

38

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 1029/90.
T.A.No.-

Date of Decision :

A.Sanjeeva Rao

Petitioner.

M.
Shri P.Chandramouli

Advocate for the
petitioner (s)

Versus

The Union of India represented by
The General Manager, South Central Railway,
Secunderabad & another.

Respondent.

Shri N.V.Ramana,
SC for Railways.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy : Member (Judl)

THE HON'BLE MR. R.Balasubramanian : Member (Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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 Tribunal ?
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)

Yes

HJNM
M(J)

HRBS
M(A)

39

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.1029/90.

Date of Judgment 28-2-91

A.Sanjeeva Rao

.. Applicant

Vs.

1. The Union of India
represented by
The General Manager,
South Central Railway,
Secunderabad.

2. The Divisional
Railway Manager,
South Central Railway,
Vijaywada.

.. Respondents

M.

Counsel for the Applicant : Shri P.Chandramouli

Counsel for the Respondents : Shri N.V.Ramana,
SC for Railways

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) I

This application has been filed by Shri A.Sanjeeva
Rao under section 19 of the Administrative Tribunals Act,
1985 against the Union of India represented by the
General Manager, South Central Railway, Secunderabad and
another.

2. The applicant while working as Train Conductor Guard
retired on 31.12.87. The applicant successfully got the
date of birth altered through T.A.No.1094/86 and ^{thereby} ~~thus~~
altered the date of retirement from 31.5.81 to 31.12.87.

It is his allegation that this has provoked the respondents, who out of a grudge against him are now harassing him. It is alleged that the respondents foisted a false case on him and he was kept under suspension from 30.11.87 and after revoking it on 28.12.87 he was allowed to retire on 31.12.87 on superannuation. The charge-sheet issued against him was proceeded with and an enquiry was conducted. Since he had retired on 31.12.87 the applicant expected payment of all terminal dues but the payment of Death-cum-Retirement Gratuity (DCRG) was denied to him and a sum of Rs.1,808/- only was paid to him by way of leave encashment. He was also sanctioned a provisional pension of Rs.978/- only. It is stated by the applicant that the disciplinary authority, after examining the enquiry report, has recommended 10% cut in the monthly pension and a recovery of Rs.720/- from his DCRG towards pecuniary loss caused by the applicant. A final decision of the Board is awaited and till that is received the gratuity amount cannot be paid and the pension cannot be commuted. The applicant is aggrieved that the disciplinary proceedings were ~~even~~ initiated ^{over} 3 years ago and still no final decision has been arrived at. He is also disputing the settlement of the leave encashment. According to the applicant he is entitled to leave salary for 125 days whereas the respondents had granted leave salary for 18 days only. It is also alleged that the pension being paid to him is less than the actual pension payable to him.

208

In this application the applicant has prayed for:

(i) release of DCRG amount of Rs.33,000/- together with interest at 18% per annum.

(ii) commuted pension of Rs.46,400/- together with interest at 18% per annum.

(iii) leave salary for 4 months together with interest at 18% per annum.

(iv) arrears of salary from 1.11.86 to 31.12.87 with interest.

(v) balance of pension.

3. The application is opposed by the respondents.

They deny that they have any grudge against him on his success in getting the date of birth altered. They justify the withholding of the DCRG amount in terms of

Rules 2308A and 2902(b) of the Establishment Code Vol.2 1973 Edition. They have also quoted a rule in support their action of withholding the commutation amount.

Regarding the calculation for leave encashment it is stated that as per the record the applicant was having only 24 days leave on average pay and accordingly the payment of Rs.1,808/- had been made to him. They also

deny that there are any arrears of salary ^{due to} for him.

On these grounds they want the application to be dismissed.

4. We have examined the case and heard the learned counsels for the applicant and the respondents. From the calendar of events in this case we find that the charge-sheet was issued on 1.12.87 when the applicant

20

.....

was still in service. The applicant who received the charge-sheet on 10.12.87 had promptly submitted his explanation on 16.12.87. An enquiry was ordered on 23.12.87 and 3 sittings proposed to be held on 16.5.89, 19.6.89 and 20.6.89 could not be held. It is stated by the respondents that they could not conduct the enquiry fixed on 19.12.88, 17.4.89 and 15.5.89 since the applicant did not participate in the enquiry fixed because the defence counsel for the applicant has withdrawn. The enquiry was completed and they have received a representation from the applicant on 24.1.90. The case had been referred to the President recommending a 10% cut in pension on 26.6.90. The case is pending there since then. The respondents had accounted for the delay in referring the case to the President ~~because there was~~ ^{due to the} delay in getting the service record filed in the Sub-Court, Venkatagiri in connection with the dispute regarding the date of birth of the applicant. We find from the above that the respondents have far exceeded the 150 days limit they have set for disciplinary proceedings. The delay on a single score alone is more than 8 months from the end of June, 1990 when the case was remitted to the President. In the course of the hearing we asked the respondents the reason for remitting the case to the President when, according to Rule 2308, the authority which started the case only was to conclude when the case had been initiated while the applicant was still

20

in service. The learned counsel for the respondents answered this satisfactorily by referring to Rule 2308 RII according to which the power to withhold or withdraw pensionary benefits or any part thereof vests only with the President even though proceedings were instituted when the applicant was in service. The learned counsel for the respondents also quoted Rule 2308-A according to which no gratuity or DCRG shall be paid to an official until the conclusion of proceedings and the issue of final orders thereon. According to the rules, commutation of pension also cannot be paid to him till the finalisation of the case pending against him.

