

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1055 of 1995

New Delhi, this the 23rd day of May, 1997

Hon'ble Mr. N. Sahu, Member (A)

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

(20) - Applicant

(By Advocate : Ms. Nidhi Biseria)

Versus

1. General Manager, Northern Railway,
Baroda House, New Delhi

2. Divisional Railway Manager, Northern
Railway, Divisional Office, New Delhi

3. Divisional Railway Manager, Northern
Railway, Ambala Division, Ambala

- Respondents

(By Advocate : Shri B.K. Aggarwal)

ORDER (Oral)

Hon'ble Mr. N. Sahu, Member (A) -

The prayer in this Original Application, as amended on 17.4.1996, is for a direction to the respondents to pay amount of subsistence allowance, interest on Provident Fund, HRA and CCA; difference of salary between 1982-83, arrears of pension, etc.

2. The main grievance of the applicant is that under Rule 2043 of the Indian Railway Establishment Code, 1973 (renumbered as Rule 1342 in 1986 Edition) / F.R.53 the applicant has to be paid subsistence allowance at the rate of 100% and this figure amounts to Rs. 2,42,282/- . The applicant was paid on 25.3.1994 50% of the amount i.e. Rs. 1,21,141/- . The order on the basis of which this amount has been paid is dated 23.11.1993. This order has reference to the directions of this Tribunal in O.A. No. 570 of 1987, Jai Ram Das Vs. Union of India & others, disposed of on 12.8.1991. By the said order the Tribunal quashed an order dated 8.2.1993 enhancing the punishment from reversion to lower grade to removal from service. It also quashed the

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orders dated 6.3.1983 and 30.3.1987 rejecting appeal and revision. Thereafter, the Tribunal remanded the matter for fresh proceedings in accordance with law from the stage of the order passed by the appellate authority. A specific mention was made that the competent authority shall also dispose of the claims of the applicant in accordance with rules as also F.R. 54. F.R.54 is a statutory rule directing the competent authority, in case of reinstatement, to make a specific order regarding pay and allowances to be paid to the applicant for the period of his absence from service and to record a finding whether the period shall be treated as a period spent on duty or not. An order was passed on 23.11.1993. Learned counsel for respondents, Shri B.K. Aggarwal states that this order is under F.R.54. This order stated to be under F.R.54 is, to say the least, vague and does not convey a proper consideration or appreciation in accordance with the mandates of F.R.54.

3. It is true that the order dated 23.11.1993 has not been challenged by the applicant, as stated by the learned counsel for the respondents, but then the entire payment of subsistence allowance hinges on findings to be recorded by the competent authority in accordance with F.R.53 or under the relevant provisions relating to payment of subsistence allowance in the Indian Railway Establishment Code. F.R. 53 and F.R. 54 are a self-contained code. It mandates application of mind by the competent authority. The order dated 23.11.1993 is styled as a 'Notice'. Two scales were mentioned from 1.11.1982 and from 1.1.1986 and with regard to subsistence allowance from 15.2.1983 to 23.9.1993 with a vague direction it was stated 'may be arranged accordingly if already not paid'. This is a very vague phrase which does not convey definite directions about payment of subsistence allowance. Under F.R. 53 subsistence allowance could be increased from 50% to 75% after three months. F.R.53 as well as the corresponding

Railway Rules confer on the competent authority the necessary discretion in the matter to determine the proper percentage. As such, it is necessary for the respondents to pass a proper order, and to this, the learned counsel for the respondents, Shri B.K. Aggarwal, has no objection. In fact, he also agreed that a proper order should have been passed in accordance with the mandatory provisions of F.R.53 and F.R.54 to the extent applicable. They should fix the subsistence allowance for the reasons to be recorded by them, in particular, they should record whether the period of suspension has been prolonged for reasons not directly attributable to the applicant. Similarly, the corresponding rate of dearness allowance should also be fixed and they should also put a condition of filing a certificate of non-employment during the period of suspension. Before passing such an order, the applicant shall be given an opportunity of hearing. The DRM Ambala shall pass the said order within a period of two months from the date of receipt of a copy of this order.

4. It is settled law that wherever an amount is legally due and is not paid, the Government is liable to pay interest on the same. The applicant in this case has claimed interest at the rate of 18%. The provident fund amount of Rs.8,731/- was paid on 5.8.1994. This amount of provident fund should have been handed over to the applicant within two months from the date of compulsory retirement. The learned counsel for the respondents states that the provident fund was handed over to the applicant but he refused to accept the same. He states that there is also an acknowledgement in token of his refusal. With regard to House Rent Allowance, Compensatory City Allowance, the learned counsel for the applicant states that the applicant has been staying in Delhi during this period and to this effect there is a finding also in the order of the Tribunal. Accordingly, she prays that HRA and CCA should be considered. To this

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the learned counsel for the respondents states that he has been posted at Kalka and he cannot be given HRA and CCA as at Delhi. All these claims for payment of interest, HRA, CCA, Provident Fund and in particular the claim of pension should be adjudicated by the D.R.M. along with an order to be passed for payment of subsistence allowance within a period of two months from the date of communication of this order.

5. In the result, the application is disposed of with the directions as contained in paragraphs 3 & 4 above. The parties shall bear their own costs.

Manasweswari
(N. Sahu) 23/1/97
Member (A)