

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA: 2464/97

New Delhi this is the day 15th of May, 1998.

Hon'ble Member Shri T.N. Bhat, Member (J)

Om Prakash Singh Naulakha,
Asstt. Station Master (Retd),
Northern Railway, Aligarh.

By Advocate: Shri M.L. Sharma

APPLICANT

VERSUS

Union of India and others

RESPONDENTS

By Advocate: Shri B.S. Jain

O R D E R

The grievance of the applicant in this OA is three-fold: Firstly, that on the applicant's retirement on superannuation on 31/5/96, the respondents arbitrarily and wrongly fixed the pension of the applicant at a reduced rate and that too without affording him any opportunity of being heard; Secondly, that the respondents wrongly made recovery of ~~some~~ some amount from the applicant's gratuity; and, lastly, that the respondents have not correctly calculated and paid to the applicant the leave encashment dues nor paid to him the admissible TA for the months of November, 1993 and May, 1996.

2. The applicant claims pension on the basis that his pay at the time of retirement was Rs 2420/- and not Rs 2360/- as wrongly fixed by the respondents. He further claims leave encashment dues for 260 days of leave on medical grounds after commutation of the said period of leave, plus TA for the aforesaid two months. Penal

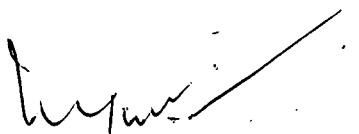
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interest at the rate of 24 percent is also claimed on the delayed payment of gratuity which, according to the applicant, was paid on 1/9/97, that is, more than one year after it became due. Interest at the rate of 18 percent is further claimed on the amount recovered by the respondents from the applicant's gratuity.

3. The respondents have resisted the applicant's claims by filing a detailed counter in which, while admitting that immediately before his retirement the applicant was drawing pay at the rate of Rs 2420/-, it has been contended that the respondents discovered a mistake as regards the fixation of the applicant's pay in the year 1982 and after rectifying the said mistake the applicant's pension was fixed on the basis that the correct pay at the time of his retirement was Rs 2360/- and not Rs 2420/-. Elucidating this point further, the respondents have averred that on the applicant's promotion to the post of ASM Grade Rs 455-700 with effect from 1/8/82 a discrepancy arose when the ~~old~~ applicant's pay on promotion was incorrectly fixed at Rs 560/- instead of Rs 545/- with effect from 1/8/82 with reference to the last pay of Rs 515/- drawn by the applicant with effect from 1/3/82 in the lower grade of Rs 425-640. The respondents have annexed to their counter a statement giving the details of the correct pay which should have been drawn by the applicant.

4. As regards commutation of leave the respondents have denied that there was any leave at the credit of the applicant which could have been commuted and in respect of which any leave encashment in addition to that already paid



to the applicant would be admissible. According to the respondents only 62 days LAP was found at the credit of the applicant on his retirement and encashment amount of Rs 12096/- was paid to the applicant accordingly.

5. The respondents have also raised certain legal objections. The first objection relates to the alleged lack of jurisdiction of this Bench of the Tribunal to hear this OA, as according to the respondents the applicant has not established by any evidence that he ordinarily resides in Delhi. Another objection raised is that multiple reliefs have been prayed for in this OA and that the OA is not maintainable as these reliefs are not consequent to one another.

6. The applicant has filed rejoinder to the counter filed by the respondents in which the averments made in the OA have been reiterated.

7. I have heard the learned counsel for the parties at length and have also examined the documents on record.

8. In the OA the applicant has shown himself to be a resident of Adarsh Nagar, Majlis ~~Park~~ Delhi. The address given is as follows:-

"R/O C/O Shri B.K. Sharma,
C-576, Gali No.-9,
Adarsh Nagar, Majlis Park,
Delhi.- 110032. "

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9. According to the provision contained in Rule 6 (2) of the CAT (Procedure) Rules 1987 the place where the applicant "ordinarily resides" determines the jurisdiction of a particular Bench of the Tribunal. Since the applicant at the relevant time described himself to be ordinarily residing in Delhi this fact gives ~~the~~ jurisdiction to the Principal Bench at New Delhi to hear this matter. The rules do not require any proof being furnished about the place of residence. It may be further mentioned here that the applicant had admittedly retired from Railway Service and his last place of posting was at Aligarh in UP, which falls at a short distance from Delhi. It would, therefore, not be unreasonable to assume that after his retirement the applicant took up residence at New Delhi, particularly so when there is nothing on record to show that the applicant continued to reside in Aligarh or at any other place falling outside the territorial limits of the jurisdiction of this Bench. Furthermore, such objections~~s~~ regarding lack of jurisdiction are not ordinarily entertained after the OA is admitted, as is the case here.

10. In view of the above the first preliminary objection raised by respondents regarding lack of jurisdiction is hereby rejected.

11. The plea regarding multiplicity of relief is equally devoid of merit. In the OA, the applicant is claiming his post-retirement dues which would include leave encashment and other dues. I am convinced that this OA is not hit by the provision against claiming multiple reliefs. Accordingly this objection is also hereby overruled.

