

Central Administrative Tribunal
Principal Bench: New Delhi

OA No 2496 of 96 decided on 7.11.97

Name of Applicant: S. Navinder Singh

By advocate: Ms. Meena Singh

Versus

Name of Respondents: Union of Ind.

By advocate: R. L. Mowen

Coram

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

1. To be referred to the Reporter or not? Yes

2. Whether to be circulated to other Benches of the Tribunal? No.



(Signature)
(N. Sahu)
Member (A)

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. 2496/96

This the 7th day of November, 1997. (12)

HON'BLE SHRI N. SAHU, MEMBER (A).

S. Narinder Singh,
S/o Late S. Gurdit Singh,
R/o A2/129, Safdarjung Enclave,
New Delhi-110029 Applicant.

(By Advocate Ms. Neena Singh)

Versus

1. Union of India through,
The General Manager,
Northern Railways Headquarters,
Baroda House,
New Delhi.
2. The Principal Secretary (Establishment)
Ministry of Railways,
Government of India,
New Delhi. Respondents

(By Advocate Shri R.L. Dhawan)

JUDGEMENT

Delivered By Hon'ble Shri N. Sahu, Member (A).

The admitted facts are the applicant, a Bridge Engineer of the Northern Railway Head Quarters Office, New Delhi was sent on foreign deputation to Nigerian Railway Corporation from May 1970 till 28th Feb. 1981, on which date he superannuated. During his service Compulsory Contributory Provident Fund @ 1/12 of the applicant's monthly salary was stated to have been deducted and remitted by the Nigerian Railways to Northern Railway Head Quarters, Baroda House, New Delhi. It is claimed that it is the

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13

responsibility of Northern Railway Head Quarters to keep up upto date his P.F.Account No.1059 and inform him every year the balance in his accounts. Vide letter dated August,1985 it was stated that only P.F. contributions from January 1971 to June 71, January 1972 to June 1972 and from June 1976 to May 1978 were received and these amounts were only paid to the applicant towards settlement of his P.F.dues. The grievance of the applicant is that the missing credits for the periods May,1970 to December,1970, July,1971 to December,1971 and July,1972 to May,1976 have not been traced out and credited to his account. The applicant made a representation to the Nigerian Government on 12.8.86. He was informed that he should contact the Northern Railways, New Delhi. He claims that his colleagues namely Shri M.A. Umar and Shri P.K. Wahi who were also sent on deputation to Nigerian Railways have had similar problems of missing credits and were paid on settlement on the basis of an affidavit as per the procedure outlined in Office Memorandum of Department of Expenditure, Ministry of Finance, dated 8.8.1977 but when the applicant furnished an affidavit about his missing claims alongwith the salary credits by a detailed representation dated 6.12.94, this representation is till date not even considered. The applicant alleges that the Northern Railways, respondent No.1 is guilty of neglect of duties and breach of trust. He states that the respondents are obliged under the

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14

instructions of Ministry of Finance dated 31.10.81 to supply to him the annual statement of P.F. contributions in the prescribed proforma. The applicant claims that he has not been supplied such statements. He cited O.M. dated 8.8.1977 issued by the Ministry of Finance (Department of Expenditure) wherein collateral evidence like certificates of deduction from D.D.Os/Treasury officers, details of remittance etc. could be taken if evidence of actual deduction is not available and the competent authority could adjust such missing credits on the basis of affidavits. It is in view of the above facts that the applicant prays for payment of missing P.F. contribution plus bonus with compound interest @ 15% per annum w.e.f. the applicant's date of retirement. He claims interest from Feb., 1981 to November 1996. He claims Rs, 5,84,578/- (Rupees Five Lakhs Eighty Four Thousand Five Hundred Seventy Eight). He also claims damages for harassment and mental torture.

2. The respondents have contested this claim and raised a preliminary objection. They have stated that the grievance of the applicant pertains to a period prior to 1.11.1982 and in terms of Section 21 of the A.T. Act, 1985, this Tribunal has no jurisdiction to adjudicate the grievance which had arisen 3 years prior to the commencement of the Act and it is stated that this claim is also barred by limitation as the

15

applicant went on deputation to Nigerian Railway Corporation in 1970 and remained there till 28.2.81 on which date he superannuated. The cause of action arose immediately on superannuation. This application filed 15 years after retirement is barred by limitation and it is stated that repeated representations would not extend the period of limitation.

