

3

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 688/93

Transfer Application No:

DATE OF DECISION 25-11-93

Shri V.K.Joshi

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Union of India and Ors.

Respondent

Shri S.S.Karkera for

Advocate for the Respondent(s)

Shri P.M.Pradhan

CORAM:

The Hon'ble ~~Shri~~ Smt. L.Swaminathan, Member (J)

The Hon'ble Shri

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

L.Swaminathan
(L.Swaminathan)
Member(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

O.A.688/93

(7)

Shri V.K.Joshi
Nasik

...

Applicant

vs

Union of India
through Post Master
General Aurangabad
region and Ors.

...

Respondents.

Coram: Hon'ble Smt. L.Swaminathan, Member(J)

Appearance:

Applicant in person

Shri S.S.Karkera for
Shri P.M.Pradhan for the
respondents.

Dated : 25-11-93

Oral Judgement

(Per: Smt. L.Swaminathan, Member(J))

The brief facts of the case are that the applicant who was working as Sub-Post Master at Ozar (Nasik) had given notice of voluntary retirement on 18-12-89.

At that time, he had completed over 30 years of service in the Department of Post. In the notice, the applicant had requested that (he may be retired from service with effect from 1-4-1990, thereby giving clear 3 months notice as required under Rule 48 of the CCS Pension Rules, 1972. From the reply filed by the respondents, it is seen that at the request of the Respondents the applicant actually continued to work in the same post till 16-4-1990, for which apparently he has also been paid the pay and allowances. The applicant has also drawn my attention to the order passed by the Post Master General, Aurangabad dated ¹⁸4-~~11~~₁₂-90 in which it is stated that Shri V.K.Joshi may be allowed to retire with immediate effect.

18

5

2. The grievance of the applicant is with regard to the orders dated 24.5.92, 6.5.92 and 29.5.93 passed by the respondents in which they have sought to recover the amount of Rs. 1453/- as pay and allowances, after modifying his date of retirement as 1-4-93. The applicant has also submitted that he would stand to loose monetarily if the retirement date is changed from 1-4-90, for which he had given notice under Rule 48 of the Pension Rules.

3. The respondents' contention is that they do not admit that the applicant has earned ~~the~~ salary for the said period he has continued to work in April 1990, since it was against ^{rules. Hence they claim that the} the ~~orders~~ ^{Rs.} to recover/ amount wrongly paid are legal.

4. It is clear from the above facts that the applicant has fully complied with the rules, by giving 3 months notice of voluntary retirement. ~~under the Pension~~ ^{Rs.} ~~Rules.~~ It is also apparent that the Department is totally at fault for not making the necessary alternate arrangements to relieve Mr. Joshi during this period of notice. They have also not denied that fact that at their request, during the period from 1-4-90 to 16-4-90, the applicant had in fact continued to discharge his duties as a Sub-Post Master at Ozar (Nasik) till they could ~~make~~ alternative arrangements. Therefore, the respondents themselves have clearly violated the provisions of the rules and cannot now take advantage of their own delay, inaction, and default. In the circumstances, it is not open to them to say at this stage that the applicant should not be entitled to the benefit of the pay and allowances he has earned for the duties performed by him. Therefore, justice

J.S.

6

^{demands}
~~requires~~ that in this case, the respondents be ^{by them} directed not to make any such recoveries as proposed in ^{is} the ~~impugned~~ impugned orders. The ~~impugned~~ impugned orders dated 24-3-92, 6-5-92 and 29-5-93 being illegal are hereby quashed and set aside. Further, if any such recoveries have been made consequent upon these orders, the same will be paid back to the applicant, as if no such orders had been passed. The application, therefore, ~~is~~ ^{is} entitled to succeed.

5. In the facts and circumstances of the case the applicant shall be deemed to have retired from service on 1-4-1990 as per the relevant Rules, but the pension and other pensionary benefits will become payable to him only from 17-4-1990. There shall be no deductions of the pay and allowances paid for the period he worked as Sub-Post Master, Ozar (Nasik) from 1-4-90 to 16-4-90.

6. Therefore, in the result the application is allowed with Rs. 300/- costs to the applicant to be paid by the respondents. The respondents are directed to implement this order within two months from the receipt of a copy of this order.

Lakshmi Swaminathan
(Smt. L. Swaminathan)
Member (J)