

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.5/1997

New Delhi, this 16th day of September, 1998

Hon'ble Shri S.P. Biswas, Member(A)

Gur Prasad Singh
211/5, Nai Sarak, Shastri Nagar
Delhi ... Applicant

(By Shri G.D. Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, New Delhi ... Respondents

(By Shri P.S. Mehandru, Advocate)

ORDER(oral)

The issue raised in this OA is an offshoot of the similar problems raised by the applicant in OA 1/97. The only difference is with reference to item No.4 of the impugned A-1 order dated 23.4.92. The total amount against this item comes to Rs.20,647/-. This amount has been deducted from the DCRG payable to the applicant. Deduction has taken place after the official retired from service of the Railways on 31.1.92. The applicant is aggrieved because he had to face civil consequences without being put on formal notice.

2. There is yet another issue in this OA and that is pertaining to counting the period from 24.9.89 to 31.1.92 towards qualifying period for the purpose of calculating pensionary benefits of the applicant. We shall discuss the issues in seriatim:

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In respect of the first issue, i.e. deduction of Rs.20,647, we find that the applicant was not given any warning. It is well settled for a long time that an order to the detriment of an official cannot be made without affording him/her to show cause against the proposed order. If any authority is required for this proposition it is available in **State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors. AIR 1967 SC 1269**. Deduction took place without affording him an opportunity and also without any speaking order as to the details of proposed deduction. Admittedly, the impugned A-1 order pertaining to Item No.4 was issued without giving reasons thereof to the applicant. Such an action cannot be sustained in the eyes of law.

4. We shall now come to the second item. With reference to applicant's claim for counting the aforesaid period towards calculation of retirement benefits, respondents vide their reply dated 22.5.97 have explained that certain sick periods covered by PMC and RMC had been decided as leave without pay and hence increments have been adjusted by a later date. The details of leave availed by the applicant have been indicated in Annexure R-1 dated 21.5.92. The periods mentioned in R-1 starts from 4.9.86 and ends with 2.2.89. If the entire period of leave was decided as leave without pay, the question of not treating this period as qualifying service does not arise.

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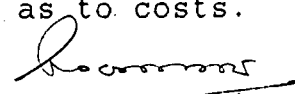
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Respondents have not come out clearly as to why the period should not be treated towards qualifying service.

5. I find that applicant had represented his case by various appeals during the period from 12.10.92 to 10.2.96. Applicant had also given details of the periods and the amounts respondents should pay, by A-5 at pages 26-31 of the OA. Respondents have decided to turn Nelson's eye to the repeated representations made by the applicant in this direction.

6. In view of the discussions aforementioned, we have no other alternative but to allow the OA with the following directions;

- (1) A-1 order dated 23.4.96 shall stand quashed in so far as it relates to Item No.4 therein;
- (2) Respondents shall refund the amount of Rs.20,647/- within a period of 3 months from the date of receipt of a copy of this order alongwith 12% interest from the date of filing of this OA till the date of payment.
- (3) Our orders in this OA, however, would not come in the way of respondents in effecting the recovery but that should be done by putting the applicant on notice, hear him and examine his representation, if any, pass a speaking order alongwith reasons and communicate the same to the applicant herein.
- (4) There shall be no order as to costs.


(S.P. Biswas)
Member(A)

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