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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.851/98

HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 28th day of October, 1999

Brijesh Kumar
S/o Shri Hoti Singh
Retired Chief Permanent Way Inspector
under Chief Administrative Officer/Const.
Northern Railway
Kashmiri Gate, Delhi
and Holding lien under Resp. No.3
R/o B/28, South Anarkali
Post Office Wali Gali
Opp. Roopa Public School

Delhi 110 051

...Applicant

Through Legal Heirs

1. Neelam Senger
 2. Chander Shekhar Sengar
 3. Navin Senger
- (By Advocate: Shri M.L. Sharma)

Versus

Union of India through

1. General Manager
Northern Railway
Headquarters Office
Baroda House, New Delhi
 2. Chief Administrative Officer(Const.)
Northern Railway
Kashmiri Gate, Delhi
 3. Divisional Rail Manager
Northern Railway
New Delhi
- (By Advocate: Shri R.L. Dhawan)

....Respondents

O R D E R

The Applicant (since deceased) retired from the post of Chief Permanent Way Inspector in the grade of Rs.2375-3500 from the service of Northern Railway. His claim was that at the time of his retirement his basic pay was Rs.3500/- p.m. The grievance of the applicant was that the respondents had not released his pension nor had paid commutation of pension, gratuity and leave encashment nor had they settled the arrears on account of revision of pay in terms of the recommendations of the Fifth Pay Commission.

2. The pleadings in the O.A. show that the

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applicant was facing disciplinary proceedings on the basis of two charge-sheets issued on 5.11.93 and 14.8.95. The respondents had not released the provisional pension to the applicant and it was only on the interim orders of this Tribunal that the respondents paid the provisional pension to the applicant as per the letter from the Manager Canara Bank dated 22.9.98. Almost immediately afterwards, the applicant died of a heart attack on 2.10.98. Thereafter on the basis of a Miscellaneous Application the legal heirs were taken in place of the applicant. The disciplinary cases against the applicant were also closed by the respondents. The applicant had, during his life time, been paid his provident fund dues and Group Insurance. It was stated that the family pension was also paid to the legal heirs but the gratuity, leave encashment would be paid to the legal heirs after completion of the requisite formalities.

3. In the above background the issues which have arisen for a decision relate to the amount fixed by way of pension and consequently the family pension; the amount of gratuity; commutation of pension; and the interest on the arrears of pension, gratuity, leave encashment, etc. The question of amount of pension has arisen because instead of fixing the pension on the pre-revised pay of Rs.3500/- p.m., the respondents have reduced the pay on the basis of the notional pay of the applicant in his parent cadre. Accordingly, the amount of gratuity and leave encashment have also been reduced. Further the respondents proposed to effect recoveries of Rs.35,37,572/- on account of certain shortages of store materials which were the subject

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matter of the disciplinary proceedings against the deceased applicant, from the gratuity amount. These actions of the respondents are resisted in the rejoinder filed on behalf of the legal heirs.

4. I have heard the counsel on both sides. In so far as the question of reduction in pay of the applicant is concerned, no notice had been given to the applicant during his life time that his pay will be treated notional at a lower level for purposes of calculation of pension, gratuity, etc. It has been stated by the respondents that the applicant was entitled to a lesser pay in his parent cadre for which they rely on an order of this Tribunal in O.A. No.2109/97. I do not consider that the ratio of that order applies in the present case. This is because nothing has been stated by the respondents as to what was the parent cadre of the applicant and ~~for~~ how was he being treated, while posted at Headquarters at the time of his retirement, as working in an ex-cadre post. On the other hand, there are a number of judgments of this Tribunal, i.e., O.A. No.1634/97 Om Prakash Vs. Union of India and others; O.A. No.1006/97 S.K. Arora Vs. Union of India & others; O.A. no.2/98 G.S. Bindra Vs. Union of India and others wherein in similar circumstances the action of the respondents in reducing the pay after a long interval and without giving a proper opportunity on the plea of notional pay in the cadre post were set aside. Accordingly, following orders of the coordinate benches, I also set aside the action of the respondents herein of unilaterally reducing the notional pay of the applicant for purposes of calculation of his retiral benefits.

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5. The second issue relates to the claim for commutation amount of pension. It is an admitted position that the applicant's pension could not be finally fixed because of the pending disciplinary proceedings. It was only after the death of the applicant that the disciplinary proceedings were dropped by the respondents. In these circumstances the question of commutation of pay would not arise. Accordingly, the claim of the legal representatives for commutation of pension is rejected.

6. I have already stated above that the notional pension has to be calculated on the basis of pay of Rs.3500/- p.m. drawn by the applicant at the time of his retirement. The amount of gratuity and leave encashment has also to be calculated only on that basis.

7. The next question is regarding proposed action of the respondents for adjusting the amount of DCRG towards recovery on account of certain shortages in stores under the charge of the applicant. It has been mentioned that these shortages were the subject matter of the charges against the applicant. It has already been noted that these disciplinary proceedings have since been closed. There has been no finding regarding the culpability and liability of the applicant for such shortages. In view of this position the respondents cannot adjust the gratuity towards any alleged shortages.

8. I finally come to the question of liability of the respondents to pay interest on the delayed payment of various retiral benefits. As already observed, the arrears of pension were paid to the applicant on the interim directions of the Tribunal. However, even then there were

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no orders in regard to payment of interest. I am, therefore, not inclined to consider this claim of the legal heirs. The amount of gratuity and the leave encashment could not have been paid to the applicant till the finalisation of the case and the respondents cannot be held responsible for not making payment of DCRG and leave encashment till the cases against the applicant were closed. In view of the death of the applicant it became necessary for the legal heirs to complete certain formalities for obtaining the dues of the applicant. For these reasons the relief sought for by way of payment of interest is not allowed.

9. To conclude, the O.A. is partly allowed with the following directions:-

(1) The respondents will determine pension, DCRG and other retiral benefits on the basis of the pre-revised basic pay of the applicant at Rs.3500/- p.m.;

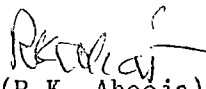
(2) The legal heirs of the applicant will be paid the whole amount of DCRG and leave encashment without any deductions on account of any alleged shortages in stores in charge of the applicant; and

(3) The respondents will arrange to pay the retirement dues of the applicant to his legal heirs during a period of three months from the date of receipt of a copy of this order, whereafter the respondents will be liable to pay 18 per cent per annum interest on such amount till the date of actual payment.

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10. Certain issues regarding the treatment of suspension period and the grant of increments during the service of applicant have also been raised by the applicant's counsel. These are not part of the reliefs which were claimed by the applicant and hence no adjudication is being made on these points. There will be no order as to costs.


(R.K. Ahooja)
Member (A)

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