3. On merits it is submitted that the P.F. contribution of the applicant have not been received by the Northern Railways from Nigerian Railway Corporation for the period from (a) May 1970 to December 1970; (b) July 1971 to December 1971; (c) July 1972 to May 1976. The respondents are stated to have addressed several letters to the Nigerian Authorities for supplying the details of missing credits but there was no response.

4. In reply the applicant states that P.F. payment is a statutory deduction. The rendition of the same on retirement is not dependent on the discretion of any authority. There is no need for any statutory Order. He relies on Supreme Court judgements in D.S. Nakara & Ors. Vs. UOI 1983(1)SCC 305 and Deokinandan Prasad Vs. State of Bihar AIR 1971 SC 1409. The missing credits of P.F. for specific periods are the applicant's retirement dues. He cites the decision of the Supreme Court in the case of S.R. Bhanrale Vs. UOI 1996(4)SLR

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16

page 717 in support of his claim that limitation does not apply to a case of payment of retirement dues. Bhanrale's case also dealt with denial of retiral benefits. Shri Bhanrale made repeated representations but the amount wrongfully withheld for more than 12 years was not paid to him. Hon'ble Supreme Court held that it ill behoved the Union of India to plead bar of limitation. In that case also the employee retired in July 84. Because retirement dues are a statutory obligation which was not settled, the applicant filed the O.A. in C.A.T. Principal Bench, New Delhi in 1987. The Tribunal rejected his claim. On further appeal, the respondents pleaded before the Supreme Court the bar of limitation. The Apex court considered Sec 21 of the Administrative Tribunals Act, 1985 and 113 of the Limitation Act, 1963 and rejected this plea. It is a recurring statutory cause of action and in support of this the applicant relies on Wazir Chand Vs. UOI 1996 32 ATC 370 Full Bench. ^{The two other aspects are:} this is also a case of discrimination because cases of similarly placed colleagues were settled in 1994 on the basis of affidavits, Respondents paid such missing credits to Shri Wahi in 1995 and to Shri Umar and to Shri Mittal in 1997. It appears that the Nigerian Railways intimated the Indian Railway Officer on deputation that on instructions from the respondents the High Commission of India in Nigeria ceased to remit

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17

the contributions from January 1978 onwards. The applicant's missing credits is for the period between 1970 and 1976.

5. It is the statutory responsibility of the respondents to pay retirement dues to the applicant. These amounts are ex-hypothesi lying with the respondents. The liability to pay back GPF contributions arises everyday and every year. It is not a case where the applicant slept over this claim. It is a recurring cause of action. The applicant's pension was sanctioned only in April 1985. The respondents have continued to assure the applicant that his case was under consideration. They have addressed letters as late as in December, 93 for particulars. As remitting back the P.F. contribution being a vested statutory duty and there is a recurring cause of action, the limitation provisions do not apply.

6. The applicant had filed a copy of letter dated 23.1.83 from Nigerian High Commission enclosing a statement showing the amount of repatriation of P.F. contribution and Foreign Service contributions received from Nigerian Railway Corporation. The High Commission categorically affirmed that the relevant schedules had accompanied the cheques. Particulars of cheques sent relating to the

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18

period of missing credits of applicant are as under:

No.	Period	Rs.P.	CBR	Classification
1.	1.7.71 to 31.12.71	38194.89	29 of 4/73	N.Rly., N.Delhi.
2.	1.7.72 to 31.12.72	84159.49	4 of 11/73	26069.96, N.Rly Baroda House, New Delhi.
3.	1.7.73 to 31.12.73	16534.94	57 of 8/74	N.Rly., N.Delhi
4.	1.11.74 to 31.12.71	13020.48	74 of 6/75	N.Rly., N.Delhi
5.	Not known	8297.39	16 of 11/76	

7. Contrast this with the respondent's point of view as expressed in the letter of Mrs. Ratna Prakash dated 25.5.90 as addressed to Shri R.N. Arora, Manager Finance Rites as under:-

"Dear Shri Arora,

Subject: Missing credits in the P.F.Account of Shri Narinder Singh, ex-Principle Bridge Engineer, Cardoona, Nigerian Railways.

