

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P. NO. 322/93 in
O.A. NO. 1432/87

New Delhi this the 23rd day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Ram Swaroop Jaggi,
Retired Employee of
Executive Engineer (Survey),
North East Railway,
Gorakhpur.

... Petitioner

By Advocate Shri D. R. Roy

Versus

1. Shri A. Bhattacharya,
FA & CAO/North Eastern Railway,
Gorakhpur.

2. Executive Engineer (Survey),
Shri R. K. Yadava,
North East Railway,
Gorakhpur.

... Respondents

By Advocate Shri D. S. Mahendru

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath -

The complaint in this case is about non-compliance with the judgment passed by the Tribunal in O.A.1432/87. The judgment was not fully complied with when the C.C.P. was filed. During the pendency of this C.C.P. the respondents have made certain payments which they contend is in full compliance with the judgment of the Tribunal. The petitioner, however, maintains that there is some more amount due to him and that there is not full compliance. We shall confine our attention to only that area where there is controversy in regard to non-implimentation of the judgment.

2. The petitioner was regarded as having retired from service of the Railway administration w.e.f. 1.2.1983 on the ground that he stood absorbed in the RITES with effect from that date. The petitioner questioned the correctness of the orders made by the respondents in regard to the actual date of retirement or absorption. The Railway administration granted pension as also commutation value and paid the same on the basis that the petitioner retired on 1.2.1983. The petitioner had sought 100 per cent commutation which was granted. We are informed that the amount paid on this account was Rs.64,180/-. In the O.A. filed by the petitioner the Tribunal held that the petitioner cannot be deemed to have been absorbed in the service of RITES w.e.f. 1.2.1983. It was held that he must be deemed to have been absorbed in RITES w.e.f. 1.1.1986 and that, therefore, the petitioner ceased to be an employee of the Railways. It was held that he must be deemed to have retired from the Railways with effect from the date he stood absorbed in the service of RITES. Hence, directions were issued in paragraph 5 of the judgment as follows :-

"5. Accordingly this application is allowed on the terms declaring the applicant as an 'existing' pensioner as contemplated in O.M. dated 16.4.1987 and the respondents to refix the pension of the applicant w.e.f. 1.1.86 in accordance with the O.M. dated 16.4.87 with all consequential benefits including redetermination and payment of the balance of the commuted value of the revised pension on the date the same was granted. There shall be no orders as to costs."

The clear effect of these directions is to treat the petitioner as having become a pensioner under the Railway administration w.e.f. 1.1.1986 and not w.e.f.

18

- 3 -

1.2.1983. His pension as also the 100 per cent commutation value were granted earlier on the basis that he must be deemed to have been retired from 1.2.1983. Now the authorities are required to redetermine the pension as also the commutation value on the basis that the petitioner must be deemed to have retired w.e.f. 1.1.1986. The respondents have accordingly taken action and given difference in the commuted value to the petitioner. The petitioner, however, maintains that there has been considerable delay in granting 100 per cent commutation value claimed by him. It is not disputed that the actual payment was made on 16.1.1994. The entire determination has been made of the commutation value and the grant of pension upto 15.10.1986, that being the date on which the medical officer signed the certificate required for grant of commutation. As the commutation value was actually paid to the petitioner on 16.1.1994 and not on 15.10.1986, the petitioner says that he must be deemed to have continued as pensioner till 16.1.1994 and the difference in the commuted value of Rs.433/- per month should be granted to him for the said period from 16.10.1986 to 16.1.1994. This according to the petitioner not having been done, there is not full compliance. The question for examination is as to whether the petitioner is entitled to any amount in this behalf.

3. Reliance was placed by the learned counsel for the petitioner on the clarificatory order made on 15.9.1980 bearing No. F(E) III 76 PN-1/7. The relevant

paragraph 2 of the said clarificatory order reads as follows :-

*2. A point has been raised in regard to the date from which reduction in pension on account of the upward revision of commutation of pension would be effective. Rule 2906-(2) of the Railway Pensions (Commutation) Rules - Appendix XXIX-RII as amended from time to time provides that reduction in the amount of the pension on account of commutation shall become operative from the date of receipt of the commuted value of pension by the pensioner, or three months after the date of the issue of the authority asking the pensioner to collect the commuted value of pension by the Accounts Officer, whichever, is earlier. Accordingly, in such cases the reduction from pension will be made from the date of receipt of the revised commutation value of pension by the pensioner or three months after the issue of the authority by the Accounts Officer asking the pensioner to collect the revised commuted value of pension, whichever is earlier."

It was urged on the strength of this order that as the petitioner was asked on 16.1.1994 to collect the commuted value, he is entitled to the benefit of paragraph 2 of the order dated 15.9.1980. Firstly, it is necessary to say that the context in which the aforesaid direction has been issued is quite different from the context in the present case. The order relates to a case where no commutation value at all has been given and directs that the reduction in the pension shall be made from the date of receipt of the revised commutation value of pension by the pensioner or three months after the issue of the authority asking the pensioner to collect the revised commuted value of pension, whichever is earlier. In this case, commuted value was granted and collected by the petitioner which

70

- 5 -

was determined on the basis that the petitioner stood retired from the Railways w.e.f. 1.2.1983. It is because of the order of the Tribunal that the revision became necessary, the Tribunal having held that the date of retirement of the petitioner cannot be taken as 1.2.1983 but it should be taken as 1.1.1986. Paragraph 2 of the clarificatory order dated 15.9.1980 does not, in our opinion, govern such a case where full commutation value was granted on the assumption of certain facts by the authorities, and the Tribunal directed another date to be taken as the date of retirement and fixation and grant of pension and commuted value. Apart from the fact that the order relied upon does not in turn govern a case like this, we are also inclined to take the view that the petitioner is not entitled to make a claim on the basis of paragraph 2 extracted above, having regard to the directions issued by the Tribunal. We have already extracted the directions contained in paragraph 5 of the judgment the clear effect of which is to re-compute the commutation value and to grant the value of the difference flowing from the alteration of the date of retirement from 1.2.1983 to 1.1.1986. It is necessary to point out that the order was passed by the Tribunal on 17.3.1993. The Tribunal has not made any direction for compensating the petitioner for the delay in the payment of the difference. That is the matter of discretion as the Tribunal is entitled to issue appropriate directions in this behalf, depending upon the facts and circumstances of the case. As there was obviously a bonafide dispute in regard to the date of retirement from the Railway administration,

the Tribunal must have taken the view that this is not a case for grant of any directions for compensating for the delay in the payment of the amount due to the petitioner. Hence, we are inclined to take the view that the claim of the petitioner cannot be sustained either on the strength of the clarificatory order of the Government dated 15.9.1980 or on the strength of the directions issued by the Tribunal in this case.

4. There is, however, no doubt that there has been delay in complying with the directions of the Tribunal issued on 17.3.1993 in that the actual amounts have been paid to the petitioner only on 16.1.1994. Having regard to the delay on the part of the respondents in complying with the directions of the Tribunal, we would like to compensate the petitioner by awarding a quantified amount of Rs.5,000/-. The same shall be paid to the petitioner by the respondents within a period of three months from the date of receipt of a copy of this order.

5. These proceedings are dropped.

S. R. Adige
(S. R. Adige)
Member (A)

V. S. Malimath
(V. S. Malimath)
Chairman

/as/