

(54)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : HYDERABAD

O.A.No.734 of 1989.

Date of Judgment : 1-6-90.

K.Ramamohan Rao

....Applicant

Versus

1. Union of India, represented by
Secretary to Government,
Ministry of Railways, Rail
Bhavan, New Delhi.
2. Joint Secretary (E), Ministry
of Railways, Railway Board,
New Delhi.
3. General Manager,
North East Frontier Railway,
Maligaon, Guwahati (Assam)-781 011.

....Respondents

Counsel for the Applicant : M/s S.Suryaprakasha Rao &
K.Kanaka Raju

Counsel for the Respondents : Shri P.Venkatarama Reddy,
SC for Railways.

CORAM:

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDL)

HONOURABLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

(Judgment of the Bench prepared by Hon'ble
Shri D.Surya Rao, Member (J)).

who

The applicant is a Railway Officer, while
working as Deputy Chief Signal and ~~Telecom~~ Engineer
(Dy.C.S.T.E.) at Guwahati in North/~~Front~~ East tier/Railway
was prematurely retired from service under an order
dt.4-6-87 issued under Rule 2046 (h) of the Indian
Railway Establishment code. The applicant questioned

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this order in O.A.No.450 of 1987 before this Tribunal.

The Original Application was allowed on 5-8-1988 holding that ^{N~~o~~} order of retirement was illegal and that the applicant should be reinstated to service with all consequential benefits viz., arrears of Pay less the payments made to him pursuant to and after the impugned order and counting of service for all purposes viz., from 11-6-1987 to the date of ^{reinstatement} ~~retirement~~. Pursuant thereto the applicant was reinstated into service pursuant to an order of the General Manager, North ^{East} Frontier Railway ^{on} dt. 14-12-1988.

The General Manager further directed ~~ed~~ on 30-1-1989 that the period from 11-6-1987 to 13-12-1988 be treated as duty and that the applicant would be eligible for fully ~~x~~ pay and allowances for the said period. It is alleged that ^{during} the notice period from 11-6-1987 to 10-9-1987 the applicant was treated as on duty at Guwahati and paid full salary and allowances due to him including House Rent Allowance of Guwahati amounting to Rs.500/- per month ~~and~~ Special Duty Allowance of Rs.400/- per month. This was despite his not being present at Guwahati during the period ~~between~~ 11-6-1987 to 10-9-1987. It is alleged that for the period 11-9-1987 to 13-12-1988 the special Duty allowance and House Rent Allowance ~~and~~ were not paid to the applicant. The applicant made several representations claiming these amounts but they were not paid. The applicant later came to know that despite sanction of the competitive ^{ent} ~~itive~~

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authority to pay these amounts the same was withheld on an objection raised by the Accounts Branch. The applicant thereupon filed contempt case No.22 of 1989 to take action for non-payment of the amounts. The contempt case was disposed of on 17-7-1989 holding that the applicant was not entitled to the amounts on the basis of a letter dt.29-8-84 produced by the Railway Counsel to the effect that officers who are on leave or training are not entitled to the Special duty allowance unless in actual service in the North East Region. ~~These orders~~ ^{This order} was passed in the absence of the counsel for the applicant and the applicant, who could not attend court on that day for valid and proper reasons. Since the correct legal position could not be placed before the Tribunal on 17-7-1989, the present application is filed claiming that the applicant is entitled to Special Duty Allowance at Rs.400/- p.m. and H.R.A. ^{at} /Rs.500/- p.m. for the period from 11-9-1987 to 13-12-1988. It is contended that para 1805 of the Indian Railway Establishment Code Vol.II provides that on re-instatement of a Railway Employee who has been prematurely retired the intervening period shall be treated as duty for all purposes including pay and allowances under this provision. The applicant is entitled to Special ^{Duty} ~~Duty~~ Allowance and H.R.A. throughout the period he was illegally kept out of duty. Reliance is also placed on AIR 1986 SC 210 in support of the claim that all emolu-

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ments due to the applicant should be paid as though he was in service. Since the question involved is a legal question viz., whether the applicant is eligible for the emoluments claimed, We have proceeded with the case and heard the arguments of Shri S. Surya Prakash Rao counsel for the applicant and Shri P. Vankatarama Reddy, learned standing counsel for the Railways.