5. Leaving these aside, there are still the amount disputed over leave encashment and the arrears of pay claimed for the period from 1.11.86 to 31.12.87.

As regards the leave encashment, this is a matter of fact and the Railway authorities can re-check if the applicant had commuted the leave and is entitled to 125 days encashment. If, on re-check, they find that he is entitled to the same, they shall draw and pay the amount of difference to the applicant within two months of the receipt of this order.

6. As regards the arrears of salary, the respondents had contended that he was entitled to arrears only upto 30.11.87 and not upto 31.12.87. Neither side has given justification in respect of its claim. Here again, it is a matter of fact and we direct the respondents to re-check if the arrears claimed

by the applicant are permissible, and, if so, this may also be paid to him within two months of the receipt of this order.

7. We shall now take up the cases for payment of commutation of pension and the payment of DCRG.

Commutation of pension is ~~not~~ dependant on a decision regarding the pension and at this stage we shall not pass any order on ~~these~~ ^{this}. The next question, therefore, is the DCRG. We find from Rule 2308-A that the gratuity is not payable until the conclusion of the disciplinary proceedings and the issue of final orders thereon. Evidently, these rules were framed bearing in mind a certain time-frame for the conclusion of disciplinary proceedings and the limit set by the Railways is 150 days. When the respondents have far exceeded the time-frame for such disciplinary proceedings it is unfair on their part to withhold DCRG under cover of Rule 2308 framed to cater to a certain situation. We are, therefore, of the opinion that in the circumstances before us the provision contained in Rule 2308-A should be deemed to be relaxed and the amount of DCRG becomes payable to the applicant. We, therefore, direct the respondents that if the disciplinary proceedings are not concluded before 30.4.91 the DCRG should be paid to the applicant after withholding a hold-back amount of Rs.1,000/- only to nominally protect the interests of the respondents.

To

1. The General Manager, South Central Railway, Secunderabad.
2. The Divisional Railway Manager, South Central Railway, Vijayawada.
3. One Copy to Mr. M. P. Chandra Mouli, Advocate, H. No. 1-7-139/1, S. R. K. Nagar, Golconda 'X' Roads, Hyderabad-48.
4. One Copy to Mr. N. V. Ramana, SC. for Railways, CAT., Hyd
5. One Spare Copy.
6. One Copy to Mr. J. Narasimha Murthy, Member (Jud1), CAT., Hyd.
7. One Copy to Mr. R. Balasubramanian, Member (A), CAT., Hyd.

VGB.

If, as a result of the finalisation of the proceedings, more monies are to be recovered from the applicant, the Railways have got other means to effect such a recovery.

8. In the course of the hearing the learned counsel for the applicant argued that he is entitled to interest for all amounts due to the applicant at the current market rates as laid down by the Supreme Court in its decision A.I.R. 1985 (SC) 357. The question of payment of interest would arise only when the applicant comes out clear in the disciplinary proceedings.

As of now, we shall not issue any direction regarding the payment of interest. However, ^{in case} the applicant is entitled to the refund of DCRG by virtue of finalisation of the disciplinary proceedings he shall be entitled to the interest in terms of the Supreme Court order.

9. The application is, therefore, partly allowed with the directions regarding payment of leave encashment, arrears of salary and DCRG in paras 5 to 7 above. There is no order as to costs.


(J. Narasimha Murthy)
Member(Judl).


(R. Balasubramanian)
Member(Admn).

Dated 28th February 91


S. Venkateswaran
Deputy Registrar(J).

5/3/91

ASR 8
WPA

CHECKED BY ✓
TYPED BY ✓

APPROVED BY
COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

THE HON'BLE MR.D.SURYA RAO : M(J)

AND

THE HON'BLE MR.J.NARASIMHA MURTY: M(J)

AND

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

Dated: 28-2-1991.

ORDER / JUDGMENT:

M.A./R.A. /C.A. NO.

int.

T.A. NO.

W.P. NO.

O.A. NO. 1029/90

Admitted and Interim directions
issued.

Partly
Allowed ✓

Disposed of with direction 12 March 1991

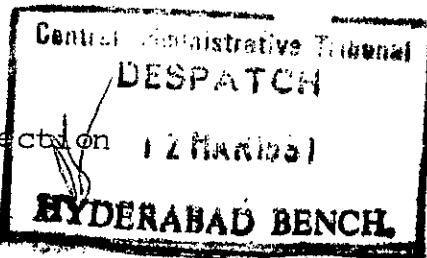
Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered Rejected.

No order as to costs.



✓
WPA
u/3/91