

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 365 of 2002

Jabalpur, this the 17th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

T.R. Pandey, Son of late Shri
K.P. Pandey, aged about 63 years,
Retired Station Superintendent
Grade-II, South Eastern Railway,
Shahdol (MP), Resident of Railway
Quarter No. 1057/2, 'B' Type, R.T.S.
Colony, Bilaspur (Chhattisgarh). ... Applicant

(By Advocate - Shri Rajendra Shrivastava)

V e r s u s

1. Union of India, through :
the General Manager,
South Eastern Railway,
Garden Reach, Kolkata (WB).
2. The Divisional Railway Manager,
South Eastern Railway,
Bilaspur (Chhattisgarh).
3. Senior Divisional Personnel Officer,
South Eastern Railway, Bilaspur
(Chhattisgarh). ... Respondents

(By Advocate - None)

O R D E R

By Madan Mohan, Judicial Member -

None is present for the respondents. Since it is an old case of 2002, we proceed to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987. Heard the learned counsel for the applicant.

2. By filing this Original Application the applicant has claimed the following main reliefs :

"(i) to command the respondents and quash the impugned recovery mentioned in the letter dt. 30.7.1999 on account of Pay & Allowances amounting to Rs. 13,569/- and be directed to the respondents to refund the same with interest @ 18% p.a.

(ii) to command the respondents & to correct the date of acceptance of voluntary retirement w.e.f. 1.1.1996 instead of 24.9.1995, and the respondents may pleased

to direct to pay the retiral benefits to the applicant on the basis of 1.1.1996 as date of retirement, in the interest of justice."

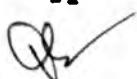
3. The brief facts of the case are that the applicant was appointed under the respondents on 21.1.1958 and thereafter the services of the applicant was continued and the applicant had completed 38 years of satisfactory service under the respondents. The applicant had submitted an application for compulsory/voluntary retirement on medical ground on 24.9.1995. The said notice for voluntary retirement was submitted by the applicant on the grounds that the applicant was decategorised employee by the Medical Board on the post of Station Superintendent Grade-II. After submitting the three months notice request for granting the voluntary retirement to the applicant on the basis of the medically decategorised employee, the authority concerned had considered the request and issued the acceptance letter after completion of three months vide letter dated 1.1.1996. After retirement on 1.1.1996 the respondents have withheld the payment of the gratuity amount payable to the applicant due to non-vacation of the Railway quarter at Shahdol. In the year 1999, the Department had paid the gratuity amount after deducting therent etc. to the applicant. The respondent No. 3 had issued a letter dated 30.7.1999, showing the details of recovery made from the gratuity amount, in which at serial No. 1 the over payment of pay and allowances is mentioned amounting to Rs. 13,569/- for the recovery of the notice period, in which the applicant had worked under the respondents and the respondents have paid the pay & allowances to the applicant as salary for November, 1995 payable in the month of December, 1995. The said recovery is not just and proper and is liable to be refunded to the applicant with interest. The action of the respondents is not in accordance to the procedure/law and also beyond the instructions issued



by the Government from time to time, and is liable to set aside. The action by the respondents is also in violation of the Fundamental & Constitutional rights of the applicant. The deductions made by the respondents from the gratuity amount of the applicant amounting to Rs. 13,569/- is not just and proper and it is liable to be refunded to the applicant with interest. The voluntary retirement order was accepted by the authority concerned after completion of three months notice period i.e. on 1.1.1996, therefore, the effective date of voluntary retirement mentioning by the respondents as 24.9.1995 for the date of submission of the application is not just and proper and it is expedient in the interest of justice that the date of retirement is liable to be effected from the date of issue of the order. Hence the applicant has filed this OA claiming the aforesaid reliefs.

4. The learned counsel for the applicant has argued that the applicant moved the application for voluntary retirement on medical ground on 24.9.1995 and it was accepted by the respondents on 1.1.1996 (Annexure A-1), while it is made effective from 24.9.1995 which is absolutely illegal, as three months notice was necessary. The action of the respondents recovering the alleged amount from the gratuity of the applicant is also against the rules. The applicant cannot be treated to be voluntarily retired on the date of his application i.e. on 24.9.1995 in any way.

5. The respondents in their reply stated that the allegation of malafide intention against the applicant is denied. The respondents have given full consideration and has even given compassionate appointment to the son of the applicant. The respondents vide letter dated 1.1.1996 intimated the applicant that his voluntary retirement will be effected from 24.9.1995 as the applicant himself has stated in his



application that he is not in a position to accept any alternate job because his eyes are defective and deficiency in ears and severe degree of deafness. It is further submitted by the respondents in the reply that if the date of submission of the application by the applicant is taken as on 24.9.1995, then his three months period have been completed on 23.12.1995, so how he is claiming that his date of retirement should be taken from 1.1.1996.

6. After hearing the learned counsel for the applicant and on perusal of the pleadings and records we find that the applicant has not filed the copy of his application for voluntary retirement on 24.9.1995 with the Original Application. The learned counsel for the applicant himself admitted during the course of the argument that the applicant has sought his voluntary retirement from 24.9.1995 and this fact was also mentioned in that application. Regarding the argument raised by the applicant that the order is passed by the respondents on the application of the applicant on 1.1.1996, hence his voluntary retirement shall be effective from 1.1.1996 and not from the date of his application i.e., 24.9.1995, is not tenable in the eye of law because the applicant himself admitted that he is not in a position to work and to accept any alternate job as his eyes are defective and there is also deficiency in his ears. Even if the order is passed on 1.1.1996 on the application of the applicant for voluntary retirement dated 24.9.1995, it does not create any right in favour of the applicant to make his voluntary retirement to be effective from 1.1.1996.

7. Hence, we are of the considered opinion that the order passed by the respondents on the voluntary retirement of the applicant on 1.1.1996 which is made effective from 24.9.1995, is correct and does not need any interference. Thus the



applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merit. Accordingly, the Original Application is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पूँछांकन सं. ओ/न्या..... जबलपुर, दि.....

प्रतिलिपि आच्यो दिल:-

(1) राजीव, उत्तर विधायक वाल प्रांतसिद्धान, जबलपुर

(2) अमेनक श्री/श्रीमती/कु..... वे कर्तव्यसल

(3) प्रद्युम्नी श्री/श्रीमती/कु..... वे काउंसल

(4) विधायक, दोप्रथा, जबलपुर वर्षाधारी

सद्वा एवं आदरशक धार्यवाही द्वा

R. Shrivastava
N.S. Rupraju

✓ Biju Lal
30. 6. 04

Issued
30. 6. 04
On
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