

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 852/94

Date of Decision : 1.2.2000.

R.C.Rao _____ Applicant.

Shri G.S.Walia _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V.S.Masurkar _____ Advocate for the
Respondents.

CORAM :

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

NO

R.G.Vaidyanatha
(R.G.Vaidyanatha)
Vice Chairman

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.852/94

Tuesday this the 1st day of February, 2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

R.C.Rao,
Sub Divisional Engineer,
M.T.N.L., Bombay.

...Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
M.T.N.L., Bombay,
Telephone Bhuvan,
Prabhadevi, Bombay.

2. Chief General Manager,
M.T.N.L. Telephone House,
Prabhadevi, Bombay.

3. Deputy general manager,
M.T.N.L. Telephone Bhuvan,
Prabhadevi, Bombay.

...Respondents

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

{Per: Shri Justice R.G.Vaidyanatha, VC}

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act. Respondents have filed reply opposing the admission. We have heard Shri G.S.Walia, learned counsel for the applicant and Shri V.S.Masurkar, learned counsel for the respondents.

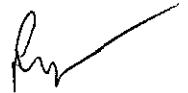
..2/-



2. Few facts which are necessary for the disposal of the OA. are as follows :-

The applicant was working as a Sub Divisional Engineer in MTNL. He came to be promoted on officiating basis as Divisional Engineer by order dated 25.11.1992. While he was working in that position, he came to be suspended on 31.5.1994. The suspension came to be revoked 15 days later on 14.6.1994. Then a chargesheet was issued to the applicant alleging acts of insubordination. An enquiry officer was appointed. The enquiry officer conducted enquiry and recorded the findings that the charges are proved but lenient view may be taken. By order dated 16.10.1995 the disciplinary authority has taken into consideration that as the applicant has since retired from service on superannuation was inclined to take a lenient view and therefore ordered that the charges be dropped and he further stated that he is conveying his displeasure to the applicant. In pursuance of this order, the applicant was paid the salary for the suspension period.

Now the applicant's only grievance is that he came to be reverted when he was under suspension by order dated 31.5.1994. He retired from service on 31.3.1995. In view of the dropping of charges, the applicant must be deemed to have been continued as Divisional Engineer from 31.5.1994 till 31.3.1995 and he is entitled to salary and allowances as Divisional Engineer and subsequently, he is entitled to higher pensionary benefits after superannuation.



3. The respondents' stand is that it is not a case of exoneration but it is a case of dropping of charges by the disciplinary authority in view of the retirement of the applicant and however the disciplinary authority recorded its displeasure to the applicant and hence it is not a case of exoneration. The applicant is not entitled for any monetary benefits for the period in question.

4. At the time of arguments, the learned counsel for the respondents contended that the case made out by the applicant through amendment should not be considered since the applicant has not carried out the amendment in the copy of the OA. furnished to the respondents and therefore the amendment should not be taken into consideration at all. In our view, this argument has no merit. All rules of procedure are meant to advance cause of justice and not to thwart the justice. Principles of natural justice demand that the respondents must be notified about the amendment and must be given opportunity to file a reply to the amended OA. Here the copy of the amendment application has been served on the respondents. Amendment application was allowed after hearing both the Advocates by order dated 6.3.1998. If inspite of this order, the respondents ignore the amendment, they can do it on their own risk. In addition, we find that the respondents have filed detailed reply to amendment application, namely, M.P.No.388/97 where they have taken all necessary defence to the amended OA. and therefore the respondents were fully aware of the amendment and they have filed their reply and they cannot take this stand at the time of final hearing. Hence the argument to ignore the amendment is rejected.

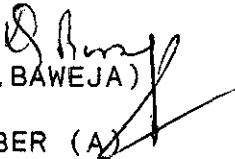
5. Now coming to the merits of the case. The applicant is asking for two reliefs. One is asking for monetary benefit from 14.6.1994 on the ground that he must be deemed to be continued in service and second relief is consequential relief that on that basis the applicant should get higher pensionary benefits.

We find that there were 3 charges against the applicant. The enquiry officer recorded that they are not serious acts of misconduct but they are acts of in-subordination and there was no loss to the Government and therefore he suggested that a lighter view may be taken by the disciplinary authority. Presumably the disciplinary authority also took into consideration the retirement of the applicant and he had taken a lenient view and dropped the charges but he recorded that he is showing his displeasure to the applicant. Taking into consideration all the facts, we feel that it is not a case of exoneration but due to applicant's attaining superannuation, charges were dropped. This was not a case of applicant being found guilty and given punishment of censure or other punishment and therefore in the facts and circumstances of the case, we have to take a via-media course. The applicant might not have been given any punishment. But however on facts the charges were dropped because of the retirement of the applicant. Hence, for the intervening period he cannot get monetary benefits for the period from 31.5.1994 to 31.3.1995. Therefore, in the circumstances of the case, we feel that the applicant could be given notional benefit of giving same pay as Divisional Engineer. It is also noticed that the

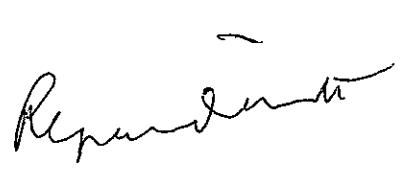


applicant's juniors have been continued on officiating basis as Divisional Engineer even after the reversion of the applicant on 31.5.1995. Hence, in these circumstances, we can give notional benefit of fixation of pay to the applicant for the period from 31.5.1994 to 31.3.1995 as Divisional Engineer. On that basis, the retirement benefits should be worked out to the applicant. Therefore, we grant only notional benefit for the said period but the actual benefit is only by way of the higher retirement benefits for which he would be entitled as per rules.

6. In the result, the application is allowed partly. The respondents are directed to fix the pay of the applicant on notional basis as Divisional Engineer from 31.5.1994 to 31.3.1995 and on that basis the retirement benefits may be worked out and arrears of retirement benefits after 31.3.1995 may be paid to the applicant. By way of clarification, we clarify that the applicant is entitled to monetary benefits only in the form of actual retirement benefits on the basis of notional fixation of pay as directed. The respondents should comply with this order within a period of three months from the date of receipt of this order. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA)

VICE CHAIRMAN

mrj.