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12. Coming to the merits of the case, one finds that on the basis of some alleged discrepancy in the fixation of applicant's pay which occurred in the year 1982 the respondents have affected a substantial cut in the pension of the applicant after his retirement on 31/5/96, i.e. nearly 14 years after the alleged discrepancy arose. It is true that according to the Pension Rules applicable to Railway employees, excess payments made to a Railway Servant such as over-payment on account of pay and allowances or other dues can be recovered or adjusted from pensionary benefits, but it is equally true that while doing so it must be borne in mind that such recoveries are made within a reasonable time from the date of the alleged overpayment. The law is now well-settled that even where pay of the official has been erroneously fixed the excess payment cannot be recovered after a lapse of several years, particularly so if the alleged error was not caused due to any fault on the part of the official concerned. As held by the Apex Court in Shyam Babu Verma Vs. Union of India and Others [1994 SCC (L&S) 683], where the official has received the higher scale of pay due to some error but the official was not at fault in wrong fixation of his pay, no recovery of the excess amount so paid can be allowed. A similar view has been taken by the Apex Court in its judgement ⁱⁿ Sahib Ram Vs. State of Haryana and others reported in 1995 SCC (L&S) 248.

13. That apart, the respondents do not seem to have considered it necessary to at least give the applicant a show cause notice before his pension was reduced and

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recovery of a huge amount was made from his gratuity on the basis of the alleged wrong fixation of his pay 14 years earlier. The Apex Court has in Bhagwan Shukla Vs. Union of India and others, reported in 1994 SCC (L&S) 1320, held that where an official is visited with civil consequences he is entitled to an opportunity to show cause before any adverse order can be passed against him.

14. In this state of law as laid down by the Apex Court the recovery of excess amount from the applicant's gratuity and other retiral benefits by the respondents cannot be sustained. The applicant's claim for refund of the amount so deducted/recovered by the respondents together with interest has to be allowed. In the circumstances of the case I am of the view that interest at the rate of 12 percent per annum from the date the amount was recovered to the date the same is actually refunded to the applicant would meet the ends of justice in this case.

15. As regards the applicant's claim for payment of TA, particularly the claim relating to November 1993, has not been established. The contention of the learned counsel for the applicant that since the respondents have not specifically denied the applicants averments relating to TA claims of the applicant the said averments should be deemed to have been admitted cannot be accepted. At any rate, the applicant does not seem to have made any representation to the respondents in respect of the claim of TA. The applicant would in the circumstances be well advised to make a representation of this claim to the competent

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authority and await its decision on the same.

16. The applicant seems to have made a detailed representation to the Senior DPO Allahabad regarding leave encashment which was received by the Station Supdt concerned on 5/4/96. A copy of the representation is at Annexure A-4 to the OA. No decision appears to have been taken by the respondents on this representation. Accordingly, a direction to the respondents to take a decision on this matter after a copy of the same is submitted by the applicant afresh would adequately safeguard the interest of the applicant in the OA so far as this particular claim is concerned.

17. I further agree with the contention of the applicant that there has been undue delay in the payment of the amount of gratuity to the applicant and applicant is, therefore, entitled to ~~interest~~ ^{the} interest for period of delay made in payment of gratuity. As already mentioned, the gratuity was paid to the applicant after one year and three months from the date of superannuation. Deducting the period of three months, which would normally be taken by the respondents in taking the decision in the matter, the delay of the period of one year has not been explained by the respondents. I accordingly allow interest at the rate of 12 percent per annum for this delay of one year which shall be payable to the applicant on the amount of gratuity actually paid to him in addition to the interest payable on the amount recovered from the applicant which, as already held, is refundable to him.

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18. In the result this OA is partly allowed, with the following directions to the respondents.

(a) The amount recovered from the applicant's gratuity on account of the alleged excess payment made to the applicant shall be refunded by the respondent together with interest at the rate of 12 percent per annum from the date the same was due till the date of actual refund.

(b) The respondents shall further pay 12 percent interest for one year representing the delay made in the payment of gratuity to the applicant.

(c) While it would be open to the respondents to take a fresh decision in the matter of fixation of the applicant's pension the same shall be taken only after the applicant is granted an opportunity to show cause why the pension be not correctly fixed at Rs. 2360/- instead of Rs 2420/-. Only after considering the cause shown by the applicant shall the concerned respondent take the decision by a speaking order with a copy to the applicant who shall be at liberty to work out his remedy and to file a fresh OA if he feels aggrieved by the decision, if so advised. It is, however, clarified that no recovery shall be made for the payments allegedly made in excess prior to the date of the applicants retirement.

(d) The respondents shall also take a decision on the applicants representation relating to commutation of his leave on medical grounds which stood at his credit at

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the time of retirement and if the claim is well founded to grant him necessary relief in the form of leave encashment for that period as well. To enable the respondents to take a decision in the matter the applicant shall submit a fresh detailed representation together with a copy of the representations already made (Annexure A-4) and within two months after receipt of the representation from the applicant the respondents shall pass the order and communicate the same to the applicant. If the applicant is still aggrieved it shall be open to him to file a fresh OA in respect of this claim as well.

19. With the above directions the OA is disposed of, leaving the parties to bear their own costs.

T.N. Bhat
15.5.1998
(T.N. Bhat)
Member (J)

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