

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 970/2002

(14)

This the 29th day of April, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

C. R. Gauatam  
Retired Head Good Clerk  
Railway Station  
Kanpur

R/o 359, DDA Flat, Mansarovar Park  
Shahdara, Delhi

Applicant

(Shri B. S. Mainee, Advocate))

Versus

Union of India, through

1. General Manager  
Northern Railway  
Baroda House, New Delhi

2. Divisional Railway Manager  
Northern Railway, Allahabad

3. Chief Traffic Manager  
Northern Railway, Kanpur

Respondents

(Shri R. L. Dhawan, Advocate)

ORIGIN

Applicant in this case is aggrieved by the alleged wrongful action of the respondents in not paying full DCRG and amount of commutation and also for their failure to pay the interest on the aforesaid amount.

2. The facts in brief are that the applicant was working with the respondents w.e.f. 19.12.55 <sup>and had worked in</sup> ~~in~~ various capacities and retired as a Head Good Clerk on 31.12.93.

3. During his service a chargesheet was issued to the applicant for penalty on the allegations that the applicant while working as ERC on reservation counter No.8 of second class reservation committed a misconduct as he was ordered to take over the charge of counter No.8 in addition to his own

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counter No.7 due to not turning up of Sh. S.K.Saxena, ERC for duty. Applicant took charge of counter No.8 from one Sh. Krishna Kumari and worked on the counter but did not sign the charge diary in token of having taken the proper charge of the tickets and other money value books. The second article of charge is that applicant did not make any report as to why he had used a new BPT book commencing from No.193801 for issuing senior citizen concession when his predecessor Smt. Krishna Kumari, ERC had already partially used a BPT book upto folio No.193605 and the book was available on counter as per the entries in the DTC book. This enquiry continued for quite a long period and final order was passed only on 23.8.2001 after the applicant had retired.

4. Applicant submits that since no disciplinary action was taken against the applicant and enquiry proceedings have been dropped as such he was exonerated from the charges levelled against him. The case of the applicant is that since the charges have been dropped, the applicant was entitled to DCRG and pension etc. from the date of his superannuation but the respondents had released the gratuity only on 11.1.2002 that too for a sum of Rs.23,407/- whereas actual amount of gratuity comes to Rs.27,726/-. Thus, the respondents had wrongfully withheld part of the amount.

5. Similarly, as regards the amount of commutation is concerned, respondents had paid amount of Rs.28,039/- but the actual amount of commutation comes to Rs.35,000/-. Thus, the respondents have failed to pay the applicant his actual dues and similarly respondents have failed to pay interest on amount of commutation of pension as well as on gratuity. So

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the applicant is entitled to actual amount of gratuity and commutation and also interest for delayed payment of the gratuity and pension commutation.

6. Respondents are contesting the OA. Respondents in their reply pleaded that the applicant himself has submitted his commutation application only on 28.9.2001 and the commutation amount was released immediately thereafter and the gratuity was also released immediately after the completion of the enquiry. As regards the amount of gratuity is concerned, it is submitted that the gratuity was calculated to the tune of Rs.33,264/- out of which certain commercial debits as advised by Sr. DCM/ALD vide his letter dated 12.7.99 were recovered from applicant.

7. Respondents further submitted that as per Rule 87 of the Railway Services (Pension) Rules, 1993, interest on delayed payment of DCRG is admissible when it is clearly established that the delay in payment was attributable to administrative lapse. In this case since enquiry was going on which had also resulted in dropping of the enquiry but the applicant had not been fully exonerated, so there was no administrative lapse on the part of the respondents and as such applicant is not entitled to interest.

8. As regards the pension is concerned, respondents have given the formula as to how applicant is entitled to commuted value of pension and it is also submitted that immediately after superannuation the applicant had been drawing full amount of provisional pension upto the finalisation of disciplinary proceedings and there has been no administrative

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lapse in arranging payment of commuted amount to the applicant. So the applicant is not entitled to any interest thereon not the amount is calculated at the lesser value.

9. I have heard the learned counsel for the parties and have gone through the record.

10. As regards the release of DCRG and commuted value of pension is concerned, counsel for applicant submitted that since the applicant has been exonerated, both the amount of gratuity as well as the amount of commutation should have been released to the applicant as per rules immediately on his superannuation. Since the same has not been done, applicant is entitled to interest.

11. In my view this contention of the counsel for applicant has no merits because the final order passed by the President of India vide Annexure A-2 shows that though the President has held that article No.1 is not proved but as regards article No.2 of the charge, the President was of the view that this charge is trivial and technical in nature but it is partly proved. However, since no malafide has been established, it was decided to drop the disciplinary proceedings. But this does not mean that applicant has been fully exonerated. The fact that the President has mentioned that charge is partly proved but being too technical the President in its wisdom did not pass any punishment order rather on the advise of the UPSC dropped the proceedings but the order does show that the element of complete exoneration is missing from the final order. So the respondents are within their right to withhold the gratuity till the final order was passed and thereafter the gratuity had been released well within time. So applicant



is not entitled to any interest thereon. As regards the commutation of pension is concerned, counsel for applicant submitted that since the applicant had superannuated and the charge has also not been proved, applicant is entitled to commutation value as explained in the chart given on page 588 of Railway Establishment Rules the commutation value expressed as number of years of purchase should be given as 10.46 whereas he has been given the value as 8.17, so this difference of commutation amount should be paid to him.

12. In my view this plea of the applicant is again not maintainable because at the time of superannuation applicant was paid full provisional pension and applicant himself applied for commutation of pension only after passing of the final order in 2001. So the number of years of purchase are to be taken from the date when the pension amount was reduced and not from the date of superannuation. Applicant cannot claim that commutation value should have been taken by applying the number of years of purchase as 10.46 because at that age the applicant was getting full pension. It is only from the date of reduction of pension the number of years of purchase have to be taken into consideration.

13. Counsel for applicant has also submitted that certain unlawful deductions have been made from the gratuity. However, Sh. Dhawan appearing for the respondents referred to Rule 15 & 16 of Railway Services (Pension) Rules, 1993 which postulates duty on Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement and the railways are entitled to adjust the same against the retiral benefits. Though counsel for applicant submitted that no notice has been given but these

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dues are not being adjusted by way of any penalty imposed upon the applicant rather these are the dues on the ground of certain railway funds lying with the respondent itself. Thus no principle of natural justice has been violated by not giving notice to the applicant for adjustment of these dues.

14. In view of the above facts, I find that the OA has no merits and no interference is call for. OA is dismissed. No costs.

  
( KULDIP SINGH )

Member (J)

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