

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

Bangalore Bench

BANGALORE.

DATED THIS THE TWENTY FIFTH DAY OF NOVEMBER, 1986.

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member.

APPLICATION No. 819/86 (T)

(W.P. No. 20762/81)

Between:

P.N. Jadi, Major,
Sr. Commercial Clerk (Retd.),
S.C. Railway, Hubli,
District Dharwad.Applicant.

(Shri R.U. Goulay, Advocate)

and

1. The General Manager,
South Central Railway,
Secunderabad, Andhra Pradesh.
2. The Divisional Railway Manager,
Hubli, S.C. Railway, Hubli,
District Dharwad.Respondents.

(Shri M. Sreerangaiah, Standing Counsel for Railways)

This application having come up for hearing today
before this Tribunal, Hon'ble Shri Justice K.S. Puttaswamy,
Vice-Chairman, made the following:

O R D E R

In this transferred application, received from the
High Court of Karnataka U/s 29 of the Administrative Tribunals

Act, 1985 (the Act), the applicant has challenged Memorandum No. H/P.578/III/3/C dated 4.10.1978 (Annexure-C) of the Divisional Superintendent, Hubli, who is now designated as Divisional Railway Manager (DRM).

2. Sometime in 1951, the applicant joined service as a Commercial Clerk in the Southern Railways. As on 1.4.1978, he was working as a Senior Commercial Clerk.

3. On 1.4.1978, the applicant made an application before the DRM for voluntary retirement from service. On 26.6.1978, the DRM made an Order No. H/P.578/III/3/C (Annexure-A) permitting the applicant to retire from service on 30.6.1978 A.N. and that order which is material reads thus:

"The request for voluntary retirement made by Shri P.N. Jadi, Sr. AC.C, EE 1483, vice his application dated 1.4.78 is accepted with full benefits by Sr. DGS/UBL and accordingly he will retire from Railway Service on 30.6.1978 (AN) on completion of 3 months notice period counted from 1.4.78.

He is also granted the following leave at his credit to run concurrently with the notice period upto 30.6.78. The leave availed from 1.7.78 onwards after retirement is subject to recovery of Pension and Pensionary equivalent."

On a further representation made by the applicant, the DRM made an order on 4.10.1978 (Annexure-C) which reads as under:-

" Further to this office letter of even No. dated 26.6.78 and 20.9.78, consequent on regularisation of sick period of Sri P.N. Jadi Sr. AGC/UBL.Staff No.1483 for the period from 19.5.78 to 30.6.78 as sick/CTS and act from 19.5.78 to 3.7.78, and further the leave granted to him is revised as under:

<u>Periods already regularised.</u>	<u>Period now regularised</u>
1) 4.5.78 to 18.5.78 = 15 days.	4.5.78 to 18.5.78 = 15 days LAP.
2) 19.5.78 to 3.7.78 = 46 days CTL.	19.5.78 to 30.6.78 = 43 days CTL. 1.7.78 to 3.7.78 = 3 days LAP.
3) 4.7.78 to 23.8.78 = 51 days LAP.	4.7.78 to 20.8.78 = 48 LAP. 21.8.78 to 23.8.78 = 3 LNAP.
4) 24.8.78 to 26.6.79 = 309 days LNAP.	24.8.78 to 23.6.79 = 354 days LNAP."

In challenging the order, the applicant has urged that he should have been allowed all such leave that was at his credit before his retirement from service without tagging on the same with the period of notice.

4. In justification of the orders made, the respondents have filed their statement of objections before the High Court.

5. Shri R.U. Goulay, learned counsel for the applicant, contends that the first orders made by the DRM permitting his client to avail leave only after retirement and tagging on the same for the period of notice was impermissible and illegal.

6. Shri Sreerangaiah, learned counsel for the respondents, in justifying the orders, contends that there was a delay of more than 3 years in the applicant approaching the

High Court, on which ground this Tribunal should decline to assist him. In the very nature of things, it is necessary for us to examine this latter contention of Shri Sreerangaiah first.

7. On the first order made by the DRM on 26.6.1978, the applicant made a representation on which the DRM made his order on 4.10.1978 modifying his earlier order. On receipt of the latter order also, the applicant made a representation on 24.5.1979 (Annexure-D) requesting the DRM to further modify his earlier orders, on which the DRM did not make an order at all. When the DRM did not attend to that representation at all, the applicant, with no other alternative left, approached the High Court on 21.9.1981. On these facts, it is difficult to hold that there is contumacious delay which disentitles the applicant for relief. We are also of the view that/cases of pension, we should not view delays as in cases of dismissals, removals, promotions etc. Every case of delay should be examined and decided on the facts of that case only. We are of the view that there is no contumacious delay in the case, which disentitles the applicant for relief. We, therefore, reject this objection of Shri Sreerangaiah.

8. In his first order, the DRM had granted leave to cover the period of notice of retirement that should have otherwise been given by the applicant.

9. A Railway servant seeking voluntary retirement is required to give notice, which is not disputed by Shri Goulay. But Shri Goulay's contention is, that the delay in making the order is no ground at all to deny/at the credit of the Railway servant.

10. We will even assume that there was justification for the delay in making the first and second orders by the DRM. But that is no ground for the DRM to deny the leave at the credit of the applicant in accordance with the rules regulating the same. On this ground itself, we must uphold the contention of Shri Goulay.

