

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1537/94

Date of Order: 10.9.96

BETWEEN :

P.Veerabhadraiah

.. Applicant.

AND

1. General Manager,
S.C.Rly., Rail Nilayam,
Secunderabad.

2. Financial Adviser and
Chief Accounts Officer,
S.C.Rly., Rail Nilayam,
Secunderabad.

3. Senior Divisional Personnel
Officer, S.C.Railway,
Vijayawada Division,
Vijayawada.

.. Respondents.

Counsel for the Applicant

.. Mr.M.LakshmanaMurthy

Counsel for the Respondents

.. Mr.V.Bhimanna

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

J U D G E M E N T

{ Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) }

Heard Mr.M.Lakshmana Murthy, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant while working as Station Master was issued with a charge sheet in the year 1979. It is stated that on without conducting any enquiry. Against this removal order the applicant filed a writ petition bearing No.6338/79 on the file of the A.P.High Court and that Writ Petition was allowed and he was reinstated in service in 1980. However he was

A

24

.. 2 ..

issued with another charge sheet bearing No. B/DCS/CON/26/74/Vol-I dated 30.12.81. It is stated that the charges in this memorandum are same as charges mentioned in the previous memorandum issued in the year 1979. The applicant retired from service on 30.6.82. The applicant filed a petition C.M.P.No.115/82 on the file of the Labour Court, Gantur for releasing some dues to him and also for fixation of pension. But the order of the labour court in the CMP was not very favourable to him and hence he filed W.P.No.16442/84 on the file of A.P.High Court against the award of the Labour Court. That Writ Petition was transferred to this Tribunal when it was formed in 1985 and re-numbered as by directing the respondents to pass a final order regarding payment of pension in terms of para 2308 within a period of

that MA to pay him 50% of the DCRG due to him on the basis of last pay drawn by him. The applicant was paid the provisional pension from the date of his superannuation i.e. from 1.7.82. It is stated that the applicant was paid the 50% of the DCRG as directed by the Tribunal in the above said MA with interest on 30.6.90. The charge ^{sheet} issued vide memorandum dt. 30.12.81 was dropped by memo No. B/DCS/CON/26/74/Vol-IV dated 26.6.92 (Page-15). Though in the memo dated 26.6.92 it is stated that the applicant is not eligible for payment of interest on the delayed payment of DCRG, ^{interest on the} the DCRG already paid ~~with interest~~ in the year 1990 was not to be realised in terms of memo No. B/DCS/CON/26/74/Vol-IV, dated 10.8.92 (Page-16). The provisional pension granted to him earlier was made final subsequently.

3. Thus from the above appreciation of this case, It is evident that the applicant had been granted the final pension and also 50% of the DCRG with interest. What is left to be paid to him is remaining 50% of the DCRG. The applicant prays for payment of 50% DCRG with interest from the date of his retirement.

(35)

The applicant has been paid leave encashment salary for 55 days already. He now contends that he is eligible for another 125 days of leave encashment over and above the 55 days leave encashment already granted to him with interest. The applicant also prays in this OA for granting him seniority immediately above Sri Mastan Rao who was a co-worker as Station Master and also retired. Probably the applicant prays for fixation of his pay at the time of his retirement on par with his junior Sri Mastan Rao.

4. This OA is filed praying for fixation of his pay on par with Sri Mastan Rao who was drawing Rs.750/- p.m. as on 1.7.82, the date on which the applicant had superannuated. He also prays for payment of ⁷⁵⁰50% of the DCRG payable to him calculated on the basis of Rs. ⁷⁵⁰50% p.m. and for a further direction to pay leave encashment for 125 days over and above the leave encashment salary already paid to him. Interest on the delayed payment at 12% p.a. from 1.7.82 is also prayed for in this OA.

5. When the OA was taken up for consideration today the learned counsel for the applicant submitted that he is not pressing for his last pay drawn as Rs.750/- but will contend with the payment of DCRG and leave encashment as per the last pay drawn by him on 30.6.82 i.e. at the rate of Rs.680/- p.m.

