

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.1267/97

(1)

Hon'ble Sh. R.K. Ahooja, Member (A)

New Delhi, this the 24<sup>th</sup> day of February, 1998

Sh.V. Narayanan  
(Retd. Asstt. Engineer of South Eastern Railway,  
S/o. Sh.K. Venkatasubramaniam,  
R/o. E-30, Vijay Lakshmi Apartments,  
Plot-98, Patparganj,  
Delhi- 110092.

APPLICANT

(By Sh.S.K. Gupta, Advocate)

Versus

1. Union of India through

The Secretary  
Railway Board,  
Rail Bhavan, Rafi Marg,  
New Delhi- 110001.

2. The General Manager  
South Eastern Railway,  
Garden Reach,  
Calcutta- 700043.

3. Sh. Braj Mohan  
Chief Personnel Officer (Admn),  
South Eastern Railway,  
Garden Reach,  
Calcutta- 700043.

RESPONDENTS

(By Sh.P.S. Mahendru, Advocate)

O R D E R

The applicant has come before the Tribunal for the third time in pursuit of his retiral benefits which he alleges have still not been fully paid to him by the respondent Railways.

2. The applicant joined the service of Railways in April 1957 and by 1974 he had been promoted as Chief Design Assistant in the grade of Rs.700-900. On 5.1.81 he joined the Rail India <sup>as Technical</sup> Technical and Economic Services (RITES) Officer on deputation. By an order dated 4.3.86 his retirement in public interest w.e.f., 1.1.84 was notified. This led to his first O.A.No.1028/90 filed on 21.4.90 against the order of retirement with retrospective effect. The impugned order was quashed and

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the Tribunal directed the respondents to consider the applicant's permanent absorption in RITES only after the actual date of acceptance of his resignation from his parent department, giving him all the consequential benefits, including pay fixation, promotion in accordance with rules and arrears of pay and allowances together with 12% simple interest. The applicant had also filed another O.A.No.929/90 claiming outstanding dues with interest thereon. This O.A was disposed of by an order dated 3.7.92 directing the respondents to pay the outstanding retiral dues of the applicant within a period of 4 months, the retiral dues being based on the premise that the permanent absorption of the applicant in RITES was w.e.f., 4.3.86. Simple interest at the rate of 12% was also ordered to be paid w.e.f., 1.7.86 (1st of the month falling 3 months after absorption) till the date of actual payment. Alleging non-implementation of this direction, the applicant filed a contempt petition of 273/93. It would be useful to re-produce the orders in this contempt petition:

"An affidavit has been filed by the Deputy Chief Personnel Officer, South Eastern Railway stating therein that in pursuance of the judgement dated 3.7.92 delivered by this Tribunal, payments of settlement dues including D.C.R.G. & Commuted value of pension together with interest wherever applicable have been made to the petitioner. Thus, the order has been fully complied with. Learned counsel appearing for the petitioner states that this is so. He, however, points out that whereas the petitioner has prayed that only 1/3rd pension may be commuted, the respondents inadvertently commuted the entire pension. He prays that the right of the petitioner to make a representation may be reserved so that the error may be set

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right. It will be open to the petitioner to make a proper representation to the authority concerned and that authority shall pass necessary orders.

With these observations, the contempt petition is disposed of. Notices issued to the respondents are discharged."

3. The present O.A has now been filed by the applicant on 6.5.97 alleging that the respondents have not paid parts of the retirement dues as per the following details:-

(a). Because pension of the period from 1.1.84 to 4.3.86 cannot be recovered twice as has been done by the respondents.

So the applicant is entitled for the amount of Rs.14640/- alongwith the interest at 12% p.a. or higher upto the date payment.

(b). Because the Leave Salary for 148 days at the pay of Assistant Engineer at IV Pay Commission Scales has not been paid together with interest.

(c). Because the interest on Provident Fund calculated upto the date of payment has not been paid to the applicant.

(d). Because contributions to REIS together with interest has not been paid so far.

(e). Because interest on about 7 years delayed payment of DA Arrears of Sept.-Dec. 1980 & Bonus of 1980 has not be paid so far.

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(f). Because the applicant is entitled for 3 sets of class I-A passes in an year; but the applicant is getting only two sets of class I passes so far.

4. Notices were issued to the respondents, but despite numerous opportunities afforded to them they failed to file a reply. However, Sh.P.S. Mahendru appeared for the respondents at the time of final hearing and submitted his arguments.

5. In essence, the applicant alleges that the retirement benefits have not been correctly calculated, that certain deductions have been made without any explanation and that interest has not been paid for the full period for which the retiral dues have been withheld. As the order of the Tribunal in the contempt petition No.273/93 reproduced above would show the counsel for the petitioner had made a statement before the Tribunal that the order in O.A.No.929/90 regarding payment of retiral benefits had been fully complied with. If the applicant was in anyway dissatisfied, he should have pointed out the default or the omissions of the respondents at the time the contempt petition was heard. If any point regarding his dues was not agitated then again it was his failure in not taking up the matter at the proper time. An issue regarding the non-payment of certain dues or delay in payments of retiral benefits is now totally barred on the principal of re-judicate. The applicant now cannot go back on the statement made by him through his counsel that the order of the Tribunal directing the respondents to pay him all the retiral benefits had been fully complied with. The only issue raised by him at that time and for which liberty was granted to him to make a representation related to the extent to which the pension was to be commuted. Neither in the O.A nor in the arguments advanced before me it has been pointed out as to what is the fresh cause of action.

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which was not and could not have been taken up in the earlier O.A.No.929/90 and for which compliance was now certified by the applicant in the contempt petition. In view of this, I do not find any reason to examine further the claim of the applicant in regard to delayed payment of retiral benefits <sup>or</sup> ~~are~~ <sup>allegatory</sup> regarding correct calculation of certain benefits.

6. There are two other matters, however, where I consider that the applicant can still agitate the matter. On the basis of the earlier orders retiring him w.e.f., 1984, the applicant had been paid pension for 1984 to 1986. Subsequently, when the date of retirement was shifted to 1986 under the orders of the Tribunal the retiral benefits were re-assessed on that basis. The applicant was liable to refund the pension received by him between 1984 to 1986. The applicant states that, this amount of Rs.14,640/- has been deducted both from his revised D.C.R.G. as well as from the commuted value of his pension. Obviously, such a deduction could not be made twice over. Accordingly the respondents are directed to check the position and if the recovery has been made twice, to refund the excess recovery to the applicant along with 12% simple interest from the date of retirement to the date of actual payment.

7. The other issue relates to the entitlement of the applicant to receive passes. The applicant submits that following the orders of this Tribunal revising the date of his retirement, he had been granted promotion to the rank of Assistant Engineer w.e.f., 21.8.81. At the time of his deputation to RITES, he was working as Chief Design Assistant. The post of Assistant Engineer is a Group "B" post and the entitlement of passes for that rank is higher than for the Chief Design Assistant. However, in the retirement ordershe has been shown as Chief Design Assistant, he is not receiving the Railway

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Passes as per his entitlement. The Tribunal in its interim direction dated 16.9.97 asked the Secretary (PASS) Railway Board to issue passes as Assistant Engineer to him. Since, I find that the applicant had been promoted as Assistant Engineer from the date claimed by him, I confirm the interim order and direct that his retirement order should be amended to indicate the higher designation and to issue him passes in future also in that capacity.

8. The O.A is disposed of with the above directions. There will be no order as to cost.

*R.K. Ahuja*  
(R.K. AHOOJA)  
MEMBER (A)

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