

(OK)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 699/92

Transfer Application No:

DATE OF DECISION 8-7-93

Shri V.S.Kulkarni, Akola Petitioner

Shri G.R.Menghani Advocate for the Petitioners

Versus

Union of India through General Respondent
Manager, Central Railway, Bombay

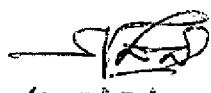
Shri Subodh Joshi Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D. Deshmukh, Member(J)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see Yes
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 ?


(V.D. Deshmukh)
Member(J)

NS/

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

O.A.699/92

Shri V.S.Kulkarni,
Akola ... Applicant

vs

Union of India
Through General Manager,
Central Railway
Bombay. ... Respondents

Coram: Hon'ble Mr. V.D.Deshmukh, Member(J)

Appearance:

Shri G.R.Menghani
for the applicant

Shri Subodh Joshi
for the respondents.

Dated: 8-7-93

Oral Judgement

(Per: Mr.Hon'ble Mr. V.D.Deshmukh, Member(J)

The applicant joined the Railway Service on 2-6-56 and after completing his service for about 30 years retired by superannuation with effect from 31-10-1986. He retired as Chief Inspector of Works in the Grade Rs. 2,375-3500 (RPS).

Ordinarily the applicant should have been paid pensionary benefits like the pension, the DCRG and other benefits within a reasonable time after his retirement. However, on 15-9-86 the Divisional Railway Manager (P) Bhusawal wrote a letter to the Senior Divisional Accounts Officer, Bhusawal stating that it was reported by the Commandant RPF Bhusawal vide letter dated 15-9-86 that the applicant was ~~main accused~~ ^{The} ~~xxx~~ to be arrested in case of theft of Railway property, and the applicant was absconding from duty from 14th Sept.86 and hence Senior Divisional Accounts Officer may not pass the payment

GPN

obj

of settlement dues till further advice. The letter itself shows that the applicant was not arrested and no chargesheet was filed against the applicant in any Criminal Court till the date of the letter. The applicant claims that though he was arraigned as an accused alongwith others in two cases which were filed by the Railway Protection Force, ultimately he was honourably acquitted in both cases. The regular criminal case No.131/87 was filed by the RPF Akola and disposed of on 29-3-90 by the Hon'ble Magistrate First Class Railways Bhusawal. A copy of the order is annexure-6 to the application. The other criminal case No. 132/87 was filed by RPF Akola and was disposed of by the same Court on 15-10-90. A copy of the order, is annexure-7 to the application. These copies show that the applicant was fully acquitted in both the cases. They also show that he was not acquitted on benefit of doubt. The dates on which these cases were loged are very material considering the claim of the applicant. However, in the reply affidavit filed on behalf of the respondents these dates are not disputed. These dates clearly show that although the report was made as regards the alleged involvement of the applicant in the alleged theft of the railway property before the applicant retired, no chargesheet was filed against the applicant before retirement and it cannot be said that any criminal case was pending against the applicant on the date of retirement. ~~xxxxxxnotxxthe case xxof the respondents that any disciplinary action was pending against the applicant on the date of retirement.~~ It is not the case of the respondents that any disciplinary action was pending against the applicant on the date of his retirement.

In spite of the representations made by the applicant the respondents made the payments of the pensionary benefits

only after the two cases were disposed of by the Criminal Court. The applicant claims interest on the payments of pensionary benefits. He relies upon the judgement of the Principal Bench in M.L.Malik vs Lt. Governor Delhi. It was held in this case on the construction of Rule 68 and 69 of the CCS, Pension Rules that a criminal case can be held to be pending only when the chargesheet was filed and criminal court had taken cognizance thereof. It was also held that as only the FIR was filed at the time when the applicant was retired and the chargesheet was filed subsequently, it could not be said that a criminal case was pending against the applicant and pension could be paid only after the conclusion of the criminal case. In the result the Principal Bench found that the applicant was entitled to interest @ 10% per annum for the delayed payment of the pensionary benefits.

In the present case the only defence taken by the respondents is that although the chargesheet was filed after the applicant retired, the delay was caused as the applicant was absconding from 14th Sept.86. It is seen from the service record that efforts made to find out the applicant were unsuccessful and hence the endorsement was placed on 14-9-86 that he was absconding. It is not necessary to enter into that controversy, as para (1) of the affidavit reply filed by the respondents themselves states that the applicant was illegally absconding from 14-9-86 to 30-9-86 only. As pointed out earlier the criminal cases were filed much later thereafter and in the meantime the applicant retired on 31-10-86. The respondents in the circumstances could not stop the payment of the pensionary benefits to the applicant and the applicant would be entitled to interest. The applicant also claimed that he was not paid the salary for October 1986 amounting to about Rs.5,000/-.

33

The respondents have stated in para 3 of their affidavit that the amount of Rs. 1419 was passed for payment after deduction of the over payment of Rs. 1608/- on 6-8-92 towards salary for the month of October 1986. This statement is not disputed by the applicant and has to be accepted. The applicant therefore is not entitled to relief claimed in this connection.

The applicant claims interest on the pensionary benefits paid to him at the rate of 18% per annum. I find that the rate of interest as against the payment of DCRG has to be as per the decision of the Govt. of India under Rule 68 of the CCS pension rules. Considering all the circumstances I find / it would be just and proper to grant to the applicant the interest at the rate of 10% per annum on all other pensionary benefits paid to him. The respondents shall be entitled to some grace period so far as the payment of arrears of pension, commuted value of the pension and the difference of leave salary is concerned. Taking into consideration the time ordinarily taken for settlement of these claims the respondents will be entitled for the benefit of three months from the date of the retirement of the applicant.

The applicant had stated in his application that he received Rs. 52,497/- on 3-6-91. It is not mentioned in the application as to on what account this amount was received. Mr. Menghani for the applicant states that this amount was received on account of DCRG and leave salary.

However, the records produced by the respondents as well as the reply affidavit filed on behalf of the respondents show that the applicant was entitled to DCRG to the extent of Rs. 37,881 and leave salary Rs. 10,745. The amount of Rs. 29,439 was received by the applicant on 2-9-91 and the record as well as the affidavit show that this

amount was paid towards commutation value of pension after deduction of the over payment of pension. The applicant was also paid the difference of leave salary and difference of DCRG on 4-10-91 which comes to Rs. 7,764/-. There is nothing in the application to show ^{how} the amount of Rs. 52,497 was received by the applicant. The figures of the DCRG and the leave salary which are shown in the service record and in the affidavit in reply are not disputed and they have to be accepted. In the result I pass the following order:

The application is allowed. The respondents are directed to pay to the applicant interest on Rs.37,881/- at the rate of 7% per annum from 1-2-1987 to 31-1-1988 and at the rate of 10% per annum from 1-2-88 till 3-6-1991. The respondents shall pay to the applicant interest at the rate of 10% per annum on the leave salary of Rs.10,745/- from 1-2-87 till 3rd June 1991, the interest at the rate of 10% per annum on the amount of commuted value of the pension Rs. 29,439/- from 1-2-87 till 2nd Sept.1991 and interest at the rate of 10% per annum on the amount of Rs. 7,764/- which is the difference of leave salary and DCRG from 1-2-87 to 4th Oct.1991.

These orders shall be complied with within 4 months from the date of receipt of the certified copy of the order by the respondents.

No order as to costs.


(V.D.Deshmukh)
Member(J)

K.