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Central Administrative Tribunal
Principal Bench

O.A. No. 2341 of 1997

New Delhi, dated this the 28th JANUARY 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Shri M.P. Singh,
S/o Shri K.P. Singh,
R/o WZ-92, Srinagar,
Shakurbasti,
Delhi-110034.

.... Applicant

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Chairman, Railway Board,
Rail Bhawan,
New Delhi-110001.
2. The General Manager,
Northern Railway Headquarters,
Baroda House, New Delhi.
3. The Financial Adviser &
C.A.O., Northern Railway,
Baroda House,
New Delhi.

.... Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant seeks release of balance amount of DCRG together with interest @ 18% p.a. thereon for delayed payment.

2. Applicant who joined the Indian Railways as a Clerk on 28.9.55 was promoted as Sr. Depot Store Keeper (Cons.), initially on ad hoc basis w.e.f. February, 1985 and was later regularised on 12.7.88. This is a Group 'C' post from which the next promotion is to the post of Asst. Controller of Stores which is a Group 'B' Gazetted post. 75% of Sr. Depot Store Keeper/Supdt. Store Depot and balance 25% by promotion through Limited

Departmental Comp. Exam., as per Recruitment Rules. For both these methods, respondents had been conducting written tests followed by viva voce and after completion of both tests the panel of successful candidates used to be declared. Written tests were conducted on 24.12.88 and 4.2.89 for the 75% quota. In all 38 candidates including applicant were declared successful and were called for the viva voce test. Respondents published an interim panel of 21 persons on 21.3.89 as against 30 notified vacancies in the 75% quota, and applicant's name was not in the panel. Eight vacancies were available in the 25% quota. A complete panel of 30 names was published on 12.3.91 in which six persons had already superannuated, and two persons junior to applicant were promoted. Aggrieved by his non-promotion and inaction by respondents on his representation, applicant filed O.A. No. 2263/93.

3. That O.A. was disposed of on merits after hearing both parties by detailed order dated 13.5.94. That O.A. was allowed with the direction to respondents to include applicant's name in the 1st Panel of 1989 containing 21 names immediately above Shri S.R. Bhardwaj and promote him as ACOS from the date Shri Bhardwaj was promoted. His notional seniority in that grade was to be fixed from that date and he was to draw pay and other allowances admissible to his immediate junior Shri Bhardwaj from the date he joined as ACOS. These directions were to be implemented within three months.

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4. Upon non-implementation of the aforesaid directions, applicant filed M.A. No. 809/96 which was disposed of after hearing both parties on 24.9.96. In that order respondents' submissions were noticed that applicant's name had been interpolated in the 1989 panel above Shri S.R.Bhardwaj, but as applicant had in the mean time superannuated on 31.7.94 he could not draw the pay of ACOS. By the order dated 24.9.96 respondents were granted two months further time to implement the order dated 13.5.94 in full.

5. Upon those directions not being complied with in time, applicant filed C.P. No. 23/97.

6. That C.P. was heard in the presence of both parties and disposed of by order dt. 4.3.97. In that order, it was noticed that applicant's name had been inserted in the 1989 panel above Shri Bhardwaj and respondents had offered a cheque of Rs.6904/- as the difference between the amount paid to applicant and that paid to his immediate junior Shri Bhardwaj for the period 1989 to 31.7.94 the date of applicant's superannuation. Another cheque for Rs.26,673/- towards gratuity was also offered by respondents. Both cheques were accepted by applicant's counsel in the Court's presence, but with reference to the amount of difference of pay between 1989 and 31.7.94, applicant counsel's contention that respondents ought to have furnished a statement of accounts, was not accepted by the Bench as there was no such direction for submission of accounts.

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Applicant's counsel's attempts to argue this point were also disallowed, on the ground that if the amount of Rs.6904/- given by cheque was not correct, it was open to applicant to approach the Tribunal in accordance with law. The C.P. was accordingly dropped. The aforesaid order dated 4.3.97 does not record any objection being raised by applicant's counsel regarding the cheque of Rs.26,673/- paid to applicant towards gratuity.

7. Thereafter respondents issued letter dated 5.3.97 to applicant (Ann. A-5) confirming refixation of pay at par with Shri S.R.Bhardwaj and revision of applicant's retiral dues, vide revised PPO dated 27.2.97/3.3.97 in the presence of the Bench on 4.3.97.

8. Meanwhile on 28.2.97 applicant had sent a letter to respondents (Ann. A-3) alleging delay in payment of settlement dues, followed by his letter dated 7.5.97 (Ann. A) specifically stating that the cheque for Rs.26,673/- did not reflect the correct amount of gratuity payable to him @ Rs.3150/- p.m. for 16.5 months i.e. Rs.51,975/- + 20% D.P. House rent and electric charges as detailed in the No Duues Certificate submitted to FA & CAO on 17.5.95 plus interest at extant rates from 17.5.95 till the actual date of payment, and no details of the payment had been furnished to him either. Upon receiving no reply to that letter, he filed this O.A. on 1.10.97.

