

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXA. No. 1103 of 1996 Decided on: 2, 1988 (17)

Shri S.K. AwasthyApplicant(s)

(By Shri M.L. Sharma Advocate)

Versus

U.O.i. & AnotherRespondent(s)

(By Shri N.K. AGGARWAL. Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1103 of 1996

New Delhi this the 2nd day of January, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri S.K. Awasthy
S/o Shri P.N. Awasthy,
R/o A-2/108/Second Floor,
Janak Puri,
New Delhi-110 058.

....Applicant

By Advocate Shri M.L. Sharma.

Versus

Union of India through

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. F.A. & C.A.O.,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

..Respondents

Shri N.K. Aggarwal, Counsel for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved that the respondents have not paid his dues on account of commutation of pension and have delayed the payment of commuted value of pension and gratuity and claims interest on the delayed payments.

2. Facts in brief are as follows:-

Applicant retired on 28.2.1995 as a Senior Civil Engineer. Disciplinary proceedings were initiated

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✓ against him in January, 1994 on certain charges , while he was working as Assistant Engineer in 1988-89. The departmental enquiry was conducted by the Divisional Railway Manager, Allahabad, who after detailed enquiry, concluded that the charges against the applicant were not substantiated and submitted his report in February, 1995. Thereafter, the disciplinary authority the General Manager, Northern Railway passed the following impugned order on 28th of February, 1996:-

" Although, according to the findings of the Inquiry Officer, the charges have not been substantiated yet after going through the entire case and related documents, I have come to the conclusion that there was some slackness on your part in dealing with the case in as much as:-

'That while working as AEN(C)/BKN in the year 1988-89 and dealing with the work of earth work and metalling of level xing in Suratgarh - Anupgarh Section, executed during May 1989 till middle of August 1989, you had verified ME's of the work submitted by SHri Punjab Singh, IOW(C) and recorded the test check certificate without carefully checking the same. Thereby Railway sustained a loss of Rs.77,368/-'.

For your above undesirable/unsatisfactory working it has been decided to convey you 'Govt.'s Displeasure' which is hereby done".

2. Applicant contends that the disciplinary authority had accepted the findings of the Enquiry Officer, and no punishment had been imposed. However, communicating Government's Displeasure is contrary to the findings of the Inquiry Officer and communication of Government's displeasure is not a recognised penalty. The disciplinary authority has not recorded any disagreement with the findings of the Enquiry Officer;

and no opportunity was given to him to make his reply submissions on the communication of Government's displeasure which seemed to have been on extraneous grounds. Because of the delay in passing such an order, the respondents calculated the commuted value of pension wrongly and pay him Rs. 80,716/- instead of Rs.83,346/- and for the delayed payments of commuted value and gratuity also, he is entitled to interest at the rate of 18%.

3. The respondents submit that the delay in the finalisation of departmental proceeding was not intentional, and it was due to lengthy process of consultation with various agencies. Finally, Govt.'sd displeasure was communicated to him on 28.2.1996. by the disciplinary authority on his account of the slackness of the applicant in the performance of his duties, for which he was charged in the proceedings. The respondents further contend that Government's displeasure is an administrative action in consonance with service conditions and in the circumstances of the case, the same was fully merited. They maintain that applicant became entitled to commutation of pension on 28.2.1996, i.e., date of issue of final order in the departmental case, and the commuted value has been worked out on the basis of commutation factor on age on next birthday, i.e., 60 years in the case of the applicant. They also contend that commutation can be done only after finalisation of dpeartmental proceedings under Rule 14(v) of Railway Servants

(Commutation of Pension) Rules, 1993 and the applicant was correctly paid the commuted value as per rules. Gratuity was also paid within one month of the date of finalisation of disciplinary proceedings and applicant cannot have any grievance on this account. They maintain that commutation had become absolute only on 28.2.1996 date of final order on disciplinary proceedings and hence the applicant has no case.

4. I have heard the learned counsel for the parties and perused the record.

5. It is an admitted position that Enquiry Officer, had completed the enquiry and submitted his findings on 19.2.1995, concluding that the charges against the applicant was established. The report was submitted before the retirement of the applicant on 28.2.1995. not The disciplinary authority has, however, specifically differed from the findings of the Enquiry Officer and has, therefore, not imposed any penalty but has, however, communicated "Government's Displeasure". From the impugned order it is seen that the reasons for communicating Government's displeasure, are the same as the "charges themselves" in the disciplinary enquiry, which have been held to be not substantiated by the Enquiring Officer. As the disciplinary authority has not recorded any other reason, this order of communication of Govt.'s displeasure does not seem to have any basis and this cannot be considered as

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an order of penalty. Even this communication has been issued after almost one year after the findings of the Enquiry Officer.

As the final order passed by the disciplinary authority does not involve imposition of any of the penalties prescribed under the Railway Service (Discipline & Appeal) Rules, 1968, this order cannot invite any civil consequences on the applicant.

Therefore, the decision to regulate the commutation of pension on the basis of treating that commutation has become absolute only after the order of the disciplinary authority, in the manner it is done in this case, cannot be sustained. The applicant is, therefore, entitled to the full commuted value on the basis of the commutation as on the date of his retirement, i.e., 28.2.1995 and he is entitled to the difference in commuted value as claimed in this application and I order accordingly. Regarding claim for interest for belated payment of ^{commuted value of pension} ~~interest~~ and gratuity, I do not find any wilful delay on the part of the respondent. Accordingly, this claim is rejected.

6. The application is partly allowed to the extent indicated above. The respondents are directed to pay the differential amount of commuted value as admissible under the rules within a period of one month from the date of receipt of a copy of this order. No costs.

(K. MUTHUKUMAR)
MEMBER (A)

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