~~the~~ ^{only} the payment of 50% of the DCRG ~~had to be paid to him~~ along with interest and encashment of leave salary of 125 days over and above 55 days already granted to him with interest. The charge sheet issued to him in terms of memorandum dated 30.12.81 has been dropped by the memorandum dated 20.6.92. Hence the applicant should have been paid the full DCRG that is the remaining-

D

(24)

50% of the DCRG kept back within a reasonable period from 26.6.92. But the applicant was not paid the DCRG till today. As no reply ~~was~~^{is} filed it is not known why this delay had taken place. However the respondents are responsible for non payment of the 50% of the DCRG within a reasonable period after 26.6.92 for the kept back 50% of the DCRG. The charge memo issued to the applicant was dropped due to misplacement of relevant document. Hence it cannot be said that the applicant was fully exonerated of charges. As per Government of India decision (G.I. Dept of Per. & A.R., O.M. F7(1)P-U./79, dated 11.7.79 and No.1(4)/Pen.Unit/82 dated 10.1.83) under Rule 68 of Swamy's Pension Compilation 13th Edition 1995 the interest on the delayed payment of gratuity is permissible only ^{if} the employee is exonerated in the charges framed against him. But in this case the proceedings against the applicant was dropped due to missing of the files. Hence it cannot be said that he was exonerated of the charges. However the applicant should have been paid the kept back 50% of the DCRG amount within a reasonable period after 26.6.92. But it is not paid even today. Hence there is a lapse on the part of the Government in paying him the remaining the DCRG amount. In view of the above a reasonable amount of interest has to be paid to him. I consider that payment of interest at the rate of 6% p.a. from the date of filing of this OA i.e. from 21.11.94 will meet the ends of justice. Hence a direction has to be given to pay the kept back 50% amount of DCRG to the applicant with interest at 6% p.a. from 21.11.94 i.e. the date of filing of this OA till it is paid. Efforts should be made by the respondents to pay the above said amount within a period of 3 months from the date of receipt of a copy of this order.

7. The second point to be considered is in regard to the payment of leave encashment. The applicant submits that the

D

respondents have erroneously calculated his leave at his credit on the date of retirement as 55 days. He further submits that he is entitled for 180 days of leave at his credit on the date of his retirement. As leave encashment to the extent of 55 days had already been granted to him he is entitled for the encashment of leave to the extent of 125 days further. As no reply has been filed the above points cannot be considered as no material is available in this connection. The respondents by their failure to file a reply ^{have} ~~has~~ placed themselves in a situation wherein a direction may ^{have} ~~be~~ given to pay them the full 125 days of leave encashment. However, considering the fact that the applicant had retired 14 years back it will be too harsh on the respondents if a direction is given to pay the leave encashment for another 125 days ^{at this distant date}. Even in the OA in para 6(f) it is stated that leave encashment is not correctly fixed as the respondents are not possessing the SR of the applicant. In the circumstances no relief can be given to the applicant in regard to the payment of leave encashment without details. Hence the applicant should produce the details available with him in regard to the availability ^{as per} 30.6.82 and ^{those} ~~in~~ those details which ^{are} ~~received~~ received by the respondents, ^{they} ~~the respondents~~ should take all endeavours to reconstruct the leave account of the applicant and check the correct availability of the leave at his credit on the date of his retirement. If he is entitled for leave encashment over and above 55 days he should be paid the leave encashment salary within 3 months from the date of the receipt of the details to be given by the applicant in regard to his leave entitlement with interest at 12% p.a. from the date of filing of this OA namely 21.11.94. If the respondents are unable to reconstruct the leave account a detailed reply should be given to the applicant in this connection.

8. In the facts and circumstances of the case as explained above the following direction is given:-

(i) The respondents should pay the remaining 50% of the DCRG with interest at 6% p.a. from 21.11.94 within a period of 3 months from the date of receipt of a copy of this order.

(ii) The applicant may submit, if so advised, a detailed representation indicating his leave particulars as on 30.6.82 on the basis of records available with him. If such a representation is received with details as above the respondents should reconstruct the leave account of the employee and on the basis of the reconstruction if the applicant is entitled for encashment of leave over and above the 55 days which has already been encashed the same should be paid to him with 6% interest from 21.11.94. In case the respondents are not able to reconstruct the leave chart of the applicant a detailed reconstructed on the basis of the details given by him should be intimated to him within 3 months from the date of receipt of the details from the applicant.


(R. RANGARAJAN)
Member (Admn.)

Dated: 10th September, 1996

(Dictated in Open Court)