The above named officer retired from Northern Railway as Assistant Bridge Engineer in February, 1981. He was on deputation with the Nigerian Railways from May, 1970 to February, 1981. He was claiming that he has not been paid Provident Fund + Bonus by Northern Railway for the periods between May, 1970 to December, 1970, July to December, 1971

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19

and July, 1972 to June, 1976. The amount claimed is Rs. 50,000/- (20,000 as self contribution and 30,000 added by Nigerian Railways as bonus). FA&CAO, Northern Rly, to whom this case was referred has stated that no details of recoveries affected from the salary of Shri Narinder Singh with effect from May, 1970 to 1981 and no remittance particulars are available with Northern Railway. They have corresponded with the Chief Accountant, Nigerian Railways Corporation and also the High Commission of India, Lagos. High Commission have informed Northern Rly. that they have not been able to obtain requisite particulars from Nigerian Railways."

8. After carefully considering the rival submissions I find that the respondents have not been prompt in discharging their responsibilities. In the first place deduction of P.F. is a statutory obligation under Rule 2 of chapter 7 of establishment Rules. Although the enclosed salary statement only shows Tax deduction yet respondents did not deny that P.F. was deducted from the monthly salary of the applicant every month in accordance with the statutory provisions. In fact, some deductions already made were paid. The presumption is that the missing credits were not due to non-deduction but due to lack of proper accounting by the

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20

respondents. I have extracted above the gross amount sent by the Nigerian Railways Corporation through the Indian High Commission to Northern Railway Head Quarters for the periods for which the applicant alleges missing credits. The respondents should have certainly received the break-up of these amounts in schedules sent by the Nigerian Rlys. Corporation vide letter dated 16.4.82 it subsequently stated that it had sent. It was the duty of Northern Railways Head Quarter to verify these break-up particulars and post the contribution promptly to the respective P.F. accounts. This should have been done contemporaneously. The respondents are guilty of remissness in not updating the P.F. accounts of employees. They knew that they have had to update these accounts and they were obliged to pay back retirement dues including P.F. to its employees who were sent to N.R.C. on foreign deputation. It was a failure of duty on the part of the respondents that they did not verify the remittances made. If there was no deduction from a particular employee they should have immediately informed the employee at that time and should have hauled up for not making the deduction the concerned officer who made the salary payment. It is not understood as to how the applicant can be made to suffer. The presumption is that a deduction was made from his monthly salary and that the statements were forwarded by N.R.C. to the High Commission and from the High Commission through the AGCR to the

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concerned department. The respondents routinely addressed letters to cover up what was basically their lapse. The applicant as well as 4 others have had similar problems. Where as those others were paid the amount on account of missing credits on the basis of affidavits, the applicant claims that he was singled out. The respondents do not explain as to how the applicant's case was different from others.

8. The claim of 18% by way of interest is rejected. P.F. deposits fetched low rates of interest during Eighties. Considering the deprivation suffered by the applicant for a decade and half, I consider it just and equitable to direct the respondents to pay an average rate of 10% simple interest per annum on the payments due as per the applicant's claim from the date of his superannuation till the date of payment.

9. Thus I direct the respondents to pay to the applicant Rs.50,000/- plus average simple interest @ 10% (Ten percent) which was mentioned also by respondents in the letter cited (Supra) from the date of his retirement till the date of payment. These amounts shall be paid within 4 weeks from the date of receipt of an Indemnity bond as mentioned below. The respondents shall, besides observing other formalities as per rules in cases of this type shall keep on record an indemnity bond in a format as per legal advise. This indemnity bond shall be signed and filed by

22

the applicant within 4 weeks from the date of receipt of a copy of this order. The purpose of indemnity bond is to recover back the amount of Rs.50,000/- + interest in the event the respondents come across evidence to show that there was no deduction from his salary on account of P.F. In that event there would be no case for returning back what is not paid as P.F. ~~not~~ for making any matching contribution.

10. With regard to compensation claimed for harassment this court is not competent to adjudicate this claim in view of the Hon'ble Supreme Court's decision in the case of Dr.H.Mukherjee Vs. S.K. Bhargava, (1996) 4 SCC 542.

11. O.A. is allowed to the extent stated above. There is no order as to costs.

N. Sahu
(N. SAHU)
MEMBER(A)