2. The short question is whether the applicant is entitled to HRA and SDA payable to all officers posted to the North/^{East} Frontier Railway despite his not being there during the period of premature retirement. The contentions put forth by Shri Suryaprakash Rao are two, first that even during the notice period of three months the applicant was not at Guwahati but he had been paid these H.R.A. and S.D.A. amounts and on the same analogy he is entitled to the said amounts after expiry of the notice period till the date of reinstatement. The second ground- which he claims on/ that the applicant is entitled to these amounts is that Rule 1805 of the Railway Establishment Code entitle him to these amounts. The said provision is extracted hereunder :-

"1805.(1) If on a review of the case referred to in Rule 1802(a), 1803(a), either on representation from the railway servant retired prematurely or otherwise, it is decided to reins ate the railway servant in

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service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or as leave of the kind due and admissible, including extraordinary leave, or by treating it as DIESNON depending upon the facts and circumstances of the case;

Provided that the intervening period shall be tread^d as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or if the order of premature retirement is set aside by a Court of law.

(2) Where the order of premature retirement is set aside by a Court of law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the court.

Shri Suryaprakash Rao also relies on the decision of the Supreme Court reported in AIR 1986 S.C. 210 and the unreported decision in Civil Appeal No.4284/1988 dated 12-1-1990 (Union of India and others Vs.K.T.Sastry). ~~Pr~~ A.I.R. 1986 SC 210 (B.Prabhakar Rao Vs. State of A.P.) ~~+~~ that was a case wherein a large number of employees of the State of Andhra Pradesh were retired due to reduction of the age of retirement from 58 years to 55 years. The respondents Supreme Court while directing reinduction or

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that the employees be paid compensation equal to the total emoluments which they would have received had they been in service. Again in Civil Appeal No.4284/1988 (Union of India Vs. K.T.Sastry) wherein while upholding the right of certain civilian employees in Defence Service organisationⁱⁿ to continue upto 60 years, Supreme Court come down heavily on the Appellant Union for not implementing the order of the Tribunal and directed reinstatement and payment of all emoluments to the employee as though he had not been retired. Shri Venkataram Reddy on the other hand reiterated the plea made in the contempt case that special duty allowance is not payable to Railway employees serving in the N.E.Region during leave/training period vide Railway Board's letter No. F(E)I/84/AL-4/5 dated 29-8-1984. This contention is not tenable and the letter will not be applicable in view of the provisions of Rule 1805 of the Railway Establishment Code which is a specific rule dealing with reinstatement of employees prematurely retired. The proviso makes it clear that when an order of premature retirement is set aside by a court of Law as unjustified the employee on reinstatement is entitled to have the intervening period i.e. period from date of retirement to the date of ~~re-~~

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To:

1. The Secretary, (Union of India) to Government, Ministry of Railways, Rail Bhavan, New Delhi.
2. The Joint Secretary(E), Ministry of Railways, Railway Board, New Delhi.
3. The General Manager, North East Frontier railway, Maligaon, Guwahati (Assam)-781 011.
4. One copy to M/s. S.Surya Prakasa Rao, & K.Kanaka Raju, Advocates, 1-9-405/15/B, Vidyanagar, Hyderabad-500 044.
5. One copy to Mr.P.Venkatarama Reddy, SC for Railways, CAT, Hyderabad.
6. One spare copy.

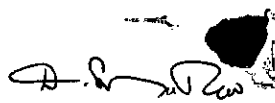
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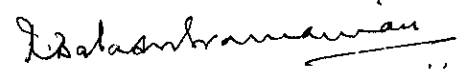
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retirement to the date of reinstatement as duty for all purposes. The language is clear and specific and means that the applicant is deemed to have occupied the same post from which he was retired during the intervening period. If he was entitled to H.R.A. and S.D.A. while on duty (which is not denied) he will be entitled to the same during the intervening period i.e. between 11-6-87 to 13-12-1988. Since payment has been made ~~for the period~~ ~~from~~ for the period 11-6-1987 to 10-9-1987 the claim is limited to payment for the period 11-9-1987 to 13-12-1988. The claim of the applicant for payment of Special Duty Allowance at Rs.400/- per month and House Rent Allowance at Rs.500/- p.m. for the period 11-9-1987 to 13-12-1988 is accordingly allowed. The parties are directed to bear their own costs.


(D. SURYA RAO)
Member (J)


(R. BALASUBRAMANIAN)
Member (A)

Dated : 1st June 90.

avl/


For Deputy Registrar (J)

5/6/90

CHECKED BY

TYPED BY:

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBU-
NAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

HON'BLE MR.D.SURYA RAO:MEMBER:(JUDL)

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: 1-6-90

~~ORDER/JUDGMENT:~~

M.A./R.A./C.A./No. in

T.A.No.

W.P.No.

O.A.No.

734/89

~~Admitted and Interim directions
issued.~~

~~Allowed.~~ No costs

~~Dismissed for default.~~

~~Dismissed.~~

~~Disposed of with direction.~~

~~M.A. ordered.~~

~~No order as to costs.~~

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