

(12)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No.
T.A. No.

484/97

199

DATE OF DECISION 25/4/2008

Mohan Singh

Petitioner

Mr. Shiv Kumar

Advocate for the Petitioner (s)

Versus

U.O.I & Ors.

Respondent

Mr. Javed Choudhary

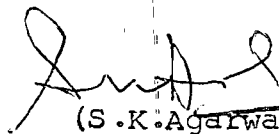
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. Agarwal, Member (J)

The Hon'ble Mr.

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 Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.K. Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.NO.484/97

Date of order: 25/4/2000

Monan Singh, S/c Shri Harodith Singh, K/o S-43. Shanti Nagar, Khatipura Road, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Mini. of Defence, Govt of India, New Delhi.
2. Chief Engineer, Military Engineering Service, Rajasthan & Gujarat Zone, Power House Road, Banu Park, Jaipur.
3. Garrison Engineer, Military Engineering Service Deptt, Power House Road, Banipark, Jaipur.

...Respondents.

Mr. Shiv Kumar - Counsel for the applicant

Mr. Javed Choudhary - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec. 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to fix/release the pension and other retiral benefits to the applicant while counting the entire service of the applicant upto 31.1.94.

2. Facts of the case as stated by the applicant are that he was initially appointed as M.T Driver on 13.8.64. He was served upon a charge sheet on 26.9.79 and after enquiry he was removed from the service on 26.9.80. The applicant preferred an appeal and the appellate authority set aside the order of removal and remanded the case back to disciplinary authority for fresh enquiry. The enquiry was again conducted and the disciplinary authority vide order dated 26.11.83, the applicant was compulsorily retired. Against this, the applicant filed a civil suit before the Munsif, Jaipur City, which was subsequently transferred to this tribunal and registered as T.A No.18/92 which was dismissed vide order dated 26.11.93. It is pertinent to mention that while the civil suit was pending before the Munsif, Jaipur, the court granted an interim injunction in favour of the applicant on 31.1.84 and the applicant was allowed to continue on the post of M.T Driver. It is also stated that after the decision given in T.A No.18/92 on 26.11.93, the respondents issued another order dated 31.1.94, to retire the applicant compulsorily. It is further stated that the order dated 26.11.83 was never served upon the applicant and for the first time an order dated 31.1.94 was served upon the applicant, therefore, the applicant is entitled to count his whole service for the

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purpose of pension but inspite of filing number of representations, no action was taken by the respondents. Therefore, the applicant filed the C.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the applicant was retired compulsorily vide order dated 26.11.83 and this Tribunal vide its order dated 26.11.93, dismissed the transfer application holding that the order dated 26.11.83 cannot be set aside as it has not been challenged. It is also stated that the penalty of compulsory retirement was imposed upon the applicant on the charge of theft. It is also stated that the applicant was served upon the order dated 26.11.83 but he refused to accept it and the fact of passing the order dated 26.11.83 was definitely within the knowledge of the applicant. Therefore, after having retired compulsorily on 26.11.83, the applicant is not entitled to count his past service rendered after 26.11.83 to 31.1.94. Therefore, this C.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Admittedly, the applicant was taken on duty after passing the order dated 26.11.83 and continued till the order dated 31.1.94 was passed. The order dated 31.1.94 is reproduced as below:

"Garrison Engineer's Office, Katipura Road, Jaipur.

No.1340/2355/EIR(B)

31 Jan. 94

MES. 418025

Shri Mohan Singh, MT Driver-II,

C/o AGE E/M, Jaipur.

COMPULSORY RETIREMENTS

MES-418025 SHRI MOHAN SINGH.

You have been compulsorily retired and SOS w.e.f. 31 Jan 94 (A).

Sd/-

D.R.Kochar

AE, AGE(T)

For Garrison Engineer."

6. The order was issued after disposal of T.A No.18/92 on 26.11.93 which is reproduced as under for the sake of better proposition:

"The suit is liable to be dismissed only on the ground that the order of compulsory retirement has not been challenged and no amendment has been made even after getting the order of temporary injunction, restraining the implementation of this order which was under challenge

before the learned Munsif. However, we have considered the case on merits and we do not find any force in the T.A and the action taken by the disciplinary authority is justified. As far as the pensionary benefits are concerned they will be given according to the rules. There shall be no order as to costs."

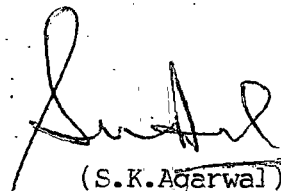
7. The learned counsel for the respondents has argued that the applicant was retired compulsorily w.e.f. 26.11.83 therefore, the service rendered by the applicant 26.11.83 onwards is no service and the same cannot be counted for pension. On the other hand, the learned counsel for the applicant has argued that after passing the order dated 26.11.83, the applicant is working on the post by the interim order of the Munsif, Jaipur city and thereafter, the applicant was retired compulsorily vide order dated 31.1.94, therefore, the applicant is entitled to count the service rendered w.e.f. 26.11.83 to 31.1.94, for the purpose of pension.

8. As the applicant rendered his service till the order dated 31.1.94 was passed retiring the applicant compulsorily and admittedly, this date is also earlier to the date of superannuation of the applicant. The respondents failed to explain why the order dated 31.1.94 was issued to retire the applicant compulsorily, therefore, the compulsory retirement of the applicant is effected only from the date of issuing the order dated 31.1.94.

9. In Mange Ram Vs. UOI & Ors, 2000 (2) ATJ 328, (CAT Chandigarh), it was held that the order by compulsory retirement cannot be issued on retrospective effect. The fact that the applicant has rendered the service till the order of compulsory retirement was issued on 31.1.94, therefore the applicant is entitled to count his past service w.e.f. 26.11.83 to 31.1.94 for the purpose of pension only.

10. I, therefore, allow the O.A and direct the respondents to determine the pension and other retiral benefits of the applicant after counting the period from 26.11.83 to 31.1.94 as qualifying service for the purpose of pension only and pay him the arrears within 3 months from the date of receipt of a copy of this order. The applicant will also be entitled to interest @ 12% per annum on the arrears of retiral benefits and pension w.e.f. 1.4.94, i.e., three years preceding the date of filing the O.A, till the applicant receives the payment.

11. No order as to costs.


(S.K. Agarwal)
Member(J).