

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.582/1994

New Delhi, this 4th day of August, 1995

Hon'ble Shri J.P. Sharma, Member(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Shri Yash Pal Kohli
s/o Kesar Chand Kohli
8943/1, Multani Dhanda, Pahar Ganj
New Delhi-110 055 .. Applicant

By Shri Mahesh Srivastava, Advocate

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Medical Officer
Northern Railway, Hqrs.
Baroda House, New Delhi
3. Sr. Divisional Personnel Officer
DRM Office, Paharganj, Northern Railway
New Delhi .. Respondents

By Shri Shyam Moorjani, Advocate

ORDER(oral)

Shri J.P. Sharma, Member(J)

The grievance of the applicant in this application is regarding inadequate settlement of his retirement benefits on his superannuation from the post of Driver under the office of General Manager, Northern Railway. The reliefs prayed for by the applicant are for direction to the respondents to pay the amount with interest on full pension, DCRG, leave encashment and the benefit of commutation and arrears of salary as if the applicant has worked till the date of his superannuation and also the benefits as per his next junior.

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2. Notice was issued to the respondents, who in their reply filed in May, 1995, in para L have given the details of the payment/sanction made to the applicant in the matter of pension, DCRG, insurance amount and provident fund. Regarding leave encashment, they have stated that nothing is due to him and commutation of pension will be done after medical examination.



3. The applicant has also filed rejoinder. Regarding reply to the main averment of the respondents in para L, the applicant has stated 'it is a matter of record'. However, regarding the fact that no leave encashment is due, the applicant has denied it and further regarding commutation of pension, he has stated that at no point of time he was medically decategorised. In the rest of the rejoinder, he has only reiterated what he has stated in the OA.

4. We have heard the learned counsel for the parties on the earlier dates as well as today. We also summoned the file of the writ petition 1030/82 which was transferred to the Principal Bench registered as T 792/85. This writ petition was filed by the applicant in July, 1982 for issue of writ certiorari for quashing the order dated 24.3.81 whereby the services of the applicant as Driver Grade C for the period from 1.1.81 to 25.2.81 was treated as absent from duty and the principle of "no work no pay" was adopted. He also prayed for quashing of the memo dated 20.4.81 ^{of} which the medical examination of the applicant by Dr. M.C.Nigam, which states that the applicant remained sick on RMO

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from 13.7.80 to 31.12.80 and he was found fit on 10.3.81 for duty under para 593 of Indian Railway Medical Manual of 1969 (IRMM in short). Para 593 is the list of posts in which staff suffering from mental diseases, epilepsy since 1974 should not be engaged to the duty of the Driver (category (a) of the para). The transfer application was considered by the Principal Bench and it was decided by order dated 10.10.88 after considering the rival contentions of the parties with the following directions:

(i) The impugned order dated 25.3.81 whereby break in service was imposed on the petitioner from the period from 1.1.81 to 25.2.81 is quashed. However, the respondents would be at liberty to issue a show cause notice to the petitioner, in case they propose to take action regarding forfeiture of his service for any period and take a decision after duly considering the reply given by the petitioner, within a period of three months from the date of communication of this order.

(ii) The question of giving an alternative job to the petitioner should be considered by the respondents after referring his case to a Constituted Committee or Medical Board before which the petitioner should be asked to appear within a period of three months from the date of communication of this order.

(iii) In the event of the Constituted Committee of Medical Board holding that the petitioner would be suitable for a particular type of job, but the petitioner does not express his willingness to accept the same in writing, it should be given the liberty to voluntarily retire from Government service with proportionate pension and other retirement benefits, within three months from the date of his non-acceptance of the alternative job offered to him.

(iv) The respondents shall continue to pay to the petitioner his pay and allowances at the same rates and grant other facilities and amenities to him in the same manner, as envisaged in the order dated 23.8.82 passed by the Delhi High Court, till the directions contained in (i), (ii) and (iii) above are fully implemented by them.

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5. The contention of the learned counsel for the applicant is that the respondents are to blame as they have not carried out the directions given in the aforesaid judgement of T.792/85 in respect of (ii) and (iii) of para 21, that the applicant can not be treated as medically decategorised as there is no offer for any alternative job and he continued from his initial appointment as Driver till the date of superannuation on 31.7.92 and he is entitled to all the benefits of pay and increment as are given to his immediate junior and on that account terminal benefits be settled by the respondents.

6. Firstly, we find that the application can not be said to be free from laches as after the judgement in October, 1988, four years after that the applicant was superannuated and there is nothing on record to justify that at any point of time he made any serious attempt for compliance of the judgement either administratively or by approaching the Tribunal in contempt petition or in MP. When all these four years had come to an end and after awaiting two years thereafter, the application was filed in July, 93, that too was taken back and refiled sometime in March, 1994. In view of this fact, we are unable to understand that the directions given in the judgement of October, 1988 has not been complied with and we have to see whether the applicant has been given the due amount of the terminal benefits or not. In (iv) of para 21 of the judgement referred to above, the Tribunal has directed the respondents to continue to pay to the petitioner his pay and allowances at the same rates and grant other facilities and amenities to him in

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the same manner as envisaged in the order dated 23.8.82 passed by the Delhi High Court, till the directions contained in (i), (ii) and (iii) are fully implemented by them. The direction issued by the Delhi High Court in the aforesaid writ petition when it was pending in that court on 23.8.82 is as follows:

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"There will be interim relief to effect that the Railway Administration shall continue to pay with effect from 1.1.82 the last salary drawn by the petitioner, as also all other perquisites and benefits to which he would be entitled as if he was in service without any debit being made to the Provident Fund A/c. It will be open to the Railway authorities to take or not to take work from the petitioner, he will be paid salary and provided benefits and perquisites irrespective of whether work is taken from him or not. The respondents will also pay to the petitioner 50% of the salary from the date of fitness upto 31.12.81 within one month from today unless full salary has already been ordered to be paid from an earlier date."

