

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 2304/91

Date of Decision: 03-04-1992

D.R. Roy

.. Applicant(s)

R.K.Kamal

.. Counsel for the applicants

Vs.

Secretary, Railway Board, New Delhi
and others

.. Respondents

Shri I.C.Sudhir

.. Counsel for respondent(s)

CORAM

Hon'ble Mr. S.P.Mukerji - Vice Chairman

Hon'ble Mr. J.P.Sharma - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

J U D G M E N T

(Delivered by Hon'ble Mr.S.P.Mukerji, Vice Chairman)

The applicant while working as a Signal Inspector in the Northern Railways retired from the Railway service for absorption in a Public Sector Undertaking known with the acronym 'RITES'. The order of retirement was issued on 21.8.85 to take effect from 7.6.83. The balance of Rs. 27,000/- out of the gratuity is still pending for payment. According to the applicant he received arrears of monthly pension from the Railways @ Rs. 368/- per month from June, 1983 to November, 1986 vide Annexure A.3 and the commutation amount for 100 per cent commutation of his Railway pension was paid vide Annexure-IV dated 8.7.86. According to him in accordance with the Government of India's D.M. dated 16.4.87 at Annexure A.V, since he was drawing Railway pension separately even after absorption in the Public Sector Undertaking right upto November, 1986 he is entitled to revision of pension with

effect from 1.1.86 and accordingly arrears of the dues and also revised commuted amount of the revised pension. In this connection he has referred to the Judgment of the Principal Bench of this Tribunal dated 7.12.90 in O.A.317/86, to which one of us was a party. He has also prayed for the due amount of gratuity along with 18 per cent interest and the arrears of pension and commutation amount along with interest.

2. In the counter-affidavit the respondents have stated that an amount of Rs.19322/- towards rent of Government quarters occupied by him, Electricity bill and FSC has to be recovered from him against the Death-cum-Retirement Gratuity of Rs. 13892/-. Hence the question of releasing the DCRG does not arise. They have denied other averments in general terms and have stated that the applicant's case is not identical with the case dealt with in the Judgment at Annexure A.2.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the question of limitation is concerned, since the applicant is claiming benefit of the Judgment in O.A.317/88 which was delivered on 7.12.90 and the application was filed on 1.10.91, the application is within time. In Y.G.Sharma Vs. Union of India, 1991(2) ATJ 123, the Calcutta Bench of the Tribunal dismissed the bar of limitation was in a case where the application based on a judgment on which the cause of action was based.

4. During the course of the arguments the learned counsel for the respondents fairly agreed that the case covered by the judgment of this Tribunal to which one of us was a party dated 7.12.90 at Annexure A.2 would cover the circumstances of the applicant also in so far as the revision of pension with effect from 1.1.86 is concerned. The applicant before us was drawing Railway pension separately from 1983 onwards after his absorption in the 'RITES'.

This was also the case of the applicant in O.A.317/88. The applicant before us also was drawing pension after 1.1.86 and got his entire pension commuted after 1.1.86. The following observations made in the aforesaid judgment would be very relevant:

"The respondents have not denied that the applicant was granted monthly pension right from 1.3.1983 to 20.9.86. On the other hand, they in their reply have more than admitted the same by their repeated averments that on his retirement a monthly pension of Rs.462/- and the said pension was drawn by him upto 20th September, 1986. thus he ceased to be a Railway employee or pensioner any longer w.e.f. 1.3.1983, although he could be able to draw pension upto 20.9.1986 i.e., the date on which the cent percent commuted value of pension was received by him....."

"Again in the counter affidavit, they have stated that:

"Thus he ceased to be a pensioner from the said date although he could be able to draw pension upto 20.9.1986".