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9. Respondents in their reply challenge the O.A. They state that the relief sought in the present O.A. has already been adjudicated upon in O.A. No. 2226/93 which was disposed of by the Tribunal by order dated 13.5.94 and in C.P. No. 23/97 which was decided by order dated 4.3.97 and the O.A. is therefore barred by Res Judicata. It is submitted that with the payment of Rs.26,673/- towards gratuity applicant's claim has been fully settled as is apparent from order dated 4.3.97 in C.P. No. 23/97 by which liberty was given to applicant to approach the Tribunal if he felt that the amount of Rs.6904/- being the difference of pay and allowances between 1989 and 31.7.94 did not represent the correct amount. It is stated that the full amount of gratuity admissible under rules has already been paid to applicant after recovery of Government dues amounting to Rs.35,697.00 from him, the break-up of which is given in their additional reply and which is as follows:

	<u>Rs.</u>	<u>p.</u>
1) House Rent	1,754.	00
2) Electricity charges	1,228.	00
3) Difference in Pay between 16.3.79 and 31.3.89	21,489.	00
4) DA/Interim Relief	10,594.	00
5) CCA	632.	00

Total	35,697.	00

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10. Applicant in his rejoinder denies that Govt. dues amounting to Rs.35,697.00 are recoverable from him and relies upon a no dues certificate issued by the Chief Administrative Officer (Construction) Northern Railway, Kashmiri Gate, Delhi who he asserts was his controlling officer, certifying that only Rs.2982/- was due from applicant on account of rent and electricity charges. Applicant's counsel Shri Rawal has laid much stress on this certificate and has vehemently argued that as per the certificate only Rs.2982/-, if at all, was recoverable from applicant.

11. From respondents' additional reply it is however clear that this certificate was forwarded by Chief Administrative Officer (Construction) Northern Railway vide letter dated 724-E/353 D.S.O. dated 4/96 (Ann. R-1) addressed to the Dy. Stores Controller, Northern Railway, General Stores Depot, Shakur Basti stating that the aforesaid dues related to their office (i.e. Office of CAO) alone and if there were any other dues the same could be verified from the records maintained in Office of Dy. Stores Controller. The office of Dy. Controller of Stores, Shakurbasti in his certificate dated 26.2.97 (Ann. R-2) certified that a sum of Rs.35,697/- were due from applicant which were to be adjusted from his DCRG and the break-up of that aforesaid sum is as given in Para 9 above (Ann. R-2/1).

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12. When applicant filed copy of the no dues certificate furnished by the CAO (Const.) relating to that office alone, in all fairness he should also have filed copy of the CAO's forwarding letter addressed to Dy. Stores Controller, Shakurbasti referred to above, in which it was stated that if there were any other dues against applicant, the same could be verified from the records maintained in Dy. Stores Controller's Office. By making it appears that the aforesaid no dues certificate issued by CAO (Const.) was final and by making no mention of the CAO's forwarding letter dated 4/96 (Supra) applicant's cause has not been well served and the O.A. could have been dismissed straightaway for wilful, non-production of a material document. Reliance has been placed by applicant's counsel on the order dated 5.8.97 in O.A. No. 2329/96 J.P. Sharma Vs. G.M. Northern Railway & Ors. and order dated 5.11.97 in O.A. No. 117/96 Shri Bachan Singh Vs. UOI & Ors., but in none of those cases was any suppression of a document noticed.

13. On the other hand while Rule 15 Railway Servants (Pension) Rules no doubt permits overpayments on account of pay and allowances, as also dues pertaining to Govt. accommodation to be adjusted from a Railway Employee's DCRG even without obtaining his consent, Respondents have not indicated anywhere in their pleadings the manner in which the various dues amounting to Rs.35,697/- have been ascertained and assessed, and why the

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major part of those dues which relate to difference in pay between 16.3.79 and 31.3.89 were made and were allowed to accumulate and were not adjusted well before applicant's superannuation in 1994. It has also not been mentioned as to who was responsible for the overpayments, and whether applicant had any hand in securing these overpayments.

14. As these aspects of the matter do not appear to have been pleaded or discussed at any stage in the earlier proceedings, it cannot be said that the same is hit by Res Judicata as claimed by Respondents.

15. ²Viewed in balance therefore, this O.A. is disposed of with a direction to Respondents to inform applicant by means of a detailed, speaking and reasoned order in accordance with rules and instructions within two months from the date of receipt of a copy of this order, the manner and basis of calculations for ascertaining and assessing dues amounting to Rs.35,697/- against him which they have adjusted from his DCRG. In this order reasons shall also be given by respondents as to why and on whose responsibility such over-payments were made and were allowed to accumulate. It will be open to applicant to challenge the order in accordance with law if so advised.

16. The O.A. is disposed of in terms of Para 15
above. No costs.

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(S.R. ADIGE)
VICE CHAIRMAN (A)

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