11. From 1.4.1978 to 30.6.1978, the applicant was actually in service. If that is so, then it is odd for the DRM to treat the same as on leave. From this, it follows that the order made by the DRM on 26.6.1978, to the extent it has treated the period spent on duty as on leave, also calls for our interference.

12. What is true of the first order is also true of the second order made by the DRM.

13. As the applicant has already retired from service, we must uphold the same with a direction to the DRM to only regulate the leave at the credit of the applicant.

14. We have perused the scheme detailed by the Railway Board (Exhibit R.1) relied by Shri Sreerangaiah. We are of the view that the same does not help the respondents to reject the claim of the applicant.

15. In the light of our above discussion, we modify the orders made by the DRM on 26.6.1978 and 4.10.1978, and direct him to grant all such leave that was at the credit of the applicant as on 30.6.1978 on which day he actually retired from service, and postpone the date of his retirement to coincide with the expiry of leave to be granted by him in accordance with the rules, and then compute the pension admissible to the applicant in accordance with the rules, ^{all} and regulate the payments on that basis in accordance with law, and the observations made in this order.

16. Application is disposed of in the above terms. But we direct the parties to bear their own costs.

Mr. D. Venkateswara
VICE CHAIRMAN

A. S. H.
MEMBER (A) 26-11-1980

dms.

Ex. 22

Copy

D.No. 2275/87/Sec.IV-A

SUPREME COURT OF INDIA
NEW DELHI

dated: 6th October, 1987.

From:

The Additional Registrar,
Supreme Court of India,

SD To

~~The Registrar,
High Court of~~

The Central Administrative
Tribunal Bangalore Bench
BANGALORE.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO 5826 OF 1987

(Petition under Article 136 of the Constitution of India
for Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 25-11-1986 of the

Central Administrative Tribunal
Bangalore in Application No. 819/86(T)

The General Manager & Anr.

...Petitioners

-vs-

Shri P.N.Jadi.

...Respondent

Sir,

I am to inform you that the petition above-mentioned
for Special Leave to Appeal to this Court was filed on
behalf of the Petitioner above-named from the Judgment
and Order of the High Court noted above and that the same
was ~~not~~ dismissed by this Court on the 17th day of
September, 1987.

Yours faithfully,


for ADDITIONAL REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@@@@@@@

Commercial Complex (BDA),
Indiranagar,
Bangalore - 560 038

Dated : 22-12-87

CONTEMPT OF COURT APPLICATION NO. 7 / 86()
IN APPLICATION NO. 819/86(T)
W.P. NO. _____

Applicant

Shri P.N. Jadi

v/s

Respondents

The GM, South Central Rly, Secunderabad
& another

To

1. Shri P.N. Jadi
C/o Shri R. Chandrakanth Goulay
Advocate
90/1, II Block
Thyagarajanagar
Bangalore - 560 028

3. The General Manager
South Central Railway
Secunderabad (A.P.)

2. Shri R. Chandrakanth Goulay
Advocate
90/1, II Block
Thyagarajanagar
Bangalore - 560 028

4. The Divisional Railway Manager
South Central Railway
Hubli
Dharwad District

5. Shri K.V. Lakshmanachar
Railway Advocate
No. 4, 5th Block
Briand Square Police Quarters
Mysore Road
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/
INTERIM ORDER passed by this Tribunal in the above said Contempt of Court
application on 17-12-87.

Cholai
for DEPUTY REGISTRAR
SECTION OFFICER
(JUDICIAL)

Encl : as above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SEVENTEENTH DAY OF DECEMBER 1987

Present : Hon'ble Shri Justice K.S. Puttaswamy .. Vice-Chairman

Hon'ble Shri L.H.A. Rego .. Member (A)

C. .C. APPLICATION No.7/87

P.N. Jadi,
Retd. Sr. Commercial Clerk,
S.C. Railway, Hubli,
Distt. Dharwad. .. Complainant
(Shri Chandrakanth Goulay . Advocate)
v.

The General Manager,
South Central Railway,
Secunderabad, A.P.

The Divisional Railway Manager,
Hubli, S.C. Railway, Hubli.
Distt. Dharwad. .. Contemnors
(Shri K.V.Lakshmanachar . Advocate)

This application came up before this Tribunal today
for hearing. Hon'ble Vice-Chairman made the following:

O R D E R

In this petition made under Section 17 of the Administrative Tribunals Act, 1985 and the Contempt of Court Act, 1971, the petitioner has moved this Tribunal to punish the contemnors on the ground that they have not implemented the order made by us in his favour on 25.11.1986 in A No.818/87. In our order we directed the contemnors to grant the applicant all such leave that was to his credit on the date he retired from service and postpone the date of his retirement to coincide with the expiry of the leave to be granted by them and then compute the pension admissible to him on that basis.

2. Shri K.V.Lakshmanachar, learned counsel for the contemnors produces two orders made by the contemnors on 30.10.1987 and 28.11.1987 and submits that the order made by us has been fully complied with.



3. Shri Chandrakanth Goulay, learned counsel for the petitioner has perused the orders produced by Shri Lakshmanachar before us. We are satisfied that the orders made by the contemners show that they have implemented the order made by us in letter and spirit. If that is so, then these contempt of court proceedings are liable to be dropped. We, therefore, drop the contempt of court proceedings. But in the circumstances of the case we direct the parties to bear their own costs.



Sd/-

VICE CHAIRMAN

Sd/-

MEMBER (A) 17-3-87

-TRUE COPY-

~~SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE~~