(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

M.A.No.244/90.
in
O.A.No. 383/90.
T.A.No.

DATE OF DECISION:- 19.6.90

Between:-

- Petitioner(s)

- Advocate for the petitioner(s)

Versus

- Respondent.

- Advocate for the Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA : VICE-CHAIRMAN
THE HON'BLE MR.D.SURYA RAO : MEMBER (JUDICIAL)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?

No

5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(BNJ)
HVC

(DSR)
HM(J)

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

M.A. 244 / 90.
AND
O.A. 383 / 90. Date of Judgment : 19.6.90.

E.Lourd Swamy

....Applicant / Applicant.

Vs.

1. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

2. The Divl. Railway Manager (MG),
South Central Railway, Secunderabad.

3. The Sr. Divisional Personnel Officer,
S.C.Railway (MG), Secunderabad.

4. The Loco Foreman, Loco Shed,
Lallaguda, S.C.Railway, Secunderabad.

....Respondents / Respondents.

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COUNSEL FOR THE APPLICANT : SHRI P.KRISHNA REDDY

COUNSEL FOR THE RESPONDENTS : SHRI N.R.DEVARAJ, SC for Rlys.

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CORAM:

HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

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

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The applicant herein states that he was appointed as Class-IV employee in the Nizam State Railway in the year 1945. He was promoted subsequently as Driver 'A' Grade. At the time of his appointment his Date of Birth was fixed as 26-10-1928 on the basis of a Medical Certificate issued

contd...2.

by the Medical Officer. Consequently he was due to retire on 31-10-1986. This was confirmed in the month of February, 1986 when by proceedings No.YP/62/SR Cell/ Settlements issued by the 2nd respondent, the applicant was informed that he is due to retire on 31-10-1986. However in the last week of June, 1986, a message was received from the 3rd respondent by the 4th respondent to put the applicant off-duty from 30-06-1986. Applicant states that his Date of Birth was shown as 26-10-28 and he retired on 30-6-86. This action of the respondents is questioned in this application. The applicant was retired 4 months earlier than the due date i.e. 31-10-1986. The applicant submitted a representation dated 23-8-1986 to the 2nd respondent protesting against the injustice done to him with a request to permit him to resume to duty till 31-10-1986. Thereafter on 11-09-1988 his aAdvocate issued a legal notice to rectify the injustice done to the applicant and pay all the amounts due to the applicant ignoring the illegal premature retirement. It is alleged that since no action was taken thereon the present application was filed to declare that the action of the respondents retiring the applicant on 30-06-1986 instead of 31-10-1986 as illegal and without jurisdiction and to direct the respondents to pay the applicant all the amounts due but for premature

contd...3.

retirement. Along with this application a Condone Delay Petition was filed to condone the delay of 416 days in filing the Original Application. The applicant seeks to contend that he ought to have filed this application by 22-02-1988 i.e. within one year and six months of his representation dated 23-8-1986, that since had filed the application only on 12-4-1989, the delay of 416 days in filing the Original Application may be condoned.

2. We have heard the learned counsel for the applicant Shri P.KrishnaReddy and Shri N.R.Devaraj, learned standing counsel for the respondents, who takes notice on behalf of the respondents. The only reason given by the applicant in the application for condoning the delay is that the respondentshave not choosen to give any reply either to the representation dated 23-8-1986 nor to the notice issued by the Advocate. It is contended that the illegal order of premature retirement is continuously affects the applicant by way of reduction in pension continuously and as such there is no delay in filing the application. However application is filed for condoning the delay if any in filing the Original Application.

contd...4.

We have considered these contentions. Section 20 of the Administrative Tribunals Act, 1985 gives an employee a right to make a representation against any order by which he aggrieved. Under this section he has to wait for six months for disposal of his representation. Thereafter section 21 gives him one year time from the date of expiry of the six months ~~notice period~~ appeal period to file an applicationbefore this Tribunal. As already stated above the applicant had made a representation on 23-8-86. He was liable to wait only six months thereafter i.e. upto 23-2-1987. Thereafter it was open to him to file an application before the Tribunal before 23-2-1988. No valid reasons were given as to why he waited beyond this period. The only reason put-forth is that no reply was given either to his representation dt.23-8-86 or to his lawyer's notice dt.11-9-1988 and that therefore there was a delay in filing the Original Application. It is well established that waiting indefinitely for the authorities to give a reply or making repeated representations cannot be a ground for condoning delay. Hence the reason given by the applicant viz., that he was waiting for a reply to his representation cannot be accepted for condoning the delay. The fact that he got a lawyers notice issued in the year 1988 cannot also be of any avail to him.

contd...5.

(18)

The lawyer's notice is at best one more representation or demand made on behalf of the applicant. The other reason advanced by Shri Krishna Reddy that the applicant's pension is affected and so he has a right to approach the Tribunal at any time in future is also untenable. This is not a case per-se relating to non-payment of pension or payment of less pension than what is due to the applicant. It is primarily a case or claim of an employee that the action of the respondents in retiring the applicant with effect from 30-6-1986 is illegal. If the applicant is legally able to establish this contention certain consequences would follow like reinstatement or payment of full salary for the period he was illegally kept out of service. But before claiming these consequential reliefs the applicant must be able to establish that his case cannot be rejected, on the threshold on the ground of limitation vis-a-vis the order of retirement. Otherwise, in any case whenever an employee is prevented from functioning or working like even an order of dismissal, then without questioning the said order the employee can always ignore the limitation prescribed on the ground that his right to pension is affected and question the order of dismissal years later. The rule of limitation prescribed by statute cannot be ignored in this manner.

contd...6.

3. For these reasons we are of the view that it cannot be contended that there is no delay in filing the application. The delay as already indicated supra consists of 416 days which is not satisfactorily explained. The Miscellaneous Application and the Original Application are accordingly dismissed as being hopelessly time barred.

(B.N.JAYASIMHA)
Vice-Chairman

(D.SURYA RAO)
Member (J)

Dated : 19th June,1990.

Deputy Registrar(J)

AVL

To:

1. The General Manager, south central railway, Rail Nilayam, Sec'bad.
2. The Divisional Railway Manager(MG), south central Railway, Sec'bad.
3. The Sr.Divisional personnel officer, S.C.Railway(MG), Sec'bad.
4. The Loco Foreman, Loco Shed, Lallaguda, S.C.Railway, Sec'bad.
5. One copy to Mr.P.Krishna Reddy, Advocate, 3-5-899, Himayatnagar, Hyderabad.
6. One copy to Mr.N.R.Devaraj, SC for Railways,CAT,Hyderabad.
7. One spare copy.

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kj.

CHECKED BY APPROVED BY

TYPED BY COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

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

AND

THE HON'BLE MR.J.NARASIMAHAMURTHY:M(J)

AND

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

DATE : 19-6-90

ORDER / ~~JUDGMENT~~

M.A./~~R.A./C.A.~~/No. 244/90 in

~~T.A.No.~~ ~~W.P.No.~~

O.A.No. 383/90.

Admitted and Interim directions Issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A.ordered/Rejected.

No order as to costs.