

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP 12/2008
OA No. 1147/2001

New Delhi this 7th day of May, 2008

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mrs. Veena Chhotray, Member (A)**

Shri K.L. Kohli,
S/o Late R.K.Kohli,
Retd. District Controller of Stores,
Northern Railway,
R/o D- 195, Saket,
New Delhi-110017

(By Advocate Shri D.K.Singh with Sh. Pradeep Shukla)

VERBVS

Sri Shri Prakash,
The General Manager,
Northern Railway,
Baroda House, New Delhi-110001 ... Respondent

(By Advocates Shri V.S.R.Krishna with Shri R.L.Dhawan)

ORDER

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J):

The applicant has retired from the Northern Railway on 31.3.1977. The prayer in the present application is to initiate proceedings against the respondent, General Manager, Northern Railway, New Delhi for committing contempt of the order dated 12.8.2002 passed in OA 1147/2001 and for directing payment of balance amount of interest payable by the orders of the Tribunal. Alongwith the application copy of the order dated 12.8.2002 had been submitted. As Annexure P-2, copy of order in OA 2134/1995 dated 11.10.1999, also had been enclosed. This showed that

earlier also an application had been filed. Against the order in OA 1147/2001, Union of India had filed Writ Petition (C) No. 2207/2003. Vide judgment dated 30.8.2007, it had been dismissed and with a direction for payment of dues to the applicant within a period of 2 months from the date after adjusting the amount of interest already paid. Allegedly there was no compliance and legal notice was served. Thereafter a CP has been filed before the High Court of Delhi as 669/2007, but vide order dated 3.12.2007, the High Court had directed that the petitioner was to invoke the contempt powers of the Central Administrative Tribunal. Consequently the present application had been filed. According to applicant, there was scant response shown to the orders of the Tribunal.

2. By way of an affidavit respondents had averred that the arrears of interest due to the petitioner had been calculated and payment arranged. Interest on balance of salary was Rs. 10,216.44; interest on DCRG was Rs. 50, 313.00 and interest on pension come to Rs. 1181.44 which totals Rs.61,710.00. According to them in spite of advice, applicant had not come and accepted the amount. Mr. Krishna appearing on behalf of respondents submitted during the time of hearing that a demand draft in favour of the applicant had been kept ready, and an offer was there also earlier, but the learned counsel for applicant submitted that he had instructions not to receive the draft since what has been offered is only a fraction of the amounts due.

Therefore, it was not acceptable. Refusal to pay full dues itself is a

contumacious conduct. Proceedings under the Contempt of Courts Act required to be initiated as respondents had made mockery of the orders passed.

3. The case history reveals that the applicant had been placed under suspension on 23.9.1976 in view of certain allegation against him. Criminal case by CBI thereafter had continued but however it had ended in the acquittal of the applicant on 15.2.1995. In the meanwhile, applicant had retired from service on 31.3.1977. After the culmination of the proceedings, he had filed OA 2234/1995 claiming that amounts were due and payable to him, namely, balance of subsistence allowance. Determination of final pension was to be made, and DCRG dues with interest stood kept back. Respondents had taken a stand that there was payment of the amounts due, but Tribunal (in the earlier proceedings) was of the view that the respondents had to make full payment due to applicant forthwith with interest @ 12 %. The presence of the Railway Ministry's Circular dated 1.11.1984 had also been noticed and it has been directed as following:

"If the respondents in any way, responsible for the delayed payment, they may consider and pass appropriate order in this regard and pay the interest in accordance with the above orders"

4. Evidently the applicant had a case that he was not given the full dues, as gatherable from his conduct of filing OA 1147/2001. For the purpose of calculation of benefits, including interest, the Railway Administration had apparently taken into account date of his discharge by the Criminal Court, but this was not acceptable to

N/

the applicant as he had a claim that amount become payable from 31.3.1977, the date of his superannuation. On this issue, the Tribunal was of the view that the date on which the applicant became entitled for payment should have been considered as 31.3.1977. The Original Application was allowed and respondents were directed to recalculate the outstanding dues from 1.4.1977 and pay interest @ 12 % to him from that date and to the date of their ultimate release.

5. The present payment ^{offered} ~~made~~ is given vide Annexure R-1 appended to the reply affidavit.

6. The question is as to whether the issue of Annexure R-1, or the delay could be treated as contumacious conduct, for initiating action.

7. Learned counsel for applicant submits that the basic order of 1999 governed the parties and there was a direction for payment of 12 % interest, at compounded rate on the basis of the Circular of the Railway Ministry dated 1.11.1984.

8. On the basis of the above, it is seen that applicant has himself prepared a calculation statement as Annexure P-6 attached to the application. The break up given shows that there were arrear of salary payable on 1.4.1977 as Rs. 4366/- According to applicant, the amount became Rs. 39795.61 as on 1.10.96, but only an amount of Rs. 4366/- had been paid at that time, and

balance remained as Rs. 35429.61, With interest at the rate of 12 % compounded. As on 1.10.1996, by virtue of the order of the Tribunal he was to be paid Rs. 125708.50. Likewise, the amount of gratuity payable on 1.4.1977, was to be Rs. 21450/- Rs. 21450/- was paid by the Railway Administration during the month of October, 1998. But the applicant submits that in view of the effect of the Tribunal's order, the balance of Rs.223803.26 as on the date remained. With interest 12 % despite some intermediate disbursements gratuity and interest now comes to Rs.631573.50. Similar claims have been made on difference of pension also.

9. However, learned counsel for respondents points out that this indeed is a boosted figure, and was not warranted or payable. Mr. Krishna, learned counsel for respondents points out that what is alleged is violation of the order dated 12.8.2002. What had been directed, was to re calculate outstanding from 1.4.1977 instead of ¹⁹⁹⁵ 3rd 1977, and to pay the applicant interest @ 12 %. There was no direction for payment of compounded interest. There was also no reference to any payment on the basis of Ministry of Railway's orders after the first payments were made. On this premises, he submits that Annexure R-1 is a correct calculation, and applicant was refused to accept it at his own risk and responsibility. Never he was justified in calling this as violation of the orders passed by the Tribunal.

(12)

6

10. On a consideration of the scenario, we find that the stand as above is reasonable. Applicant has got himself misdirected about his claim and rights. Annexure R-1, *prima facie* appears to be in order taking due notice of the Tribunal's order. Even the earlier order gave liberty to the respondents to look into the relevant aspects, and the possible impact of the Railway Ministry's order. As long as the criminal proceedings were pending, the applicant could not have claimed his DCRG. Therefore, there was no omission which could be attributed to the administration, and the care and caution to be exercised in matter of delayed payments were not really an issue, especially when we read the order in its entirety. Though, there was direction to pay 12 % interest on arrears, it is seen to have been made.

11. Resultantly, it may not be possible for us to accept the contention of the applicant that there is contumacious conduct on the part of the respondents. Application is, therefore, dismissed.

12. We make it clear that the disposal of this application will not preclude by itself any claim that the applicant might have for getting any amount, he feels is due from the respondents adjudicated, as law permits.

13. CP is closed. Notice issued to respondents are discharged.

hkhkay
(Mrs. Veena Chhotray)
Member (A)

DR
(M. Ramachandran)
Vice Chairman (J)

sk