"By the very force of circumstances, the pension payment order was admittedly issued on 14.3.1986 retiring the applicant on a pension of Rs.462/- with effect from 1.3.1983 and this pension was drawn by him upto 20th September, 1986. Accordingly the question of the applicant applying for commutation in 1983 does not arise. Pension which has already been received retrospectively cannot be logically commuted with prospective effect. Commutation of pension is the capitalising the value of the future pension at the time of commutation with reference to what the pensioner is likely to receive on future dates depending upon his health, present age and the statistical expectation of how long he is likely to live. The state of health and age of the applicant in 1983 cannot be relevant for commutation of pension in 1986. The learned counsel for the applicant indicated that for commutation of his pension in 1986, he was medically examined in 1986 itself, and this is what was natural and possible. He could not have been medically examined in 1986 in order to determine his state of health in 1983. Accordingly, it will be illogical if not absurd to say that in 1986 the applicant got his pension commuted from 1983. Such an argument may lead to funny results even the successor of a pensioner who has died could claim commuted value of pension with reference to the life and state of health of the deceased pensioner with reference to a past year. We would not like to dilate the dimension of absurdity pregnant in such an argument and perception.

"In the conspectus of facts and circumstances, we allow the application declaring the applicant as an 'existing pensioner' as contemplated in O.M. dated 16th April, 1987 and direct the respondents to refix the pension of the applicant with effect from 1.1.1986 in accordance with the O.M. dated 16th April, 1987 with all consequential benefits including redetermination and payment of the balance of the commuted value of the revised pension on the date on which the same was granted."

11

In the above circumstances we find that the applicant is entitled to get his pension revised with effect from 1.1.86 along with arrears of pension from that date and the benefit of commutation of pension on the basis of the revised pensionary amount.

5. As regards withholding of the gratuity the same is allowed under Rule 323 of the Manual of Railway Pension Rules, 1950. The relevant portion of the rules is as follows:

"(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus 25 per cent thereof. In cases where it is not possible to estimate the approximate amount recoverable from the retired Railway servant, the deposit to be taken or the portion of the gratuity to be withheld should be limited 40 per cent of the amount of death-cum-retirement gratuity or Rs. 1,000/- whichever is less."

6. The Full Bench of this Tribunal in Wazir Chand Vs. Union of India and others in its Judgment dated 25.10.90 (Full Bench Judgments of CAT, 1989-91, Vol.II page 287) have held that the Circulars of the Railway Board and Rules contained therein are statutory rules issued under Article 309 of the Constitution. Accordingly in the instant case since the dues which the applicant has to pay has been assessed to be more than the amount of gratuity to which the applicant is entitled, the action of the respondents to withhold the DCRG cannot be faulted. However, it appears that no notice was given or no explanation obtained from the applicant before the Railways assessed the amount due from the applicant for adjustment against the gratuity. The Patna Bench of the Tribunal in O.A.361/90, 1992(1)ATJ held as follows:

"It is settled that the amount of gratuity due to a civil servant or a railway servant is not a bounty and that it has to be paid in full immediately on the retirement on superannuation. No doubt, in the case of a railway servant as there is a provision for adjusting

the dues to the Railways, the Railway servant need only be paid the amount after such adjustment. But the dues must be established as in existence in accordance with law. Without that after the retirement of the Railway servant, it is not open to the Railway administration to arrive at a decision unilaterally to adjust amounts out of the gratuity that is payable to the Railway servant."

7. In the circumstances, the amount of gratuity due to the applicant has to be paid provisionally subject to such security or bond as have been prescribed under the Rules and instructions;

8. Accordingly, we allow the application to the extent and on the lines indicated below:

- (a) Subject to such security or bonds as have been prescribed the amount of gratuity should be released provisionally to the applicant.
- (b) The particulars and details of the amount due from the applicant should be communicated to the applicant within a period of two weeks from the date of communication of this judgment and the applicant should submit his explanation to the respondents within a period of two weeks thereafter. The amount due should be finalised within a period of one month thereafter and adjusted against the provisional gratuity.
- (c) The respondents are directed to revise and refix the applicant's monthly pension with effect from 1.1.86 in accordance with O.M. of 16.487 and pay arrears from 1.1.86 to November, 1986 on the basis of the revised rates.
- (d) The respondents are directed to revise and refix the commutation amount payable to the applicant as a consequence of the revision of his pension and pay the dues.
- (e) There will be no order as to costs.

J. P. Sharma
(J. P. SHARMA)
MEMBR (JUDICIAL)

S. P. Mukerji
(S. P. MUKERJI)
VICE CHAIRMAN