during the period commencing from 13.11.1982 to 21.11.1982, when one Shri M.R.Chowdhary, Junior Accounts Officer and Drawing and Disbursing Officer was on leave, the applicant was entrusted with or having dominion over the Blank Cheque Book No.001937 containing Cheque Nos.B-193601 to B-193700, issued a cheque No. B-193673 dated 20.11.1982 for Rs.48,360/- in his own name, in his capacity as a Drawing and Disbursing Officer and deposited the said cheque in his own Savings Bank Account No. 4467 in the State Bank of India, Churchgate branch at Mumbai. On the counter-foil of the said cheque he wrote as 'cancelled due to spilling of ink and later on destroyed the said counter-foil. After investigation of the matter, a chargesheet under Section 409, 201 IPC and under Section 5 (1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 was filed before the Special Judge, where

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the applicant pleaded guilty to the charges framed against him and was found guilty sentenced to suffer simple imprisonment till rising of the day and a fine of Rs.250/- for each of the charges (in No.3). The applicant had paid the entire amount of Rs.48,360/- immediately on 31.5.1983 and realised that he has committed a wrongful action. He received a Memorandum dated 24.8.1993 from Deputy Secretary (E) II, Railway Board, Ministry of Railway asking him to show cause why the President in exercise of his powers conferred by Rule 2308 read with Rule 14(2) of the Railway Servants (D&A) Rules, 1968, should not withhold/withdraw his pension in full or part thereof. The applicant replied to the above mentioned Memorandum vide reply dated 18.10.1993. The case of the applicant was referred to the UPSC in January, 1985 and the Commission after due consideration of the case records, advised penalty of withholding of entire monthly pension on a permanent basis. The Railway Ministry was accordingly informed vide letter dated 23.5.1995. The Railway Ministry referred back the case to the Commission intimating that the penalty recommended is harsh and that it needs reconsideration but the Commission reiterated it's earlier view and the President has decided to withhold his entire pension permanently vide letter dated 24.7.1996 which was received by the applicant on 31.7.1996.

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3. The grievance of the applicant is that the conviction of the applicant under Section 409, 201 I.P.C. and Section 5 (1) (c) read with Section 5 (2) of the Prevention of Corruption Act, 1947 on its own would not involve moral turpitude depriving the applicant the opportunity to serve the state unless the facts and circumstances which lead to the conviction. The respondents have failed to send the copy of the UPSC report to the applicant before imposing the penalty as the copy of the UPSC report was sent along with the penalty order. There is no loss caused to the Government and there was no gross misconduct of the applicant. The advice of the Commission was based on a very technical issue. The applicant was under suspension and retired under suspension on 31.7.1989. Hence, this OA. for the above said relief.

4. The respondents have denied the allegations and stated that disciplinary proceedings were initiated against the applicant with the approval of the President of India for imposing the punishment/withdrawal of pension. After the provisional decision of the President, the case was referred to UPSC for advice as per rules. The penalty of withholding of entire pension was imposed by the President after consideration of the advice of UPSC. The advice was that the charges proved against the applicant are very grave and the penalty advised is

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commensurate with the gravity of the charges proved. As per the extant rules, it is not obligatory to furnish the copy of the interim order/views of the disciplinary authority to the delinquent officer. The applicant was served with a copy of the UPSC's advice letter No.F-3/9/95-SG dated 23.5.1995 alongwith the speaking order of penalty.

5. The additional written reply is also filed by the respondents along with the copy of the Mercy Petition which is filed by the applicant on 18.9.1996 and rejected on 28.6.2000.

6. Even after the said reply, the applicant has not challenged the order dated 28.6.2000. The order in Mercy Petition dated 28.6.2000, is confirming the order dated 24.7.1996 is a subsequent event. When we are quashing the order dated 24.7.1996, the order passed in Mercy Petition which is in continuation of the order dated 24.7.1996 also does not survive.

7. The learned counsel for the applicant has relied on the judgement of Charanjit Singh Khuran vs. Union of India reported in 1994 (2) SLR 514, wherein it is laid down that when advice of the UPSC is not sent to the applicant before taking a decision in respect of the penalty imposed on him, the penalty deserves to be quashed. It is true that even after order dated 24.7.1996, the applicant has availed the opportunity of filing a Mercy Petition, which is rejected by the respondents vide order dated 28.6.2000,

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the applicant availed the opportunity raising the defence in respect of the opinion of U.P.S.C. but it is in a subsequent action which cannot cure the defect which is caused in coming to the conclusion arriving to the guilt of the applicant.

8. The learned counsel for the applicant relied on general conditions governing pension Rule 2308.A. (C.S.R.351-B)-(1) which is as under :-

"Where any departmental or judicial proceeding is instituted under Rule 2308 (C.S.R.-351A) or where a departmental proceeding is continued under clause (a) of the proviso thereto against a Railway servant who has retired on attaining the age of compulsory retirement or otherwise he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon."

9. Perusal of the same makes it clear that where departmental proceedings is continued against a Railway servant who has retired on attaining the age of compulsory retirement or otherwise is entitled to the provisional pension from the date of retirement to the date on which, upon conclusion of such proceedings final orders were passed, a provisional pension not exceeding the maximum pension which would have been admissible on

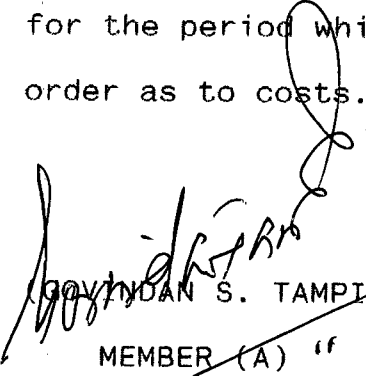
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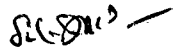
the basis of his qualifying service upto the date of retirement or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension. It further lays down that gratuity or death-cum-retirement gratuity shall not be paid to him until the conclusion of such proceeding and the issue of final orders thereon.

10. In the present case, the applicant claims that he retired on 31.7.1989 and the decision of the President is dated 24.7.1996. The grievance of the applicant is that he has not been paid the provisional pension. It is a grievance which is made out only during the course of arguments. The applicant has not preferred any representation in this respect before the respondents.

11. In the result, OA. is allowed. The order dated 24.7.1996 (Annexure-'A') is quashed and set aside. The matter is remitted to the Hon'ble President for redecision after consideration of the representation of the applicant, which shall be filed by the applicant within 45 days from the date of receipt of the copy of the order. It is further ordered that the respondents shall in view of the discussion in paras 8,9 and 10 of this order, consider the case of the applicant for provisional pension, arrive to a conclusion within a period of two months and pay the provisional pension to the applicant, if he is entitled therefor, for the period which is due in another one month thereafter. No order as to costs.


(GAYNDAN S. TAMPI)
MEMBER (A) "

mrj.


(S.L.JAIN)
MEMBER (J)