

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 46/2001

This the 19th day of March, 2004

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

Sh. Tara Chand Aggarwal,
Ex. Station Superintendent,
Tioyodar,
Ajmer Division,
Western Railway,

R/o S-2-5 School Block Shakarpur,
Delhi-110092.

(By Advocate: Sh. B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.
3. The General Manager,
Western Railway,
Church Gate,
Mumbai.
4. The Divisional Railway Manager,
Western Railway,
Ajmer (Raj.).

(By Advocate: Sh. R.L. Dhawan)

O R D E R

By Sh. Kuldip Singh, Member (J)

Applicant had filed this OA as he is aggrieved of the fact that the respondents had failed to pay DCRG, commutation amount and other dues to the applicant although the applicant has retired from service w.e.f. 31.1.1997.

2. Applicant claimed that he had earlier also filed the OA to finalise the disciplinary proceedings and though the

respondents had made a statement that the final order will be passed within 2 months from the date of order of the earlier OA, i.e. 29.9.2000 but still they have failed to comply their own undertaking hence this OA.

3. Applicant further claims that he had joined the service as Assistant Station Master and had reached up to the level of Station Superintendent and thereafter he retired on 31.1.97. It is further stated that he was issued a charge memo for the major penalty but same had not been finalised on account of delay on the part of the respondents. So it is stated that the amount of DCRG and commutation which has been withheld by the respondents should be released to the applicant. Applicant claimed the following amounts in addition to DCRG and commutation:-

- a) Rs.8,000/- an award for accident free service as per Railway Board orders.
- b) Rs.8000/- which has been wrongfully been recovered from the salary of the applicant as damage rent when the applicant was not responsible for retaining the quarter in Bhabhar when a quarter was not allotted to him at Bhabhar. The applicant being an essential staff was entitled to allotment of quarter where he was transferred.
- c) Rs.3750/- arbitrarily deducted from the salary of the applicant from the month of January 1997 without any opportunity of hearing.

Km

d) arrears of his fixation of his pay according to Fifth Pay Commission from 1.1.96 to 31.1.97

e) Rs.286/- returned unpaid by the Divisional pay clerk No.17 vide unpaid list No.17/15 dated 29.5.1997.

f) Rs.248/- returned unpaid by the DPC 17 vide unpaid list No.17/26 dated 5.7.1997.

4. While the OA is pending the respondents also passed an order imposing the penalty upon the applicant vide letter dated 17.11.2000 whereby the President had decided to withhold 10% of the monthly pension otherwise permissible to the applicant for a period of 2 years for grave misconduct committed by him. Applicant amended the OA and also challenged the order imposing penalty upon the applicant. In the grounds to challenge the same the applicant had submitted that the order passed by the President making a cut in pension is illegal as it is a non-speaking order and secondly copy of UPSC report was not supplied to the applicant before imposition of the penalty. As regards the withholding of other payments are concerned, applicant has submitted that all those payments have been illegally and arbitrarily withheld from the retiral benefits of the applicant.

5. Respondents are contesting the OA. Respondents pleaded that the order has been rightly passed and as regards the DCRG is concerned the same has been paid but only a sum of Rs.24,383/- has been deducted which reflects the following grounds of deductions:-

kn

(46)

Stationary charges	05-00
Elect. Bill	1518-00
Damage Rent	2697-00
Rent	0633-00
Overpayment	19500-00

24383-00

6. Respondents also tried to defend the order imposing penalty and stated that copy of the UPSC report had been supplied to the applicant. So applicant cannot take the plea that order is bad on that score.

7. We have heard the learned counsel for the parties and gone through the record.

8. Counsel for applicant pointed out that though the details of deduction have been given in their letter dated 7.11.2003 but out of the amount so deducted there is a sum of Rs.19,500/- has been deducted on account of overpayment of pay but it has not been explained as to for what period this payment has been overpaid nor any show cause notice has been issued as to how this overpayment has been made to the applicant. So unless show cause notice is issued, respondents cannot deduct the same.

