

Central Administrative Tribunal
Principal Bench

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O.A. No. 469 of 1998

New Delhi, dated this the 11 January, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Jai Ram Dass,
S/o Shri D. Ram,
R/o 1565, Cinema Street,
Gandhi Nagar,
Delhi.

... Applicant

(By Advocate: Shri S.K. Bisaria)

Versus

1. General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divl. Railway Manager,
Northern Railway, Divl. Office,
New Delhi.
3. Divl. Railway Manager,
Northern Railway, Ambala Div.,
Ambala. Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 13.11.97 (Annexure 1) and seeks payment of various sums of money under different items of account from Respondents.

2. Applicant had earlier filed O.A. No. 1055/95 which after hearing both sides, was disposed of by order dated 23.5.97 with a direction to respondents to adjudicate applicant's claims in accordance with law and pass a detailed and speaking order thereon. It is this order dated 13.11.97, passed after giving applicant a hearing, which is now impugned by applicant.

3. Admittedly applicant was proceeded against departmentally on the charge that on 7.2.79 while functioning as Parcel Clerk at Delhi Railway Station he had demanded and accepted illegal gratification for booking certain railway consignments. The enquiry officer upheld the charges in his inquiry report. On 13.7.82 the disciplinary authority imposed on applicant the penalty of reduction to lower grade for a period of three years. Applicant filed an appeal against that order, upon which the appellate authority issued a show cause notice on 29.8.82 for enhancement of the penalty to removal from service. On 3.11.82 applicant submitted his reply, after which by order dated 8.2.83 he was ordered to be removed from service. On 21.8.83 applicant filed a statutory appeal against the order of his removal from service which was rejected on 6.8.83, and his revision petition dated 7.10.85 was also rejected on 20.3.87.

4. Thereupon applicant filed O.A. No. 570/87 which was disposed of by order dated 12.8.91. The orders passed by the appellate authority as well as the Revisional Authority were quashed and set aside and the case was remanded back to respondents for fresh proceedings from the stage of the order passed by the appellate authority onwards. Accordingly by order dated 28.7.92 applicant was placed under deemed suspension and subsequently by order dated

23.9.93, the penalty of removal from service was converted into one of penalty of compulsory retirement on humanitarian grounds, and the period from 8.2.83 to 23.9.93 was treated as suspension period. Applicant was paid Rs.1,21,141/- towards subsistence allowance on 25.3.94.

5. Thereafter applicant filed O.A. No. 1055/95 in which he claimed subsistence allowance of Rs.2,42,242/- along with claims of payment of interest, HRA, CCA, Provident Fund and pension. That O.A. was disposed of by order dated 23.5.97 with a direction to respondents to give applicant a hearing and thereafter adjudicate on each of those claims.

6. Applicant filed a detailed representation on 16.7.97 setting out each of his claims. Respondents gave applicant a hearing on 27.8.97 and have thereafter passed a detailed and reasoned order on 13.11.97 in regard to each of these claims which is now impugned in the present O.A.

7. We have heard applicant's counsel Shri Bisaria and respondents' counsel Shri Dhawan. We have also perused the materials on record and given the matter our careful consideration.

8. In so far as the claims for enhanced subsistence allowance is concerned, applicant was paid Rs.1,21,141/- as subsistence allowance for the

period of his deemed suspension @ 50% of his salary. Under Rule 1342 IREM Vol. II 1987 Edition which corresponds to FR 53, the competent authority was competent to raise this amount of subsistence allowance if in his opinion the period of suspension was prolonged for reasons not directly attributable to the Government servant, but as pointed out in the impugned order dated 13.11.97, applicant was removed from service on 8.2.83 and the orders of his deemed suspension were issued over 9 years later on 28.7.92 and during this period as applicant stood removed from service there was no question of reviewing his suspension allowance. Moreover it is also not a case where applicant was exonerated of the charges. Under the circumstances, respondents cannot be faulted for limiting applicant's subsistence allowance to Rs.1,21,141/- and the claim for higher payment of subsistence allowance is rejected.

9. In so far as the claim for interest on Provident Fund is concerned there is no specific denial by applicant in his rejoinder to the specific averment of respondents in their reply that P.F. amounting to Rs.8731/- was released to applicant in May, 1983 but he refused to take payment and the said amount was, therefore, kept in "Deposit/Miscellaneous" till it was released to applicant in July, 1994. In view of the position the claim for interest on P.F. is rejected.

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10. In so far as the claim for arrears of difference of salary are concerned, the impugned order dated 13.11.97 makes clear that applicant's pay on account of reduction from Rs.500/- to Rs.430/- in the grade of Rs.330/560 w.e.f. 13.7.82 was revised vide letter dated 23.11.93 to Rs.515/- w.e.f. 1.11.82 (in grade Rs.330/560) and this punishment of reduction was later merged into the higher penalty of removal from service. This punishment of reduction of pay was never quashed or withdrawn, nor were any specific orders passed by the competent authority on the same while enhancing the punishment. In view of this position, there is merit in respondents' contention that applicant is not entitled to any arrears on account of difference in salary.

11. In so far as the HRA and CCA at Delhi rates are concerned, the impugned order dated 19.11.97 makes clear that applicant was posted with Headquarter at Kalka. His pay was charged to bills prepared at Kalka and his last salary was also drawn at Kalka. He was paid HRA at Kalka rates. No CCA is admissible at Kalka and hence he was not paid any CCA. Nothing has been shown to us to rebut these findings and hence the claim for HRA and CCA at Delhi rates is rejected.

12. There is, however, one claim of applicant which has some justification and that is ^{claim for} the interest on the delay in release of applicant's subsistence allowance. Applicant was placed under

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deemed suspension by order dated 28.7.92. He became entitled to payment of subsistence allowance w.e.f. the date of his deemed suspension i.e. 28.7.92, but the sum of Rs.1,21,141/- as subsistence allowance was paid to him only in a lump sum on 25.3.94. Meanwhile he was compulsorily retired from service w.e.f. 23.9.93. There are no materials on record to indicate why applicant was not released his subsistence allowance within a month or so from the date of issue of order dated 28.7.92 placing him under deemed suspension. Respondents cannot take the plea of lack of jurisdiction because earlier O.A.s filed by applicant were entertained by this Bench, nor can they take the plea of Res Judicata as this claim has not been adjudicated between the parties earlier and in fact the order dated 13.11.97 passed by them pursuant to the Tribunal's order dated 23.5.97, gives applicant a fresh cause of action.

13. Under the circumstances it would be just, fair and equitable to direct respondents to calculate and pay to applicant interest @ 12% p.a. on the subsistence allowance paid to him for the period 1.9.92 to 23.9.93. We direct accordingly. This should be calculated and paid to applicant within three months from the date of receipt of a copy of this order.

14. The O.A. is partly allowed and is disposed of in terms of Paragraph 13 above. No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER(J)

Anil Agarwal
(S. R. ADIGE)
VICE CHAIRMAN(A).

/GK/