

Central Administrative Tribunal
Principal Bench

OA No.3393/2002

New Delhi this the 25th day of May, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Gurdev Singh,
S/o Shri Sarwan Singh,
Retd. Assistant Personnel Officer,
Rail Coach Factory,
KAPURTHALA.

-Applicant

(By Advocate: Ms. Meenu Mainee)

. Versus

Union of India through:

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhawan, Raisina Road,
New Delhi.
2. The General Manager,
Rail Coach Factory,
Kapurthala.

-Respondents

(By Advocate: Shri Rajinder Khatter)

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Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Applicant has challenged the following:-

- 1) Annexure A-1 dated 25.10.1997 whereby applicant was communicated Government displeasure on the allegation that during the period 1987-1989 when he worked as Assistant Secretary to GM, RCF/Kapurthala, as one of the members of the screening committee to screen casual labour, he did not take due care and failed to detect additions, alterations, erasures and other irregularities on the list of oustees supplied by the Land Acquisition Collector which resulted in



irregular appointment to S/Shri Gurdev Singh, Jagjit Singh and Surinder Jeet Singh appointed.

2) Annexure A-2 dated 23.8.2002 denying payment of interest on delayed payment of DCRG on the instructions of the Railway Board.

2. It has been pointed out on behalf of the applicant that the applicant had not been supplied a copy of the enquiry report which had exonerated the applicant from all charges. He has further stated that he was not supplied the reasons for disagreement of the disciplinary authority with the enquiry officer. He has also relied on order dated 10.10.2000 in OA-445/1998 Shri C.L. Batra Vs. Union of India and another, whereby in a similar case interest was allowed on pensionary benefits which were held to have been withheld incorrectly.

3. At the outset learned counsel of the respondents stated that Principal Bench of the Tribunal has no jurisdiction in this matter as the applicant has been residing in Jalandhar district in the State of Punjab and has been receiving his pension etc. at his Jalandhar address. As such, this case falls within the territorial jurisdiction of the Chandigarh Bench of the Central Administrative Tribunal. Then, the learned counsel contended that OA is barred by limitation as the DCRG and the commuted value of pension were paid to the applicant on

25.11.1997. Thus, the cause of action, if any, had arisen on or before 24.11.1998.

4. Learned counsel of the applicant contended that after his retirement, the applicant has been temporarily residing at Delhi at the address given in the verification made on the OA. He further submitted that the Principal Bench has the territorial jurisdiction to try this case because final order has been passed by the Railway Board vide letter dated 22.7.2002 on the basis of which Annexure A-2 had been issued.

5. Rule-6 of Central Administrative Tribunal (Procedure) Rules, 1987 reads as follows:-

"6. Place of filing application-(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction-

(i). the applicant is posted for the time being, or

(ii) the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1), a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application".

6. Applicant is a retired person and as such

he is entitled to file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application. In the verification of the OA, the applicant has declared that he is residing at a Delhi address. Nothing repugnant to the provisions of Rule-6, ibid is present in this OA when the applicant is a retired person and though he has been receiving his pension etc. at Jalandhar address, he has stated to have been residing at the time of filing of the OA at Delhi address. Further more, Annexure A-2 has been issued on the basis of a Railway Board's letter dated 22.7.2002 as is clear from Annexure A-2, which is Headquartered at Delhi. The objection raised in respect of territorial jurisdiction, as such, is untenable.

7. As regard, respondents' objection to the application having been filed beyond the prescribed limitation period, we are in agreement with the contention raised on behalf of the applicant that while Government displeasure had been communicated to the applicant on 25.10.1997, applicant's claim, for payment of interest on delayed payment of DCRG was denied on 23.8.2002 (Annexure A-2). The limitation period, as such, has to be computed from 23.8.2002 under the Rules. As such, this OA, in our view, is not barred by limitation.

8. On merit, learned counsel of respondents stated that as applicant had not asked for a copy of

the enquiry report, therefore, the ground of non-supply of enquiry report cannot be taken by the applicant. He further stated that disciplinary authority had not disagreed with the findings of the enquiry officer and as such there was no question of recording or supplying any reason to the applicant. Learned counsel further contended that decision in the case of Shri C.L. Batra (supra) is not applicable to the facts of the present case.

9. The argument put-forth by the learned counsel of respondents that it was not necessary for the disciplinary authority to supply a copy of the enquiry report to the applicant when he had not ~~h~~ asked for the same is absolutely unacceptable. The established law on the point lays a heavy responsibility on the disciplinary authority to supply a copy of the enquiry report to the delinquent otherwise it amounts to non-provision of sufficient opportunity of defence and denial of principles of natural justice.

10. Next, while it has been stated on behalf of the applicant that he had been exonerated by the enquiry officer, respondents have not been able to refute this by production of the relevant records to establish that applicant had not been exonerated in the enquiry report and as such the disciplinary authority had also not disagreed with the findings of the enquiry report. We have to draw an adverse inference against the respondents accordingly.

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11. We have carefully gone through Tribunal's order dated 10.10.2000 in the case of **Shri C.L. Batra** (supra) (Annexure A-6), we find that the facts of the present case are not different than those of the case of Shri C.L. Batra, they are identical. The observations/directions in that case are re-produced below:-

"5. We have given careful consideration to the rival contentions made by the learned counsel on either side. It is not disputed that the enquiry report which was generally in favour of the charged officer or partially against him was not communicated to him before a decision was taken by the disciplinary authority. In view of the decision of the Hon'ble Supreme Court in **Union of India Vs. Mohd. Ramzan Khan**, 1991 (1) SCC 588, it was incumbent upon the disciplinary authority to have made available to the charged officer, a copy of the preliminary enquiry report before proceeding to take any penal action against him based on the report. This has not been done. Instead, the disciplinary authority has gone ahead and imposed on the applicant the penalty of Govt.'s displeasures which is not warranted or permitted by the rules. This action of the respondents was malafide, prejudicial and is not warranted. There is no way, we can countenance it.

6. In the result, the application succeeds and is accordingly allowed. The impugned proceedings of 29.10.1996 and 23.1.1998 are quashed. The respondents are directed to pay the applicant the consequential benefits, by way of interest on the pensionary benefits withheld incorrectly. This should be done within three months from the date of receipt of the order. We also order that costs quantified at Rs.3000/- be paid to the applicant".

11. Annexure A-2, wherein respondents have stated that despite certain similarity in the case of the applicant with that of Shri C.L. Batra (Supra),

they did not find appropriate to allow payment of interest on delayed payment of DCRG is infact a non-speaking order. They have not explained how the facts of the instant case are not different than those of the case of Shri C.L. Batra (supra). While as per Annexure A-3, charges related to irregular appointment of S/Shri Trilok Singh, Chanan Singh and Amrik Singh, in the impugned letter Annexure A-1 dated 25.10.1997, applicant has been communicated displeasure of the Government for charges in respect of irregular appointment of entirely different persons namely S/Shri Gurdev Singh, Jagjit Singh and Surinder Jeet Singh. The action of the respondents has been an absolute non-application of mind.

12. Having regard to the reasons discussed above, OA succeeds and is allowed. Annexure A-1 and A-2 are quashed and set aside. Respondents are directed to pay to the applicant interest on the gratuity amount as well as the commuted value of pension @ 9% per annum from the date from which this amounts became due after retirement of the applicant on 30.11.1993 till the date when these amounts were paid on 25.11.1997. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra -
(V.K. Majotra) 25.5.04
Vice Chairman (A)

cc.