

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2423 of 1998

New Delhi, this the 19th day of December, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Kuldeep Mathur
S/o Sh. R. K. Mathur,
R/o P-50, Sector XI, NOIDA.

-APPLICANT

(By Advocate: Shri Mrs. Nidhi Bisaria)

Versus

General Manager
Northern Railway,
Baroda House,
New Delhi.

-RESPONDENTS

(By Advocate: Shri B.S. Jain)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this OA the applicant is seeking interest on his delayed payment of retiral benefits.

2. The facts in brief are that the applicant was working with the Northern Railway and on 29.6.87 the applicant went on deputation for a period of one year to RITES. Inereafter the appliant had sought absorption in the RITES and had resigned seeking voluntary retirement from the Railways.

3. The appliant further alleges that the respondents vide their letter dated 3.1.1994 informed that the applicant would be deemed to have retired from service w.e.f. 19.6.90.

4. The appliant further claims that the respondents had unduly withheld his payment of retirement benefits as Provident Fund was paid on 28.6.91,

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Commutation of Pension was paid on 16.9.94 and Leave Encashment was paid on 26.5.95. However, the Pension Payment Order was issued on 23.12.1992 so the applicant alleges that there was no delay on his part and he had submitted his papers well in time, as such he is entitled to claim interest.

5. The OA was contested by the respondents. They pleaded that as regards the withholding of PF amount is concerned, they state that immediately on his retirement his PF was processed and the payment of the same was made itself within a period of 6 months, i.e. on 28.6.91. As far as Commutation of Pension and Leave Encashment are concerned, the counsel for the respondents submitted that for the period the applicant remained on deputation with the RITES till his absorption, he was supposed to see that contribution with regard to cost of leave salary and pension credit etc. should have been sent to Railways in time and for this purpose the respondents have also relied upon Rule 2009 (1) which is reproduced hereinbelow for ready reference:-

"2009(1) Procedure for payment of contribution - A copy of the orders sanctioning a railway servant's transfer to foreign service must always be communicated to the Accounts Officer by the authority by whom the transfer is sanctioned. The railway servant himself should, without delay, communicate a copy to the Accounts Officer and take his instructions as to the officer to whom he is to account for the contribution; report to the latter officer the time and date of all transfers of charge to which he is a party when proceeding on while in, and on return fro, foreign service and furnish from time to time particulars regarding his pay in foreign service, leave taken by him, his postal address and any other information which that Accounts Officer may require. (emphasis supplied)

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6. The counsel for the respondents further submitted that respondents had been making various correspondences even with the RITES requesting them for seeking foreign service contribution for the period during which the applicant was on deputation with the RITES but no response was received from the RITES and even the respondents had calculated the amount and demanded a sum of Rs.9640/- from the RITES and since the RITES were silent and respondents had not received any response, Rs.9640/- was deducted from the DCRG of the applicant.

7. Besides that the counsel for the respondents have also submitted that the applicant had retired on 3.1.1991 but the applicant applied for commutation on 10.3.92, i.e., after one year of his retirement. So as per the Pension Rules if a person applies after one year of his retirement then he has to present himself for medical check-up also and it is the applicant who himself had caused delay on this aspect, as such applicant could not be released the payment earlier.

8. Heard the learned counsel for the parties and have gone through the records of the case.

9. A combined reading of Rule 2006 and Rule 2009 show that it is the primary responsibility of the Railway servant himself to deal at his own level with the Accounts Officer and to see that the amount of his contribution reaches his parent office. But in this case, inspite of writing various letters by the respondents themselves when the amount had not reached,

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the respondents were compelled to deduct a sum of Rs.9640/- from the DCRG of the applicant in order to release payment to him.

10. The counsel for the applicant has no explanation as to why he did not observe the instructions contained in para 2006 and 2009, so in these circumstances I find that since the respondents had written several letters so there is no fault on the part of the respondents for withholding the payment since the respondents were not receiving the amount of share towards the cost of leave salary as well as towards commutation of pension etc. from the department of the applicant where the applicant had gone on deputation.

11. The counsel for the applicant has also referred to a judgment reported in 1996(4) SLR 717 entitled as S.R. Bhanrale Vs. U.O.I. & Others, wherein the Hon'ble Supreme Court has follows:-

" Constitution of India, Articles 226 and 300-A_ Administrative Tribunals Act, 1985, Section 21- Limitation Act, 1963 Article 113 - Limitation- Retiral benefits including earned leave, increment arrears, special pay etc. denied and wrongfully withheld- appellant making repeated representations but to no effect-Amount wrongfully withheld for more than 12 years-In the circumstances it ill behoved the Union of India to plea bar of limitation-Rupees two lacs awarded as compensation, in addition to other claims".

12. On the basis of the above judgment the learned counsel for the applicant submitted that payment of pension is not a bounty but a right of the employee and

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withholding the payment and that too payment of interest without any reply is not correct, therefore, the applicant was allowed interest thereon.

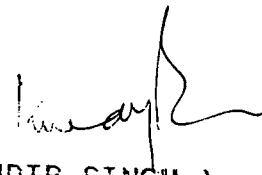
13. In reply to this the learned counsel for the respondents has also cited the ruling of in the case of Dwarka Prasad Lulla Vs. U.O.I. & Others (OA No.2214/97) wherein following directions were given:

"5. It was next contended on behalf of the applicant that though the applicant vacated the railway accommodation on 30.5.97 the retiral benefits was not released till 19.11.1998. I am not inclined to accept this argument since I find that the applicant had totally stirred over the fact of non vacation of the Railway accommodation in his original occupation. As the applicant has not come before the Tribunal with clean hands, he is therefore, not entitled to any consideration".

14. The ruling cited by the learned counsel for the applicant is distinguishable because in that case the department had wrongfully withheld the payment for more than 12 years and in that case the applicant's repeated representation had not moved the department to make payment but in this case the record shows that the respondent had been making repeated attempts to call for the contributions from the department where the applicant had gone on deputation and though it was the duty of the employee himself to see that the contribution reached his parent department and the applicant being an employee had not shown any effort made by him to see that the contribution reaches to his parent department which shows that it was the employee who was at fault and not the department for the delay payment.

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15. In view of the above, OA has no merit and the same is dismissed.



(KUDIP SINGH)
MEMBER (JUDL)

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