

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2762/99

New Delhi this the 13th day of February, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

(15)

Shri O.P. Talwar,
S/o Shri Assa Nand,
R/o H.No.22, Rajdhani Enclave,
Delhi-110034.

...Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
DRM Office, Chelmsford Road,
New Delhi.

...Respondents

(By Advocate Shri Rajinder Khattar)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a retired Government servant seeks retirement benefits, including Medical Cadre and post retirement cards as well as penal interest at a market rent on the delayed payment from December, 1995 to the date of payment as well as revision of his pension on account of the Fifth Central Pay Commission's recommendations and grant of arrears on that account. The applicant was appointed as a Permanent Way Inspector on 16.4.64 in the pay scale of Rs.205-280 and was lastly working as PWI (Planning) in the pay scale of Rs.2000-3200 has been promoted on the post in 1984. His last pay drawn was Rs.2825/- . The applicant was dealt in a disciplinary proceedings for his unauthorised absence and was removed

from service. This penalty has been later on reduced to compulsory retirement vide an order dated 1.12.95. (16) According to the applicant he had made a representation to the respondents for settlement of his retiral dues on 10.4.96 and thereafter another representation was made on 6.12.89 but without any avail. According to the applicant as he had rendered qualifying service from 17.4.64 to 14.6.91 he is entitled for several retiral benefits, including Provident Fund as on 1.12.95, pension on the basis of pay last drawn and commutation as well as DCRG, leave encashment, post retirement passes and Medical card and lastly the refund of contribution to GIS. The grievance of the applicant that the applicant has not been issued any pension payment order and seeks revision of pension w.e.f. 1.1.86 along with arrears the applicant had contended that under the provisions of Chapter VII of Railway Pension Rules, 1993 and under Rule 76 (3) in the case of a Railway servant retiring other than by way of superannuation it is the head of the office who has to inform the Accounts Officer as soon as such fact of retirement is known to him. The applicant further taken resort to Rule 78 and contended that it is the Head of the Department who has to undertake the work of preparation of pension papers and there is nothing in the aforesaid rules to mandate the Government servant to present himself the pension papers for settlement. The learned counsel of the applicant also contends that pension is not a bounty and is a right of the Railway servant. The applicant relies upon the ratio of the decision of the Apex Court in Vijay L. Malhotra v. State of U.P., 2001 ATJ SC 215 to contend that in the event of delay of payment of retiral benefits without any reasons or justification by the respondents,

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petitioner therein has been awarded an interest of 18% simple interest per annum on the retiral benefits, including GIS, encashment of leave, gratuity and other ancillary amounts. (17)

2. The grievance of the applicant is also that on 1.1.91 his pay was Rs.2825/- + Rs.20/- personal pay and he is entitled for retirement benefits on the basis of his last pay drawn, i.e., Rs.2825/- and not Rs.2720/- as alleged by the respondents. According to him as he has been awarded the penalty of compulsory retirement w.e.f. 1.12.95 he is entitled for retiral benefits 9.8.2000 he has not been issued medical passes and he is entitled for interest on GPF and his contribution to the GPF w.e.f. 1981-83 has not been added as he was working under the Construction Division. According to the applicant the pension payment order was issued on 20.10.2000 but the amount is still to be credited. The DCRG amounting to Rs.65,010/- has been received by the applicant but without any interest from 1.12.95 to 9.8.2000.

3. The respondents in their reply contended that as the applicant remained absent w.e.f. 16.6.91 to 18.3.95 and from 2.6.95 his pensionary benefits have been rightly calculated, the applicants have denied to have received the representation of applicant dated 8.4.96 and further contended that the OA is barred by limitation and the representation dated 16.12.99 has been made to cover the limitation. The respondents further contended that as the applicant was drawing his last pay at Rs.2750+20 as such he is not entitled for pensionary benefits on last pay drawn to be calculated at Rs.2825/-. According to the

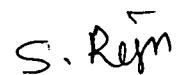
respondents the delay in calculating in paying the retirement benefits to the applicant is on account of lat submission of pension papers by the applicant. According to them the pension papers have been filled up by the applicant only on 17.2.2000. According to the respondents GPF, GIS, Leave Encashment, Gratuity had already been paid to the applicant and pensionary benefits have also been calculated correctly. According the applicant his pension is rightly fixed as per the recommendations of the Fifth Central Pay Commission at Rs.1275/- per month with the usual allowances admissible to him.

4. According to the respondents the applicant is entitled to relief as per the extant rules. The respondents have attached a letter dated 3.7.2000 where certain retirement benefits have been provided to the applicant. The applicant in his rejoinder reiterated the contention taken by him in his OA and further contended that his pension has been fixed wrongly and certain benefits to which he was legally due have not been paid to him. He contended that he was entitled to Rs.1275/- as per the admission of the respondents as monthly pension but he has been sanctioned only Rs.1,000/- The applicant further contended that the pay scale mentioned in the PPO dated 20.10.2000 is Rs.1320-2040/- where the applicant was working in the pay scale of Rs.2000-3200 at the time of his retirement. According to him the revised PPO dated 20.10.2000 was effective from 1.1.96 and mentions revised pension as Rs.3030/- instead of Rs.3250/- as the minimum of the scale effective from 1.1.96 was Rs.6500/-. The applicant further contended that he is also entitled to commute 1/3rd of his pension.

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In fact as a Modal Employer the respondents have to act promptly in this case after 1.12.95 after the applicant was awarded the reduced penalty of compulsory retirement to have prepared his pension papers and to settle the same promptly. The delay in preparing the pension papers on 9.8.2000, i.e., after more than five years from the date of retirement cannot be attributed to the applicant by any stretch of imagination.

6. In view of the discussion made above, I dispose of the OA with a direction to the respondents to re-consider the settlement of the pensionary benefits of the applicant in view of his claim made in this OA and described in the rejoinder. The dues, if any, as alleged by the applicant ~~has~~ not been paid to the applicant, shall be settled and paid to him in accordance with the rules and instructions. The applicant shall also be entitled to get an interest @12% on account of delay on the part of the respondents on his retiral benefits. The respondents are directed to comply with the directions within a period of two months from the date of receipt of a copy of this order. No costs.



(Shanker Raju)
Member (J)

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