9. As regards the balance payment of DCRG is concerned, the counsel for applicant submitted that despite the fact that order has been passed on 17.11.2000 imposing cut in penalty that shows that the disciplinary authority had finalised the disciplinary proceedings vide order dated 17.11.2000 whereas the payment has been made by cheque dated 5.4.2001. Thus there is a 5 months delay in release of DCRG amount, so applicant is entitled to interest thereon.

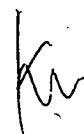
Km

(47)

10. As regards the claim of Rs.8000/- of accident free service is concerned, it is stated that accident free service award is Rs.5000/- and the same has been paid to the applicant vide cheque dated 6.11.2003 and as regards the damage rent is concerned, it is submitted by the respondents that since the applicant has not vacated the Railway quarter on transfer on 5.1.1995 but had vacated the same on 22.6.95 so Rs.8,461/- was deducted as damage rent for the said period and same has been recovered in 95 instalments from the salary of the applicant.

11. As regards the deduction of Rs.3750/- is concerned, respondents have pointed out that same was traffic debits towards the applicant which has been recovered in 3 instalments from the salary of the applicant. Similarly arrears regarding fixation of pay as claimed by the applicant from 1.1.96 to 31.1.97 are concerned respondents pointed out that after the pay fixation arrears of Rs.11,616/- have also been paid vide cheque dated 1.5.2001. Thus, counsel for respondents pointed out, that all the amounts have been accounted for.

12. After these pleadings and submissions made by the parties we find that the only question which remains to be decided is about the imposition of penalty and the payment of interest for delayed release of DCRG amount. As regards the imposition of penalty is concerned, counsel for applicant submitted that this Court in a similar matter had earlier held in OA-1954/2002 that the order which is a non-speaking one cannot be sustained and is liable to be quashed. In that case also in a similar matter presidential order passed after finalisation of the disciplinary proceedings and the Court had

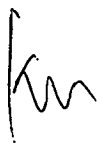


found that since no speaking order has been passed so the same was quashed. Similar type of order has been passed in this case also but a copy of opinion of UPSC was not supplied.

13. Counsel for applicant submitted that the order passed by this Tribunal in OA-1954/2002 was challenged by the respondents which was set aside by the Division Bench of the High Court. However, applicant had gone in a SLP before the Hon'ble Supreme Court in Civil Appeal No.642/2004 and the order of the Hon'ble High Court was set aside and the disciplinary authority was directed to finally dispose of the disciplinary proceedings in accordance with the direction given by this Tribunal in the OA itself.

14. In this case also though the respondents claim that UPSC advice has been sent to the applicant but there is nothing on record to show that advice of the UPSC had been sent to the applicant and applicant was called upon to explain or make comments upon the UPSC advice. In the impugned order passed by the President dated 17.11.2000 also does not give any reason and since the copy of the UPSC advice was also not supplied to the applicant, the impugned order is liable to be quashed.

15. In view of the judgment given by the Hon'ble Supreme Court in Civil Appeal No.642/2004, in a similar matter we have to follow the same and we hereby quash the order passed by the disciplinary authority and direct the respondents to pass a detailed and speaking order within 3 months from the date of receipt of a copy of this order and meanwhile his pension be restored.



16. As regards the withholding of sum of Rs.19,500/- on account of overpayment of pay is concerned, since the applicant has not been put to notice for the same and it has been so held earlier also in one OA-1412/2002 wherein similar grounds of overpayment of wages/salary DCRG had been withheld, the Tribunal had directed the respondents that applicant should be put to notice and applicant may make a representation with regard to his claim and respondents shall decide the applicant's representation within a period of 3 months from the date of receipt of a copy of this order. So we quash the order with regard to withholding of sum of Rs.19,500/- on account of overpayment of wages and direct that applicant may make a representation to the respondents with regard to his claim and the respondents shall decide the same within a period of 3 months.

17. As regards the claim of interest of DCRG is concerned, admittedly there is a delay in release of DCRG amount ^{even till} after the normal period of 3 months of passing of the order. So applicant is entitled to claim ^{interest} only on the delayed payment of DCRG amount. We direct that respondents shall pay the interest to the applicant at the rate of 9% from the date the amount of DCRG had fallen due to the applicant till the date of actual payment. OA stands disposed of.

(S.A. SINGH)
Member (A)

(KULDIP SINGH)
Member (J)

'sd'