7. When we go through the reply given by the respondents, the respondents have calculated the salary of the applicant on the last pay of his retirement by giving notional increment in Driver's post. The pension of the applicant has been fixed earlier as Rs.1047, which has been revised to Rs.1296 from 1.8.92. This is on the basis of the last pay drawn in 1982 by adding notional annual increment from 1980 upto 31.7.92. This position is accepted in the rejoinder in the corresponding para (i) of L. Thus, there can be no dispute that there is any controversy regarding payment of pension. The contention of the applicant that the pay should be revised and refixed on the basis of the pay drawn by his immediate junior can not be accepted because the order of the High Court passed on 23.8.82 only indicates the last payment of salary at that point of time and the Tribunal in October, 1988 on the transfer application also also based on the same

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direction as mentioned in para (21) supra. In view of this, there is no question of any revision or refixation of salary of the applicant. However, it may be recorded that the applicant himself did not approach the Medical Board for getting alternative job or for his re-examination as by the earlier examination done on 21.4.81, he was medically declared to be unfit for the post of Driver, having been shown as a patient of epilapsy. The contention of the learned counsel for the applicant that this medical examination of the applicant was supposed to be re-confirmed by setting up a Medical Board within 3 months is not acceptable as the applicant was not found fit for the post of Driver. It is a fact that the respondents slept over the matter either unknowingly or in collusion with the applicant, the fact remains that prior to superannuation of the applicant with effect from 31.7.92, he was not subjected to re-medical examination. Since the earlier order dated 20.4.81 declaring the applicant unfit for the post of Driver was quashed by the Tribunal, and direction was given to reconstitute Medical Board and in the event of the applicant's being found suitable for a particular type of job but he does not express his willingness to accept, he should be given liberty to voluntarily retire. This goes to show that the Tribunal had in its mind that the second medical board to be constituted may not agree with the findings of the medical examination done by earlier Railway Doctor on 20.4.81. Be that as it may, the position today is that the applicant can not be subjected to re-medical examination. The challenge to (i) and (iii) of para 21 of the earlier Tribunal's

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judgement is not acceptable as the applicant has to get the benefit only as per the direction given by the Delhi High Court as per order dated 23.8.82.

8. The respondents have already granted notional increment to the applicant irrespective of the discontinuation in service and they have treated him in service on the basis of the Tribunal's order. In such a situation, whether the respondents have taken work from him or not, he shall be entitled to accumulate leave due to him and the bald reply of the respondents that no leave encashment is due to him is not substantiated by any document. The applicant is governed by the service rules and he is entitled to leave year after year and he may accumulate maximum leave as per rules and at the time of retirement encashment of leave can not be denied to him by merely saying in one sentence that no encashment of leave is due to him. Therefore, this relief of leave encashment is to be reconsidered by the respondents.

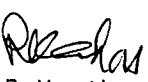
9. Regarding commutation of pension the contention that the applicant has to subject himself as per rules for medical examination, the argument of the applicant is that the medical board was not constituted till the date of his superannuation. However, the applicant is equally at fault as he himself avoided subjected to re-medical examination as per the Tribunal's direction that he shall be decategorised medically if found unfit and the job offered on decategorisation may be lower in rank unsuited to him, he has to go on premature retirement as per supplementary direction of the

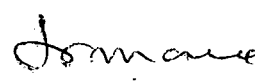
Tribunal. The respondents have to follow the Rules regarding the commutation of pension and the applicant can not bypass the medical examination as proposed by the Administration.

10. It also appears from the counter reply filed by the respondents that the DCRG was paid to the applicant only in February, 1995. DCRG was due to the applicant when he retired from 1.8.92. In case where certain administrative information was required, it should have been done within 3 months but any delay beyond that can not be held to be justified in the circumstances of the case. There has been therefore administrative lapse on the part of the respondents in the disbursement of DCRG to the applicant. The applicant is entitled to interest on the delayed payment @ 12% per annum from 1.11.92 till 15.2.95. This will be paid by the respondents within 3 months from the date of receipt of this order and if the amount is not paid within 3 months, the interest will be enhanced to 15% per annum from the date beyond three months. Regarding leave encashment and commutation of pension, the applicant shall make representation to the respondents and the respondents will consider these items according to relevant rules and grant the benefit to the applicant within a period of 3 months from the date of receipt of this order. As regards the delay in payment of provident fund, the case of the respondents is that there was some administrative delay in correspondence between the concerned department making the payment as due and therefore this can not be stated as administrative lapse.

11. In view of what is stated above, the applicant is not entitled to any revision or re-fixation of pensionary benefit or any increase in his pay with reference to the pay of his junior. However, he is entitled to the interest on the late payment of the amount of DCRG as directed above and for grant of leave encashment as well as commutation of pension as per rules.

12. In case the applicant is still aggrieved even after the compliance of the above directions, with regard only to the commutation of pension and leave encashment he is given liberty to approach the Tribunal as per law, if so advised. The OA is thus disposed off leaving the parties to bear their own costs.


(R.K. Ahooja)
Member(A)
4.8.1995


(J.P. Sharma)
Member(J)
4.8.1995

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